

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.847 of 2017

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Shashi Bhushan Prasad Singh S/o Late Brij Nandan Prasad Singh, R/o
Village- Koshra, P.O.- Jiyan Bigha, P.S.- Sheikhpura, District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Bihar, Patna.
3. The Director, Primary Education Bihar, Patna.
4. The District Education Officer, Sheikhpura.
5. The District Program Officer (Establishment), Sheikhpura.
6. The Block Education Officer.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Dr. Raj Kumar Singh, Advocate.
For the State : Mr. U. K. Singh, AC to SC-13.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 17-03-2023

Heard Dr. Raj Kumar Singh, learned counsel
appearing on behalf of the petitioner and Mr. U.K. Singh,
learned AC to SC-13 for the State.

2. The present writ has been filed for the following
reliefs:-

*“That the present petition is being filed for quashing of
fixation of salary of the petitioner dated 27.06.2016 and
thereafter to fix salary of the petitioner considering the
benefit of promotion of Graduate Teacher grade granted by
letter no. 870 dated 29.06.2012 in the grade pay of PB-2
9300-34800/- grade pay 5400 with 3% promotion
increment. It is further prayed that upon aforesaid fixation
of salary final pension and gratuity may be fixed and paid
to the petitioner from the date of such entitlement.”*



3. The petitioner was appointed as Assistant Teacher in pay scale of Rs.296-423/- on 21.01.1997. The petitioner was granted first time bound promotion after completion of 12 years of service w.e.f. 01.04.1989 for which the pay scale of Rs.1400-2600 was applicable and after revision the pay was fixed in PB-2 9300-34800 Grade Pay 4600. Thereafter, the petitioner was granted second time bound promotion after completion of 24 years of service on 31.12.2015 w.e.f. 01.09.2011 in the revised scale of PB-2 Rs.9300-34800, Grade Pay 4800 vide Letter No. 1385 dated 31.12.2015. Thereafter, vide Memo No. 870 dated 29.06.2012, the petitioner was promoted to Graduate Teacher w.e.f. 02.07.2012. The petitioner after serving about 36 years of service retired as Assistant Teacher on 28.02.2013 while working in Upgraded Middle School, Khakhra, Sheikhpura. After retirement of the petitioner from service, taking into consideration first and second time bound promotion, the salary of the petitioner was fixed for Rs. 24520/- w.e.f. 01.09.2011 and in view of the Memo No. 870 dated 29.06.2012 by which the petitioner was promoted to the post of Graduate Teacher w.e.f. 02.07.2012, the salary of the petitioner was enhanced to Rs. 26020/- by adding 3% of promotional increment.



4. Petitioner is aggrieved by the action of the District Programme Officer (Establishment), Sheikhpura who vide Letter No. 830 dated 21.03.2016 sent letter to the Head Master to re-fix the pay of the petitioner in light of the Circular No. 630 dated 21.01.2010 and in light of the Notification No. 940 dated 01.09.2011. Petitioner has stated that since the letter was adversely affecting the petitioner, the authority was required to issue show cause, however, such decision was taken without issuing show cause and pay of the petitioner was reduced from Rs.26020/- to Rs. 25260/- on 06.01.2016 and gratuity was also reduced proportionately on 27.06.2016. The competent authority of the department sent the service book of the petitioner to the Accountant General for re-fixation of the pay and emoluments vide Letter No. 95 dated 22.01.2019 and accordingly, the Accountant General issued authorities under P.P.O. No. 20131123920P3 @ Rs.12650/- (Basic Pension) with Grade Pay of Rs. 4800/- per month and gratuity for Rs.1188/- after adjusting Rs.7,50,222/- (earlier paid) from the admissible gratuity for Rs. 7,51,410/- on 22.02.2019.

5. Today, the petitioner is unrepresented.

6. Learned counsel appearing on behalf of the State at the outset submitted that the case of the petitioner is squarely



covered by the decision of a co-ordinate Bench of this Court passed in **C.W.J.C. No. 10681 of 2017 (Tej Pratap Vs. The State of Bihar)** and another analogous cases which was disposed of vide order dated 26.07.2022 by which this Court had rejected the claim of fixation of pension of the petitioners on the basis of their last pay drawn. The Court considered the entire gamut of the matter and the relevant provisions of the Departmental Promotion Rules as well as the Resolution of the Finance Department, Government of Bihar dated 21.01.2010, mainly its Clause-12(a).

7. Similar statement was made by the Accountant General as in the present case, in the counter affidavit, promotion of the petitioner in Pay scale of Rs. 9300-34800/-, Grade Pay 4800 and thereafter giving 3% increment was found not in consonance with the Clause-12 of the aforesaid Resolution dated 21.01.2010, Hence the family pension / pension / gratuity was authorized to the petitioner on the basis of the admissible last pay i.e. Rs.25260/-. Learned counsel further submitted that the pay scale of regular promotion is similar to that of first financial upgradation and contends that pay will not be fixed in view of the clarification made by the Finance Department in the year 2017. The Accountant General



had fixed the admissible pay giving the same benefit which resulted into his promotion in pay scale of Rs.9300-34800/- Grade Pay 4800 and the petitioner has been found entitled to:

- i) Salary – Rs. 23610/-
- ii) Benefit of Promotion – Rs. 710/-
- iii) Difference of Grade Pay (4800-4600) = Rs. 200/-
- iv) Prescribed salary on 01.09.2011 - Rs. 24520/-
- v) and one increment equal to 3% w.e.f. 01.07.2012.

8. On these basis, learned counsel submitted that no interference is required so far as the pay of the petitioner was fixed by the District Programme Officer in requisite format on 27.06.2016 (Annexure-6).

9. This Court finds that there is force in the submission made by the learned counsel appearing on behalf of the respondent-State that the facts of the present case is similar to that of **Tej Pratap (supra)**, wherein a co-ordinate Bench of this Court after discussing the entire gamut of the case in detail and material on record in Paragraph Nos. 9 and 10 has held, *inter alia*, as follows:-

“9. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that the petitioners have already been granted the benefit of financial upgradation/increment/benefit of pay fixation by grant of one additional increment, after completing 12 years of service in the pay scale of senior selection grade-II i.e. prior to their regular promotion, hence the writ petitioners are not entitled to get the same benefit/additional increment twice inasmuch as it is evident from clause-12 of the aforesaid resolution dated 21.01.2010 that in case of promotion from one grade pay to another in the revised pay structure, the fixation will be done by



adding one increment equal to 3 per cent of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of ten, however, in the present case the grade pay of the aforesaid writ petitioners, upon promotion has remained the same as was before promotion, thus they will not be entitled to an increment equal to 3% again.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the aforesaid writ petitions, hence the aforesaid writ petitions are dismissed, however, considering the law laid down by the Hon'ble Apex Court in the case of State of Punjab & others versus Rafiq Masih & others reported in (2015) 4 SCC 334 as also the judgment dated 02.05.2022, rendered by the Hon'ble Apex Court in the case of Thomas Daniel versus The State of Kerala & others (Civil Appeal No. 7115 of 2010), the respondents are directed not to recover the amount paid in excess to the writ petitioners on account of grant of one additional increment due to wrong interpretation of rules, inasmuch as there has been no misrepresentation on the part of the writ petitioners."

10. In view of the discussions made hereinabove and the observation made by the co-ordinate Bench of this Court, this Court finds that the petitioner is not entitled to an increment equal to 3% again as the petitioner after his due promotion had remained in the same pay band and existing grade pay because the petitioner cannot be granted benefit / additional increment twice inasmuch it is evident from Clause 12 of the Resolution dated 21.01.2010.

11. As has been held in the aforesaid judgment of this Court, the respondents are directed not to recover the amount paid in excess to the writ petitioner on account of grant of one additional increment due to wrong interpretation of Rules, inasmuch as there has been no misrepresentation on the



part of the writ petitioner.

12. The writ petition requires no interference and accordingly stands dismissed.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.03.2023
Transmission Date	N.A.

