IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5872 of 2018

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Sushil Jha Son of Late Srikant Jha, Resident of Village - Asthua, P.S.- Singhwara, District- Darbhanga Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Government of Bihar, Water Resources Department, Sinchai Bhawan, Patna.
4. The Principal Secretary, Government of Bihar, Department of Finance, Patna.
5. The Secretary Ependiture, Government of Bihar, Department of Finance, Patna.
6. The Chief Engineer, Water Resources Department, Darbhanga. null null
7. The Executive Engineer, Western Koshi Canal Division, Khutauna, District- Madhubani. null null
8. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate
		Mr. Girish Pandey, Advocate
For the State	:	Mr. Piyush Kumar Pandey, AC to SC 11
For the A.G.	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 27-09-2023 Heard Mr. Amit Shrivastava, learned Counsel for the petitioner and Mr. Piyush Kumar Pandey, learned A.C. to S.C. 11 as also Mr. Bindhyachal Rai, learned Counsel for the Accountant General.

2. The present petition has been preferred for the

following reliefs:-

(i) for issuance of a writ in the nature of a Certiorari or such other writ/order/direction for quashing the Office Order dated 08.09.2017 issued by the Respondent No. 6 and communicated to the petitioner by Memo dated 09.10.2017 whereby and where under he has rejected the lawful claim of the petitioner for grant of benefit of revision of first and second A.C.P. from 09.08.1999 in the pay scale of Rs. 5500-9000 and Rs. 6500-10,500/- respectively and thereafter in the upgraded pay scale being Rs. 6500-10,500/- and Rs. 10,000-15,200/- respectively with effect from 28.03.2000, which rejection is in the teeth of notifications dated 28.01.2008 and 08.01.2016 and letter dated 16.11.2016 issued by the Government of Bihar, Finance Department and in view of judicial pronouncement dated 16.02.2012 passed in C.W.J.C. No. 18015 of 2011 and analogous cases/order dated 20.04.2015 in LPA No. 1260 of 2012 and order dated 07.12 2015 in SLP (Civil) No. 21329 of 2015 and order in MJ.C. No. 2783 and 3243 of 2012.

(ii) for issuance of a writ in the nature of a Mandamus or such other writ/writs / order / direction for

commanding and directing the Respondent Authorities to grant benefit of revision of the first and second A.C.P. with effect from 09.08.1999 in the pay scale of Rs. 5500-9000 and Rs 6500-10,500 respectively and also benefit of the upgraded pay scale being Rs. 6500-10,500/- and Rs. 10,000- 15,200/- respectively with effect from 28.03.2000 on the basis of the said notifications dated 28.01.2008 and 08.01.2016 and letter dated 16.11.2016 issued by the Government of Bihar, Finance Department and the aforesaid judicial orders along with 12% interest per annum from the said due dates for the delayed payment along with all other consequential benefits.

3. The case of the petitioner is that he was appointed as Lower Division Clerk in the office of Accounts Officer, Kosi Project, Purnia on 10.11.1965.

4. It is his further submission that subsequently, he was promoted as an Upper Division Clerk on 26.02.1977.

5. He concedes that subsequently two time bound promotions were granted to the petitioner on 01.04.1981 and then on 10.11.1990. Subsequently, he retired in the year 2003.

6. The case of the petitioner is that once the ACP was introduced, he rightly staked his claim and submitted

representation whereafter he moved in the corridors of the Department for years but now in the garb of the letter no. 687 dated 21.01.2015 (which is actually 20.01.2015), the claim has been denied.

7. The name of the petitioner finds incorporated at Serial No. 29 of the Order No. 1558 dated 08.09.2017 issued by the office of the Chief Engineer, Water Resources Department, Darbhanga.

8. Learned Senior Counsel for the petitioner has narrated the case of the petitioner in paragraph nos. 20 and 25 which read as follows:-

> *"20. That it is relevant to state here that the authorities were duty bound in law to issue appropriate orders for grant of both A.C.P. to the petitioner in terms of notifications dated 28.01.2008 and 08.01.2016. The said notifications are amendment to the said 2003 Rules. By the said amendment it was clearly provided that if there is provision of promotion from one cadre to another cadre then in that case government employee in the cadre will be granted first/second A.C.P. in the regular pay scale of the promotional cadre. In so far as the petitioner is concerned, as on 09.08.1999 he was duly posted on the post of U.D.C. (Accounts) and the said post had a promotional avenue in the cadre of Senior Auditor. The said promotional post of Senior Auditor had another promotional avenue / post in the cadre of Superintendent.*

As such in terms of said amendment dated 28.01.2008 the petitioner is legally entitled to grant of the two A.C.P. in the pay scale of the promotional post of Senior Auditor and consequentially in the pay scale of the promotional post of Superintendent. That is to say that the petitioner is legally entitled for grant of A.C.P. benefit in the said pay scales of Rs. 5500-9000 and Rs. 6500-10,500 respectively, which are the pay scales of the promotional post of the Auditor and Superintendent respectively.

25. That thereafter the petitioner made enquiries as regards the said letter dated 21.01.2015. He was informed that the said letter is actually dated 20.01.2015 so issued by the Finance Department, Government of Bihar and not dated 21.01.2015 as incorrectly mentioned in the impugned order. The petitioner has been able to obtain the copy of the same. A perusal of the said letter irrevocably demonstrates that the same is not at all applicable in so far as the case of the petitioner is concerned. A perusal of Clause - 2 and 3 therein reveal that there is no provision of two promotions in the cadre of Accounts Clerk thus the prescribed A.C.P. is as per the prescribed pay scales as mentioned in the said clauses 2 and 3. For the reason that in the cadre of the petitioner (Accounts Cadre) there is a specific provision for two promotional avenues."

9. A counter affidavit on behalf of the respondent no. 3 has been filed in which paragraph 25 has been answered at paragraph 31 which read as follows:-

"31. That the statement made in para no. 24-25 is denied to the extent that the claim of the petitioner have been considered and the same has been rejected after due consideration."

10. From the aforesaid facts, it is clear that the respondents have failed to reason out/reply to the specific statements made by the petitioner in the writ petition.

11. In the aforesaid circumstances and considering that similar such persons are in the queue, it would be appropriate that a decision is taken by the highest Officer of the Finance Department, the Principal Secretary (respondent no. 4).

12. Learned Counsel for the petitioner submits that he will be preferring the detailed representation before the Principal Secretary, Department of Finance, Bihar, Patna (respondent no. 4) within a period of eight weeks from today.

13. If the said representation is preferred, the same shall be taken up by the Principal Secretary himself and a reasoned order be passed within a period of four months thereafter.

14. A fresh decision of the Finance Secretary will have bearing on the order in question and which will be passed independently of what has been incorporated in the order of the Chief Engineer and has been questioned by the petitioner in the

writ petition.

15. The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

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