

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2472 of 2018

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Sachidanand Sharma Son of late Mohan Sharma, Resident of Village-
Milanpalli Ward No. 2, P.S.- Kishanganj, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, General Administration Department, Old Secretariat, Patna.
3. Director, Directorate of Integral Child Development Services, ICDS, Indira Bhawan, Ram Charitra Singh Path, Boring Canal Road, Patna.
4. District Magistrate, Kishanganj.
5. District Programme Officer, Kishanganj.
6. Child Development Project Officer, Thakurganj, District- Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kishore Kumar Thakur, Advocate Mr. Braj Kishore Singh, Advocate
For the State	:	Mr.Sunil Kumar Mandal -SC3 Mr. Bipin Kumar, AC to SC3

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 19-12-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed by the
petitioner primarily to set aside letter No.1089 dated 23.10.2017
issued by respondent No.5, namely, the District Programme
Officer, Kishanganj (Annexure - P/1 to the writ petition); order
contained in Letter No. 111 dated 08.01.2018 issued under the
signature of respondent No.3, namely, the Director, Directorate
of Integral Child Development Services (ICDS) (Annexure -P/2



to the writ petition); order communicated vide Memo No. 355 dated 28.03.2018 issued by the District Magistrate, Kishanganj and with further prayer to restrain the respondent for making any recovery from the petitioner.

3. Learned counsel for the petitioner submits that the petitioner was working as a regular appointed clerk-cum-typist under the Directorate of Integrated Child Development Services of the Social Welfare Department, Government of Bihar. The petitioner was initially appointed to a Class-III post in the Directorate of Adult Education under the Human Resources Development Department between the years 1979-1987. The petitioner and other similarly situated persons were terminated from the services by a common order dated 28.02.1993 issued by the Director, Mass Education but, subsequently, by virtue of the order passed by the Hon'ble Court in CWJC No. 4716 of 1993 and also vide order passed in CWJC No. 5036 of 1992. Subsequently, in view of the order dated 01.09.1993, passed in CWJC No. 4716 of 1993, the services of the petitioner and other similarly situated persons were absorbed in the Directorate of Adult Education by virtue of Annexure-P5 and the condition for appointment was also mentioned therein. The name of the petitioner was figured in the said Annexure at Sl. No.45. The



condition for appointment stipulated in the said annexure is as follows:-

“क) मानव संसाधन विकास विभाग (प्राथमिक एवं वयस्क शिक्षा) के संकल्प संख्या 582 दिनांक 20.05.2005 के आलोक में इन छटनीग्रस्त कर्मचारियों का समायोजन नई नियुक्ति समझी जायेगी। छटनीग्रस्त होने के पूर्व की सेवा के आधार पर उन्हें वरीयता का लाभ अनुमान्य नहीं होगा परन्तु छटनीग्रस्त होने के पूर्व की सेवा की गणना पेंशन के प्रयोजनार्थ की जायेगी।”

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4. Learned counsel for the petitioner further submits that the petitioner through his association has filed another writ CWJC No. 13009 of 2001 and on the basis of the decision rendered in the said writ petition, the respondent State has issued one resolution published vide Memo No.582 dated 20.05.2005. According to which, the decision to absorb the Project Officers, Clerk-cum-Accountant, Clerk-cum-Typist and Steno-Typist as well as Drivers and Orderly Peons were taken. Counsel submits that the absorption of the petitioner was made on the post of Clerk-cum-Typist in the Directorate of ICDS under the Social Welfare Department, Government of Bihar.



Counsel further submits that there were two separate pay scales for both the cadres prescribed. One for the Lower Division Clerk other for the Upper Division Clerk. The pay scale for a Lower Division Clerk was Rs. 3050-4590/- and for an Upper Division Clerk the pay scale of Rs.4000-6000/-. Counsel further submits that when Modified Assured Career Progression Rules, 2010 (hereinafter referred to as 'the MACP') was introduced and according to Rule 22 of the MACP, the petitioner also became entitled to the same and as such he came in the pay-scale of Rs.5000-8000/- as decided by the organization vide Annexure-P-11/A which is said to be applicable w.e.f 09.08.1999.

5. Learned counsel for the petitioner further submits that upon receiving Letter No. 1089 dated 23.10.2017, the petitioner was surprised to know that the District Programme Officer, Kishanganj vide the said letter has directed to recover the excess amount paid to the petitioner towards his salary on grant of 1st, 2nd and 3rd ACP/MACP. The petitioner became further surprised on receipt of Letter No. 111 dated 08.01.2018 by which it has been held that the persons situated as like that of the petitioner are entitled to a pay-scale of Rs.4500-7000/- instead of a pay-scale of Rs.5000-8000/-. He further submits



that the said Annexures – P/1 and Annexure P/2 have been issued in gross violation of Letter No. 1720 dated 19.02.2014 by the Finance Department (Annexure – P10) by which merger of two pay-scales of Rs.4500-7000/- and pay-scale of Rs.5000-8000/- is permissible into one scale as PB-11 (9300-34,800/- with Grade Pay 4200 admissible. Learned counsel further submits that the benefit of the said merger is permissible financially w.e.f. 01.01.2009 particularly to those persons who are entitled for grant of 2nd ACP.

6. Learned counsel for the State has filed its counter affidavit and submits that the petitioner is not entitled for any benefit due to the reasons that Annexure -P2 to the writ petition which is under challenge as well as Annexure P-10 to the writ petition, on the basis of which the petitioner wants relief in his favour, shall not help the petitioner in any manner as the Letter No. 111 dated 08.01.2018 has been issued on the basis of letters issued by the Finance Department in which pay-scale for Clerk cadre after the grant of 1st ACP has been fixed as Rs.4500-7000/- but the fixation of pay of the petitioner has wrongly been made vide Annexure P-11A dated 18.05.2017. He further submits that Annexure -P10 is very much clear that there were two different pay scales permissible for the Clerk cadre i.e.



Rs.4500-7000 and Rs.5000-8000/- but the merger of those two pay scales has been made only w.e.f. 01.01.2006 onwards and, therefore, the petitioner is not entitled for the relief which he has prayed in the present writ petition.

7. Upon perusal of the documents and on the basis of the submission made by the parties, there are two provisions that are very much relevant to the petitioner's case. The first is the condition for appointment and the second is Rule 22 of the MACP Rules, 2010 by virtue of which it is clear that the petitioner is entitled for the benefit of ACP/MACP. So far as Annexure-P10 is concerned, it is admitted that there were two different pay scales prior to 01.01.2006, and in the opinion of the Court, Annexure P-10 shall not help the petitioner in any manner. Annexure-P2, issued by the Director, ICDS, is completely lawful and in accordance with law. So far as the question of recovery of the excess amount from the petitioner is concerned, there are relevant dates that are important. Benefit has been granted to the petitioner vide Annexure P-11 dated 18.05.2017 w.e.f. 09.08.1999 but just three months after the issuance of the said letter dated 23.07.2017, the order for recovery has been made and further clarification has been made vide Letter No. 111 dated 08.01.2018 by the Director, ICDS.



8. In this background, this Court is of the view that the wrong calculation made, if any, has been immediately rectified by the Department at the earliest i.e. within five months. Hence, there is no need for any interference in the orders impugned. Accordingly, this writ petition stands dismissed.

9. The order of stay granted vide order dated 23.02.2018 is hereby vacated.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	23/12/2023
Transmission Date	NA

