

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.960 of 2024

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Ajit Kumar Singh, son of Late Bhim Singh, resident of Bharasara, P.S. Bihiya, District-Bhojpur, presently posted as Additional District and Sessions Judge, Hilsa, Nalanda at Biharsharif and the Secretary of Bihar Judicial Services Association, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Finance, Government of Bihar, Patna.
2. The Secretary (Resource), Department of Finance, Government of Bihar, Patna.
3. The Secretary (Expenditure), Department of Finance, Government of Bihar, Patna.
4. The Secretary cum Legal Remembrancer, Department of Law, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Saket Tiwary, Advocate Mr. Anurag Singh, Advocate Mr. Animesh Gupta, Advocate Mr. Shivam Gupta, Advocate Mr. Amritya Raj, Advocate
For the Respondent/s	:	Smt. Anuradha Singh, Standing Counsel 21 Mr. Rakesh Prabhat, AC to SC-21 Mr. Shatabdi Sinha, AC to SC-21

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-07-2024

The petitioner, an Additional District & Sessions Judge in the State’s Judicial Service, has approached this Court in his personal capacity and as the Secretary of the Bihar Judicial Services Association; ventilating the cause of the Judicial Officers in the State of Bihar.



2. The issue raised is with respect to the second National Judicial Pay Commission (NJPC) and the grant of increments, which was done as per the resolution of the Government of Bihar applicable to all government employees, including the Judicial Officers. When the recommendations of the second NJPC was introduced, the resolution applicable to the government employees were made applicable to the Judicial Officers also. The specific issue dealt with in the writ petition is the applicability of the date of increment as available to the government employees. The same was modified, exclusively for the Judicial Officers, which resulted in the earlier fixation of date of increment being revised and refund being ordered from them.

3. The Government has filed a counter affidavit asserting its stand that the modification was in accordance with the recommendation of the second NJPC; which the Hon'ble Supreme Court has also specifically directed to be implemented, as is evident from *All India Judges Association v. Union of India and others; (2024) 1 SCC 546*.

4. We heard Shri Saket Tiwary, learned Counsel for the petitioner and Smt. Anuradha Singh, learned Standing Counsel No. 21 for the Government.



5. Admittedly, the Government of Bihar had, by Resolution No. 3590 dated 24.05.2017 (Annexure-P2), revised the pay structure of State Government employees with effect from 01.01.2016. As far as the payment of increments are concerned, by Clause 9 the following was provided:-

“9. Date of next increment in revised pay structure-

(1) There shall be two dates for grant of increment namely, 1st January and 1st July of every year, instead of existing date of 1st July:

Provided that an employee shall be entitled to only one annual increment either on 1st January or 1st July depending on the date of his appointment, promotion or grant of financial upgradation.

(2) The increment in respect of an employee appointed or promoted or granted financial upgradation including upgradation under Modified Assured Career Progression Scheme (MACPS) during the period between the 2nd day of January and 1st day of July (both inclusive) shall be granted on 1st day of January and the increment in respect of an employee appointed or promoted or granted financial upgradation including upgradation under MACPS during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.”

6. As illustration, it has also been provided that a person appointed/promoted/upgraded under MACPS between 02.07.2016 and 01.01.2017 would get the first increment on 01.07.2017. Similarly, a person appointed/promoted/granted MACPS between 02.01.2016 and 01.07.2016 would draw the



next increment on the 1st day of January, 2017. Hence, an employee with the State Government was entitled to the annual increment either on 1st of January or 1st of July depending on the date of promotion/appointment/financial upgradation. Then the increment will be on an annual basis; i.e. the 1st of January or July on which the increment was granted in the earlier year.

7. Implementation of second NJPC (Annexure-P1) was brought out by the State Government wherein Clause 4 (Chh) provided as under:-

“4(Chh) The date of annual salary increment will be determined in the light of the resolution no. 3590 dated 24.05.2017 of the State Government.”

8. The Judicial Officers were thus entitled to the annual increment either on the 1st of January or the 1st of July, as illustrated above. In the subsequent year from the year of promotion/appointment/financial upgradation, the State of Bihar also fixed the date of increment for the existing Officers along with the other benefits provided under the second NJPC and provided for payment of 25 per cent of the arrears due within three months from 27.07.2022, another 25 per cent within three months from that and balance 50 per cent before June, 2023.

9. While the Judicial Officers in the State of Bihar



were drawing such increment, a further modification was made as per Annexure-P3 being Resolution No. 6649 dated 28.07.2023, Clause 3 (iv) whereof is as below:-

“(iv) The date of annual increment of Bihar Judicial Service officials will be determined once a year according to the date of their appointment, promotion and financial upgradation. Paragraph 4(g) of the previously issued Resolution No. 9154, dated 28.09.2022 of the finance department, will be deemed amended to this extent. For those judicial officers whose salary increment matures on the next date of retirement, the notional benefit of the said salary increment will be admissible only for terminal benefit, subject to the salary limit of Rs. 2,24,100/-.”

10. The Counter affidavit also relies on the cited judgment in **All India Judges Association** (supra) and refers to Recommendation No. 44.11 (i) of the second NJPC, which was approved by the Hon’ble Supreme Court and which is extracted hereunder:-

<i>Recommendation No.</i>	<i>Recommendation</i>	<i>Order of this Court</i>
44.11(i)	As regards the date of accrual of increment, there shall be no change in the existing system which is being followed in various States/UTs i.e. the increment shall be once in a year as per the date of appointment or promotion or financial upgradation.	Accepted

11. The resolution as made applicable to the government employees for grant of increment on two dates



subsequent to promotion/appointment/financial upgradation is definitely a benefit conferred on the employees which was extended to the Judicial Officers also. The individual officers were granted the fixation as per Annexure-P1 resolution and they were paid the amounts due. It was subsequently that the said modification was brought out making the increments payable from one year from the date of promotion/appointment/financial upgradation.

12. True, the second Judicial Pay Commission had provided for the increments as modified by Annexure-P3. However, that is not intended to take away a benefit already conferred by the State Government to all the government employees; in which would be included the Judicial Officers also. The Judicial Pay Commission is appointed to make recommendations for the pay and allowances of the Judicial Officers, so as to maintain and preserve the independence of the judiciary and ensure that the Judicial Officers are not subjected to prejudice by executive imprimatur. When a benefit has been granted to all the government employees by the State Government, there is no reason for the State to modify it with respect to the Judicial Officers; discriminating them from the other government employees and also prejudicing their



entitlement to increment, as is provided to all other government employees.

13. It is undisputed that the provision under Annexure-P2, which is implemented for all the government employees is applicable also to the Judicial Officers. Merely for a recommendation made in the second NJPC that the increments normally would be once in a year as per the date of appointment or promotion or financial upgradation cannot result in the benefit conferred by the State to all the government employees, being denied to Judicial Officers. In fact, the recommendation of the second NJPC is also to the effect that there shall be no change in the existing system which is being followed in various States or Union Territories as regards their date of accrual of increment. In the State of Bihar, obviously the system followed was as per Annexure-P2; made applicable to the Judicial Officers also as per Annexure-P1. On the second NJPC being implemented the 2016 resolution was made applicable to all the Judicial Officers who were enabled to pay revision from that year. There is no reason to modify it based on the normal procedure followed in grant of increment; noticed only as an example in the second NJPC.

14. We hence set aside Annexure-P3 to the extent it



modified the grant of increment. The Judicial Officers will also be entitled to the date of increment as applicable to the other government employees as per Annexure-P2. The recovery made shall be immediately refunded to the Judicial Officers and increments shall be continued in so far as the Judicial Officers are concerned as per the procedure in vogue in the State of Bihar as evidenced by Annexure-P2.

15. On the above reasoning and the directions issued, we allow the writ petition.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	22.07.2024
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