

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5411 of 2020

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Jai Shanker Prasad Sinha, Son of Late Maheshwar Prasad Sinha, Resident of Kalyani Nikunj, Parao Pokhar Lane no.2, Sadpura, Bankers Colony, P.S.- Kazi Mohammadpur, Muzaffarpur- 842002.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Home Department, Government of Bihar, Patna.
3. Principal Secretary, Finance Department, Government of Bihar, Patna
4. Joint Secretary-Cum-Director, Administration, Home (Jail), Government of Bihar, Patna.
5. Deputy Secretary-Cum-Deputy Director (Admin), Home (Jail), Government of Bihar, Patna.
6. I.G. Prisons, Bihar, Patna.
7. Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Ms. Anju Kumari @ Anju Narain, Advocate Ms. Anant Kumari Sinha, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC- 8 Mr. Anil Kumar, AC to SC-8
For the AG, Bihar	:	Mrs. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-11-2024

Heard Mr. Rajendra Narain, learned Senior Advocate, duly assisted by Ms. Anju Kumari, learned Advocate for the petitioner and Mr. Anil Kumar, learned Advocate for the State.

2. Facts of the case depicts the sorry state of affairs of the State respondent authorities and their audacity not to extend any regard to the order of this Court, which stood



affirmed by the highest Court of the land.

3. the short facts, which led to the filing of the present writ petition are that the petitioner along with others were duly appointed as Jail Superintendent in the pay scale of Rs.1000 - 1820/-. The letter of appointment contains the name of eleven persons, including Shri Surendra Kumar Ambastha and Md. Mushtaque Ansari, whose name figured at serial nos. 6 and 8. So far as the petitioner is concerned, his name figured at serial no.3. The petitioner submitted his joining on 04.01.1984 as Jail Superintendent, in the Home (Jail) Department, Government of Bihar.

4. In terms of 4th Pay Revision Committee Recommendation, the petitioner and other identically situated persons, who were holding the post of Jail Superintendents, they have been allowed the pay scale of Rs.2200- 4000/- with effect from 01.01.1986; Subsequently on account of 5th Pay Revision Recommendation, a revise pay scale was recommended, which has been made effective from 01.01.1996, duly notified by the State Government vide Resolution No. 660 dated 08.02.1999. Since in the implementation of the 5th Pay Revision Committee recommendation, there was certain discrepancies, which led to the reference of the matter to the Fitment Appellate Committee,



duly constituted under the Chairmanship of Hon'ble Mr. Justice Aftab Alam, the then Justice of this Court. The said Fitment Appellate Committee after hearing the concerned parties have made recommendation for pay scale of Rs.8000-13,500/-, in favour of Superintendent, District Jail, the copy of which is marked as Annexure- 2.

5. Learned Senior Advocate for the petitioner advertng to the aforesaid facts contended that the recommendation of the Fitment Appellate Committee was duly accepted by the State Government vide Resolution No. 230 dated 12.01.2004 (Annexure- 2). Despite the aforesaid facts when the Superintendents of District Jail have not been allowed the revised pay scale, some of the similarly situated persons, including those of Surendra Kumar Ambastha and Mushtaque Ansari, have approached this Court in C.W.J.C. No. 22597 of 2012 (**Surendra Kumar Ambastha & Ors. Vs. The State of Bihar & Ors.**) with a prayer to grant replacement scale of Rs.8,000-13,500/- in terms of the recommendation of the 5th Pay Revision Commission and the resolution of the Bihar Government dated 12.01.2004 implementing the recommendation of the Fitment Appellate Committee. The respondent State authorities have countered the prayer of the



petitioners of that writ petition by stating that the petitioners were not found entitled to promotion on the identified 'need based post' as they were appointed on the post of Jail Superintendent in Junior Branch of the Bihar Jail Service in the then existing pay scale and they were officers in the basic grade till date 01.01.1996 and as such they had neither been given promotion in selection grade nor given regular promotion.

6. Disapproving the objections raised by the respondent State authorities, the learned Single Judge vide its order dated 27.06.2014 allowed the writ petition holding that the petitioners are entitled to receive their salary in the revised/replaced pay scale of Rs.8,000-13,500/- w.e.f. 01.01.1996.

7. Nonetheless, the recommendation made by the Fitment Appellate Committee and its acceptance by the State Government, the petitioners of the said writ petition have been deprived from their rightful entitlement, the learned Court further directed to ensure payment of salary to the petitioners in the revised/replaced scale and also to pay the arrears with interest @ 8% per annum after calculating the same in accordance with law.

8. The State being aggrieved preferred Letters



Patent Appeal, bearing L.P.A. No. 04 of 2015 (**The State of Bihar & Ors. Vs. Surendra Kumar Ambastha & Ors.**). A very comprehensive and assiduous order has been passed by the learned Division Bench of this Court vide order dated 09.02.2018 rejecting the contention of the State respondents by affirming the order of the learned Single Judge.

9. While dismissing the Letters Patent Appeal, bearing L.P.A. No. 04 of 2015 (**The State of Bihar & Ors. Vs. Surendra Kumar Ambastha & Ors.**), the learned Division Bench of this Court has categorically observed as follows:

“As we have observed at the outset, an unnecessary ghost has been created by the State in defence of the impugned action because even though the claim of the petitioners is for grant of replacement scale of Rs.8000-13500, the reply of the State is either in reference to promotion on need based post or in respect of grant of replacement scale of Rs.10,000-15200 but in the entire set of affidavits filed in the proceedings or in the present appeal except for trying to illegally attach the petitioners to the scale recommended by the Fitment Appellate Committee for the post of Superintendent, Sub Jail of Rs.6500-10,500 on grounds



that the petitioners were in basic grade with no promotions earned, despite the fact that the Bihar Jail Service Rules does not even conceive of a third branch other than the Junior and Senior Branch, there is no explanation as to why the petitioners were not granted a scale of Rs.8000-13500, which admittedly is a replacement scale of the scale of Rs.2200-4000 as per recommendation of the Fitment Appellate Committee and which has been implemented by the Finance Department through its resolution dated 12.1.2014.”

10. The State on being aggrieved by the order passed by the learned Division Bench of this Court has taken the matter to the Hon’ble Supreme Court in SLP (Civil) Diary No(s).40242/2018 (**The State of Bihar & Ors. Vs. Surendra Kumar Ambastha & Ors.**), which ultimately came to be dismissed vide order dated 10.12.2018, having been found no merit.

11. Basing upon the aforesaid facts and the issue being already set at rest by the learned Single Judge of this Court as also duly affirmed by the learned Division Bench and the Apex Court; the petitioner made a representation before the Principal Secretary (Home), Government of Bihar, Patna.



Despite the prayer of the petitioner to grant the same benefit, as has been granted to other similarly situated persons, the matter kept pending for long, compelling the petitioner to approach before this Court by filing the present writ petition.

12. In the meantime, the State Government in compliance with the aforementioned order of this Court ensured the payment of all the arrears after according the revised pay scale, as recommended by the Fitment Appellate Committee.

13. A counter affidavit has been filed on behalf of respondent nos. 2 to 6. This Court is surprised to see the averments made in the counter affidavit, especially in paragraph nos. 9, 10 and 11 wherein the similar contention has been raised, as was raised before the learned Single Judge as well as the learned Division Bench of this Court, which contentions had already disapproved by this Court while allowing the writ petition and dismissing the Letters Patent Appeal preferred by the State authorities.

14. Once the issue has already been set at rest by this Court, which got affirmance by the highest Court of land, there is no reason or occasion for the State authorities to compel the other identically situated persons to approach before this Court. In the case in hand, irrespective of the fact that the case



of the petitioner is identical to those of Surendra Kumar Ambastha and Mushtaque Ansari and in fact as per the submission of the learned Senior Advocate of the petitioner even on better footing, because of petitioner being senior to those, the denial of the identical benefit is not only in defiance of the order passed by this Court in identical matter, but an attempt to overreach the order of this Court, as discussed hereinabove and, as such, in the opinion of this Court the outrageous action of the respondent State is not only fit to be reprimanded, but the authorities are liable to be punished for their audacity enabling them to circumspect their action, being the part of the model employer.

15. In view of the aforesaid facts and the ruling of this Court in the case of the **Surendra Kumar Ambastha & Ors. Vs. The State of Bihar & Ors.** (C.W.J.C. No. 22597 of 2012) and in the case of the **State of Bihar & Ors. Vs. Surendra Kumar Ambastha & Ors.** (L.P.A. No. 04 of 2015), this Court finds substance in the writ petition and accordingly allowed the same with a similar direction to extend the benefit of revised/replaced pay scale of Rs.8,000-13,500/- w.e.f. 01.01.1996 with a further direction to ensure the arrears with interest at the reate of 8% per annum along with a cost of



Rs.50,000/-.

16. The writ petition stands allowed.

(Harish Kumar, J)

uday/-

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CAV DATE	NA
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