

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16640 of 2018

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Ramashish Prasad Singh, Son of Late Nageshwar Singh, Resident of Priyadarshani Apartment, Flat No. B-401, Nageshwar Colony, Boring Road, P.S.- Budha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The State of Jharkhand, Ranchi through Chief Secretary, Ranchi.
3. Accountant General, A.G. Office, Bir Chand Patel Path, Patna.
4. Accountant General, A.G. Office, Doranda, Ranchi, Jharkhand.
5. Senior Accounts Officer GE07AJo (XVIII)N-10, A.G. Bihar.
6. The Registrar General, Hon'ble Patna High Court, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9425 of 2018

- =====
- 1.1. Amrendra Kumar Sinha Son of Late Braj Bihari Sinha and Late Punam Sinha. Resident of Mohalla - Ayodhyapuri, Sri Nagar, Police Station - Siwan Mufassil, District - Siwan.
 - 1.2. Narendra Kumar Sinha, Son of Late Braj Bihari Sinha and Late Punam Sinha, Resident of Mohalla - Ayodhyapuri, Sri Nagar, Police Station - Siwan Mufassil, District - Siwan.
 - 1.3. Bharti Sinha, daughter of Late Braj Bihari Sinha and Late Punam Sinha. Resident of Mohalla - Ayodhyapuri, Sri Nagar, Police Station - Siwan Mufassil, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna.
5. The Accountant General (A &E), Bihar, Birchand Patel Marg, Patna.



6. The Registrar General, Hon'ble Patna High Court, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16640 of 2018)

For the Petitioner/s : Mr.Shiva Shankar Sharma, Advocate

For the State : Mr. Prashant Pratap, GP-2

For the State of Jharkhand: Mr. Sanjay Kumar Pandey, Advocate

For the AG : Mr. Binod Kumar Labh, Advocate

For the High Court : Mr. Piyush Lall, Advocate

(In Civil Writ Jurisdiction Case No. 9425 of 2018)

For the Petitioner/s : Mr.Dhananjay Kumar, Advocate

For the State : Mr. Vishwa Ranjan Choudhary AC to GP-24

For the AG : Mr. Binod Kumar Labh, Advocate

For the High Court : Mr. Piyush Lall, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 31-01-2024

The petitioner in CWJC No. 16640/2018 is a retired judicial officer and substituted petitioner in CWJC No. 9425 of 2018 is the son of a retired judicial officer; whose wife was the original petitioner. Both the petitioners seek revision of salaries carried out when the officers were in service, based on the revision proposed by the Shetty Commission report; which came into effect on 01.01.1996, but the monetary benefit was to be paid with effect from 01.07.1996. Both the petitioners rely on a judgment of this Court in *Nawal Kishore Prasad vs. The State of Bihar & Ors.* in CWJC No. 10065/2010 dated 12.07.2011, produced as Annexure-3 in CWJC No. 16640 of



2018.

2. We have heard the parties and perused the records and also looked at the decision of the Hon'ble Supreme Court in *All India Judges' Association Vs. Union of India; (2002) 4 SCC 247*, which was relied on by the High Court to negate the claim raised by the two judicial officers.

3. The petitioner in CWJC No. 16640/2018 joined the service as Civil Judge (Junior Division) and retired as such. The judicial officer, whose revision of pay is agitated in CWJC No. 9425/2018 was appointed as Civil Judge (Junior Division) and retired on 31.12.1997, while continuing in the Bihar Superior Judicial Service. For a resolution of the separate similar claims made by the petitioners, reference to the facts are necessary and hence, we have to narrate the same before proceeding with the adjudication.

4. In CWJC No. 16640/2018, the petitioner was appointed on 04.06.1975 as a Munsif/Civil Judge (Junior Division). The petitioner was transferred in the course of service and later retired on 17.07.2001. The petitioner was promoted to the First Level of Need Based Post as per Annexure-1 dated 10.01.1997 with effect from 20.06.1987. The petitioner's name is found at Sl. No. 41 in Annexure-1. The petitioner, thus, was



promoted to the post with pay scale Rs.9000-14550 and retired from the said post.

5. The petitioner's contention is that, in fact, he should have been granted the pay scale of Rs.12850-17550. The petitioner who was at the scale of 3000-4500 was wrongly fixed in the pay scale of Rs.9000-14550 at the time of Annexure-1, is the argument.

6. It is very pertinent that the petitioner did not seek to challenge Annexure-1, revision of pay scale at the time when it was passed. Later, on the bifurcation of Bihar into the States of Bihar and Jharkhand, the petitioner chose Jharkhand and it was from that State, the petitioner retired on 17.07.2001. The petitioner is said to have taken up the cause with the Government of Bihar, for the first time by Annexure-2 dated 28.01.2016. The petitioner also relies on Annexure-4 issued by the Registry of the High Court, wherein it is stated that as per the decision of the Hon'ble Supreme Court, cited above, the petitioner's corresponding scale for Rs.3000-4500 would be Rs.12850-17550. The office of the Accountant General, however, refused to enhance the revision to the higher pay scale.

7. The learned counsel for the High Court pointed out from *All India Judges' Association* (supra) that the petitioner



remained as a Civil Judge (Junior Division) and his scale of pay, as per Shetty Commission Report was Rs.9000-14550. The higher scale of Rs.12850-17550 was applicable only to the Civil Judge (Senior Division) and officers in the Civil Judge (Junior Division), who obtained second stage ACP.

8. The Accountant General's counter affidavit indicates that the claim of the petitioner arises from a misapprehension that there is a scale to scale revision as per the Shetty Commission report, when the revision is only based on the post. Annexure-R-3/A, produced along with the counter affidavit dated 12.09.2018, is specifically relied on, wherein the Government of Bihar had provided revised scales available at the Entry Level in which the petitioner remained, till retirement. There is no challenge to the same.

9. In CWJC No. 9425/2018, the father of the petitioner was initially appointed as a Munsiff and retired on 31.12.1997 from the Bihar Superior Judicial Service. The father of the petitioner while posted as the Additional District & Sessions Judge, by notification, produced as Annexure-1, dated 27.05.1998, was given the third level of need based promotion and his pay scale revised to Rs.4600-150-5700. The judicial officer was given revised pay scale of Rs.16750-400-20500



while the petitioner claims Rs.18750-22850/-. The defence of the respondent is similar to that in the earlier case that the revision is post based and not scale to scale.

10. We have perused the *All India Judges' Association* (supra) case, wherein it is observed that, after consideration of the recommendations of the 5th Pay Commission and the pivotal role played by the subordinate judiciary and the essential characteristics of a judicial officer, the Shetty Commission evolved a master pay scale. As has been noticed in the cited decision, the Shetty Commission came to the conclusion that the number of pay scales should equal the number of clearly identifiable levels of responsibility. After considering all the relevant circumstances, the Commission recommended the scales of pay, which are extracted here, from the decision of the Hon'ble Supreme Court:-

(i) Civil Judges (Jr. Divn.): Rs9000-250-10,750-300-13,150-350-14,550

(ii) Civil Judges (Jr. Divn.) (I Stage ACP scale):

Rs 10,750-300-13,150-350-14,900

(iii) Civil Judges (Sr. Divn.)

(II Stage ACP scale for Civil Judges (Jr. Divn.):

Rs12,850-300-13,150-350-15,950-400-17,550

(iv) Civil Judges (Sr. Divn.) (I Stage ACP scale):

Rs 14,200-350-15,950-400-18,350



(v) District Judges (entry level): Rs 16,750-400-19,150-450-20,500

+

(II Stage ACP scale for Civil Judges (Sr. Divn.)

(vi) District Judges (selection grade):

Rs 18,750-400-19,150-450-21,850-500-22,850

(vii) District Judges (super time scale): Rs 22,850-500-24,850

11. The revision, based on the Shetty Commission report, has to be post based as contended by the State, High Court and the office of the Accountant General. Annexure- R-3/A, produced in CWJC No. 16640/2018, is the notification issued by the Government of Bihar for the persons continuing in the entry level of Munsiffs. On revision, the scale applicable would be Rs.9000 - 14550. On the 1st ACP, scale applicable would be Rs.10750-14900 and on grant of 2nd ACP, the scale applicable would be Rs.12850 -17550, which is akin to the scale of a Civil Judge (Senior Division). The need based promotions and the scale of pay granted, is not a conformation of ACP.

12. The petitioner in CWJC No. 16640/2018, thus, cannot claim a higher pay than that conferred on him. If at all, the need based promotion had to be reckoned for the purpose of revision of pay, the petitioner ought to have challenged the notification Annexure-R-3/A, which was issued in the year 2001. There is no reason to entertain the claim of the petitioner



at this belated stage and the claim also is found unsustainable.

13. Insofar as the claim of the petitioner in CWJC No. 9425/2018, the father of the petitioner was granted the scale of Rs. 16750-20500, which is the scale applicable to the District Judge Entry Level. The judicial officer was promoted to the post of Additional District Judge, according to the petitioner, on 01.01.1986. Annexure-1 notification dated 27.05.1998 also confers him with promotion to the third level of need based post on 01.01.1986. This also indicates that the promotion to the need based post is not an ACP, since if it were an ACP conferred on stagnation, the officer would not have been entitled to the higher pay scale, since on the same day, he was promoted to the higher post.

14. The petitioners had relied on the consent given by the office of the Accountant General, and the permission accorded by the High Court. The consent of the Accountant General is found at Annexure-R/1 of the counter affidavit. The learned counsel for the High Court, however, has specifically referred to the counter affidavit filed, which speaks of the Standing Committee of the High Court having considered the relevant record of the officers and the father of the petitioner was found to be not fit for promotion to the selection grade post



of the Bihar Superior Judicial Service. The judicial officer hence remained at the entry level of the Higher Judicial Service without any career advancement and in such circumstances, would be permitted the revision as applicable to the District Judge Entry Level, which is Rs. 16750-20500.

15. Both the officers remained at the Entry Level and retired; one as a Munsiff and the other as an Additional District & Sessions Judge. The revision applicable, as per the Shetty Commission, is that applicable to the post. The decision in *Nawal Kishore* (supra) proceeds on the basis that there is no explanation offered by the respondents. Here, the explanation is pleaded and found credible, by us. The writ petitions are, hence, found to be devoid of merit and both stand dismissed.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree.

(Rajiv Roy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	23.01.2024
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