

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6629 of 2018

1. Vinod Kumar S/o Sri Rambahadur Mahto, resident of Village- Patta, P.O. Amari, P.S. Chaurrarti, District Begusarai.
2. Md. Rashid Farooqui, S/o Late Md. Hassan Farooqui, resident of Village- Katasa, P.O. Katahalia, P.S.- Singhama, District- Darbhanga.
3. Uday Prakash, S/o Sri Ram Jug Ram, resident of Village- Sonbarsa, P.S.- Nawanagar, District- Buxar.
4. Umesh Kumar Ranjan, S/o Late Baleshwar Raman, resident of Village- Hathder, P.O. Sonagopalpur, P.S. Gaurichak, Sampatchak, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Department of Animal Husbandry and Fisheries Resources, Govt. of Bihar.
2. The Secretary, Department of Animal Husbandry and Fisheries Resources, Govt. of Bihar.
3. The Director Fisheries, Patna, Bihar.
4. Secretary, Finance Department, Patna, Bihar.
5. Additional Secretary, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajneesh, Advocate
For the Respondent/s : Mr. Sajid Salim Khan, SC-25

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 20-03-2024

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

2. The present writ petition has been filed for
setting aside the impugned notification dated 11.12.2017, issued



vide Memo Nos.3960 and 3964, by the Additional Secretary, Department of Animal Husbandry and Fisheries Resources, Government of Bihar, Patna, by which Financial upgradation extended to the petitioners under scale of PB-3 + 5400/- grade pay has been cancelled with a further direction to realize the excess payment made in this regard. The further prayer has been made for extending the benefit of financial upgradation under pay scale of PB-3 + 5400/- in view of resolution/Memo No.5153 dated 21.05.2013 issued by the Finance Department, Bihar, Patna.

3. Learned counsel for the petitioners submitted that vide advertisement No.27/99 the petitioners were appointed on the post of D.F.O. on entry pay structure of PB-2 pay grade 4800/- and after completion of four years their services were confirmed. Counsel submits that in exercise of power State Government was pleased to re-designate the Bihar Agriculture Service (Fisheries Category) into Bihar Fisheries Services with effect from 01.04.1970 vide Memo No.1829 dated 10.06.1970. Counsel further submits that in the year 2007 Animal and Fisheries Resources (Fisheries) recruitment/promotion Rules came into existence vide notification dated 23.08.2007 in which post of D.F.O. has completely been considered as promotional



post meaning thereby there would be no direct recruitment on the said post. Counsel further submits that the Department of Finance, Government of Bihar, issued another resolution vide No.5153 dated 21.05.2013, issued by the Additional Secretary Finance Department, Government of Bihar, addressed to Accountant General, Patna, indicating therein that there is provision of upgradation of entry of pay scale of PB-2 + 4800/- or grade pay 5400/- into PB-3 + 5400/- after completion of four years of confirm service and this would be a financial upgradation in view of departmental letter No.8710 dated 19.09.2011, which would be treated as financial upgradation under MACP 2010. Therefore, it is clear that the petitioners are entitled for the same. Counsel submits that petitioner Nos. 1 and 2 have been granted financial upgradation with effect from 16.08.2009 and 17.08.2009 respectively in view of the provisions made in resolution No.630 dated 21.01.2010 and letter No.3623 dated 31.03.2010 of Finance Department whereas petitioner Nos.3 and 4 have been granted the same with effect from 09.07.2010 and 01.06.2014 respectively in view of the resolution No.630 dated 21.01.2010 and resolution No.10041 dated 03.11.2011. But surprisingly vide Annexure-1 and 1A, the financial benefit accorded to petitioners has been



withdrawn without assigning any reason nor the impugned notification has clarified the opinion given by the Finance Department as to how and under which circumstances such illegal decision has been taken in contravention with its earlier resolutions. Counsel further submits that in consequence thereupon the Fisheries Department has started realizing the excess payment from the salary of the petitioners after being reverted to their earlier pay scale. Counsel further submits that the petitioners being aggrieved by the impugned notifications at Annexures-1 and 1A made representation to the Secretary, Finance Department, Bihar, Patna on 19.12.2017 stating therein their stand for financial upgradation to PB-3 + 5400/- with a request to restore the upgradation, but no action so far has been taken by the concerned authorities. As such, the impugned notifications at Annexures-1 and 1A is fit to be set aside for the ends of justice.

4. Learned counsel for the petitioners submits that being aggrieved and dissatisfied by the impugned notifications at Annexure-1 and Annexure-1A, he has filed representation on 19.12.2017 to the Secretary, Finance Department, Bihar, stating therein their stand for financial upgradation to PB-3+5400/- with a request to restore the



upgradation but no action has been taken by the concerned authority as yet.

5. Learned counsel for the State, on the other hand, submits that the financial upgradation of eight officers of Bihar Fisheries Service, category-2 had been under active consideration of the respondent Department and in this regard the concerned file was sent to the Finance Department, Government of Bihar, for obtaining opinion on this matter before extending the benefit of financial upgradation to them. Counsel further submits that the Finance Department, Government of Bihar after in-depth consideration of the aforesaid matter, opined that since the benefit of upgradation in the upgradation in the pay scale of PB-3 + 5400/- after completion of four years of service is not admissible to the basic category of officers of Bihar Fisheries Service as per Finance Department's Resolution issued vide Memo No.630 dated 21.01.2010. Counsel submits that as per the State Cadres are concerned, the Committee is the opinion that their position is not comparable to DANICS or DANIPS in that they do not constitute a service. Accordingly, they are entitled to the entry pay structure of PB-2 with grade pay of 4800/- and an automatic upgradation to PB-2 with grade pay of 5400/- after four years.



In the light of the aforementioned opinion of the Finance Department the respondent department has come out with the impugned notifications thereby cancelling the benefit of financial upgradation to the petitioners given earlier in the year 2016. As such, this writ petition has got no merit and fit to be dismissed.

6. Considering the rival submissions of the parties and materials available on record, this Court directs the Secretary, Finance Department, Government of Bihar, Patna, to decide the representation of the petitioners by passing reasoned and speaking order after granting opportunity of hearing to the petitioners within 90 days.

7. Accordingly, this writ petition is disposed off.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2024
Transmission Date	NA

