

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17761 of 2023

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Ram Kandey Rai, S/o Dashrath Rai, R/o Village Umarpur, P.S.-Buxar (Industrial State) District-Buxar, at Present R/o Mohalla-Ashiyana Digha Path, Prachi Orchid Apartment Flat No 302, Anand Bihar Colony, P.S. Shashtri Nagar District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Government of Bihar, Patna.
2. The Secretary, Department of Law, Government of Bihar, Patna.
3. The Secretary, Department of Finance, Government of Bihar, Patna.
4. The Registrar General, Patna High Court, Patna.
5. The Registrar, Establishment, Patna High Court, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddharth Harsh, Advocate
For the State	:	Mr. Sanjay Kumar Tiwary, Advocate
For the resp nos. 4 and 5	:	Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-08-2024

Heard Mr. Siddharth Harsh, learned Advocate for the petitioner, Mr. Satyabir Bharti and learned Advocate for respondents no. 4 and 5. The State is represented by Mr. Sanjay Kumar Tiwary, learned Advocate.

2. The petitioner superannuated on 31.01.2021 from the post of Assistant Registrar in the Patna High Court, has invoked the prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a direction



upon the respondent(s) to release withheld amount of Rs.5,87,669/- along with interest forthwith and to fix his pension on the basis of last pay drawn and to pay the same along with arrears.

3. Learned Advocate for the petitioner contended that after following due process, the petitioner was appointed as an Assistant Court Officer and subsequent thereto promoted to the post of Assistant on 05.03.1997. The petitioner while serving as Assistant, which was a Class-III Post, he had accorded the benefit of 6th Pay Revision w.e.f. 01.04.2007. The pay of the petitioner was fixed along with the benefit of bunching w.e.f. 01.01.2006 under 6th Pay Revision Commission in terms of Finance Department Resolution No. 630 dated 21.01.2010. Later on, vide letter bearing no. 3A-2-PV-16/2009 (Ansh-1)-15777/F, dated 07.11.2012, issued by the Finance Department, it was clarified that the benefit of bunching and implementation of Schedule II in respect of Clerk and Assistant Grade employees is applicable only for such employees appointed on or after 01.01.2006 and directed for re-fixation of the pay of such employees and recovery of the excess payment in two installments from their salary.

4. Being aggrieved, the Assistants of the Patna High



Court preferred two writ petitions bearing C.W.J.C. No. 12641 of 2013 and C.W.J.C. No. 12289 of 2013, which came to be allowed vide judgment dated 17.12.2015. The afore-noted judgment dated 17.12.2015 was put to challenge by the State respondents in LPA No. 1094 of 2016 and LPA No. 1098 of 2016, which were came to be dismissed vide judgment dated 28.10.2016. Aggrieved with the afore-noted judgment dated 28.10.2016, the respondent/State preferred Special Leave Petition before the Hon'ble Supreme Court being SLP Nos. 3861 of 2017 and 3795 of 2017. In the afore-noted matter, leave was granted and it has been numbered as Civil Appeal Nos. 2701 of 2017 and 2702 of 2017.

5. Learned Advocate for respondent nos. 4 and 5 submitted that in the meantime, a contempt petition bearing M.J.C. No. 4308 of 2016 was filed by the Assistants of the Court, which came to be disposed of granting liberty to the petitioners to seek enforcement of the order after disposal of the S.L.P. or any benefit is granted by the Supreme Court. In the light of the order passed by the Division Bench, in the contempt matter and after making proper consultation by the Finance Department, a notice has been issued by the order of Registrar General, Patna High Court, the copy of which has been brought



on record by way of Annexure-R4/F, which reads as under:

“In the light of clarification issued by the Finance Department, Government of Bihar vide letter no. B/Estab. (H.C.)06-03/2018-3586/J, dated 21.05.2019 of the Secretary, Law (Judicial) Department, Govt. of Bihar and also in view of Legal opinion of the Learned Counsel, retired Officers and Staff of Assistant/Personal Assistant/Translator Cadre of the Court is hereby informed that they may submit their consent along with undertaking for re-fixation of their pay without benefit of bunching w.e.f. 01.01.2006 under 6th P.R.C., for verification of their pay fixed w.e.f. 01.01.2006 under 6th P.R.C. from the Finance Department, Government of Bihar and thereafter finalisation of their Pensionary benefits, subject to the outcome of the order/judgment passed in the Civil Appeal nos. 2701/2017 & 2702/2017 by the Hon’ble Supreme Court.”

6. In pursuant to the notice, the petitioner submitted his undertaking and accordingly his pay was re-fixed under 6th Pay Revision after deducting thereupon the benefit of bunching.

7. It would be worth noting that further in the light of the clarification of Finance Department, the Patna High Court vide letter dated 29.08.2022 communicated to the petitioner that excess payment of Rs. 5,87,669/- has been withheld from the unutilized earned leave till the final judgment/order passed in



Civil Appeal Nos. 2701/2017 and 2702/2017 of the Hon'ble Supreme Court.

8. Adverting to the aforesaid facts, Mr. Satyabir Bharti, learned Advocate for respondents no. 4 and 5, contended that the apprehension of the petitioner is unfounded and the amount has been withheld subject to the final outcome of Civil Appeal Nos. 2701 of 2017 and 2702 of 2017.

9. At this juncture, learned counsel for the petitioner contended that not only the amount in question has been withheld rather the pay-scale of the petitioner has been reduced without any notice or opportunity of hearing causing serious prejudice to the right and entitlement of the petitioner.

10. In response thereto, Mr. Satyabir Bharti, learned Advocate for respondents no. 4 and 5 further contended that the pay-scale and pension of the petitioner shall also be abide by the final outcome of the afore-noted Civil Appeal Nos. 2701 of 2017 and 2702 of 2017.

11. Considering the submissions advanced on behalf of the respective parties and taking note of the pendency of Civil Appeal Nos. 2701 of 2017 and 2702 of 2017, which have material bearing over the issue, the writ petition stands closed with an observation that the claim of the petitioner with regard



to withholding of the amount as well as fixation of pay-scale/pension shall be abide by the final outcome of Civil Appeal Nos. 2701 of 2017 and 2702 of 2017.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21-08-2024
Transmission Date	

