

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3354 of 2020

Devendra Nath Tiwary Son of Late Raghunandan Tiwary resident of Village-Sherpur, Post Office MIC Bela, Sherpur, P.S. Muzaffarpur Sadar, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
3. The Chief Engineer, Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
4. The Superintending Engineer, Drainage Investigation Circle, Water Resources Department, Muzaffarpur.
5. The Executive Engineer Drainage Investigation Division, Water Resources Department, Muzaffarpur.
6. The Principal Secretary, Finance Department, Government of Bihar, Old Secretariat Building, Patna- 800 015.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Verma, Advocate

For the Respondent/s : Mr. Mr. Rewtikant Raman, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 18-10-2024 Heard Mr. Sanjay Kumar Verma, learned Advocate

for the petitioner and Mr. Rewtikant Raman, learned Advocate

for the State.

2. The petitioner by invoking the jurisdiction of this Court under Article 226 of the Constitution of India is seeking a direction upon the respondents to grant him the benefit under the Assured Career Progression Scheme by recalling the replacement pay scale of Rs. 4000-6000/- for existing pay scale of Rs. 1200-1800/- with effect from 01.01.1996 and



accordingly, to grant first and second Assured Career Progression Scheme in the next higher pay scale of Rs. 4500-7000/- and Rs. 5000-8000/- respectively and so the benefit of modified Assured Career Progression Scheme in the pay scale of Rs. 9300-34800/- with grade pay of Rs. 4600/-with payment of consequential benefits in integrating pay and pension of the petitioner.

3. The brief facts as averred in the writ petition are that the petitioner was duly appointed as Gauge Reader-cum-Silt Analyst in the work charge establishment with effect from 01.08.1973. The services of the petitioner was absorbed in regular establishment with effect from 22.10.1984. From the date of regularization/confirmation the petitioner had been discharging his duty as Gauge Reader-cum-Silt Analyst in the respondent department. Later on the petitioner was granted first time bond promotion and also accorded the fifth pay revision with effect from 01.01.1996 and accordingly, he got the replacement pay scale of Rs. 1200-1800/- for un-revised pay scale of Rs. 580-860/-. After coming into force of sixth pay revision the petitioner was surprisingly put in the pay scale of Rs. 3050-4590/- instead of pay scale of Rs. 4,000-6000/- and thus, the petitioner was paid lesser amount in terms of pay scale.



4. Learned Advocate for the petitioner contended that on the basis of the pay scale as fixed, the first and second assured career progression were given to the petitioner vide letter no. 1540 dated 10.05.2006 and after granting third Assured Career Progression Scheme the petitioner was put in the pay scale of Rs. 5200-20,200/-with grade pay of Rs. 2800/-, instead of pay scale of Rs. 9300-34,800/- with grade pay Rs. 4600/-. The learned Advocate further drew attention of this Court to the other similarly situated person namely, Bhagyanarayan Pathak and one Chandradeep Prasad Singh as is evident from page 47 of the writ petition and vehemently contended that they have been allowed the pay scale of Rs. 9300-34,800/- with grade pay of Rs. 4200/- whereas in the case of the petitioner discrimination has been caused and he has been accorded the pay scale of Rs. 5200-20,200/- with grade pay of Rs. 28,00/-.

5. The submissions as noted hereinabove has not been answered in the counter affidavit filed on behalf of respondent nos. 1 to 5.

6. Learned Advocate for the State submits that the petitioner has already superannuated on 31.01.2010 and accordingly, the pension was fixed which has never been questioned and after about a decade the petitioner approached



this Court. It is further contended that there is no infirmity in the fixation of pay scale as the same has been done properly in the light of the letter issued by the Finance Department.

7. This Court has heard the learned Advocate for the respective parties.

8. So far as the contention of the learned Advocate for the State with regard to delay is concerned, the same does not find any merit as the claim of the petitioner with regard to incorrect pay scale causes continuing wrong creates a continuing source of injury. The issue has already been crystallized by the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Tarsem Singh** reported in **2008(8) SCC 648** wherein the Hon'ble Court ruled that where a service related claim is based on a continuing wrong, relief can be granted even if there is long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

9. This Court also finds substance in the submission of the learned counsel for the petitioner at least to the extent that there is no response to the averment made in the writ petition and the submission made in support thereof that the persons



having identically situated have been allowed the higher pay scale and pension has been fixed, accordingly.

10. In that view of the matter, instead of directing the respondent State officials to file a fresh counter affidavit it would be apt and proper to dispose of the writ petition with a direction to the respondent no. 3 to consider the claim of the petitioner qua the identically situated persons, namely, Bhagyanarayan Pathak and one Chandradeep Prasad Singh. In case the claim of the petitioner finds favour and the case of the petitioner is found identical to those similarly situated persons, the similar pay scale must be accorded to the petitioner along with the consequential benefits in accordance with law.

11. The entire exercise must be completed preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

12. Writ petition stands disposed of.

(Harish Kumar, J)

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