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IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C.No. _____ / of 2012

Arbind Chaudhary

-----Petitioner.

Versus

The State of Bihar and ors.

-----Respondents.

Sub:- Pay Scale (Alam Ghatia)

I N D E X

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-----Petitioner.

Versus

The State of Bihar and ors.

-----Respondents.

S Y N O P S I S

For direction to the respondents for extending the benefit of 1st A.C.P. since June'2008 after completion of 12 years of service on the pay scale of Rs.9300-34800 (pre-revised scale of Rs.5000-8000) despite of possessing all eligibility the same has not been given without rhyme and reason and further give direction to the respondents after granting of the said A.C.P. the arrears of the salary in the revised pay scale be paid to the petitioner for which representation filed by the petitioner is pending and authorities are not taking any final decision.

- 15.7.1999 Petitioner was appointed on the post of Panchayat Sewak by the order of the District Magistrate Madhepura by the order issued vide Memo No.75-2 dated 15.7.1999.
- 16.8.2001 Petitioner has also passed the Hindi Noting and Drafting Examination conducted by the Department of Rajbhasa, Government of Bihar the examination held on 17.1.2000 for which the result was declared by the Deputy Secretary Raj Bhasa Department, Government of Bihar vide memo No.614 dated 16.8.2001.
- 18.5.2009 The Department of Panchayati Raj, Government of Bihar has issued a letter vide Memo No.2015 dated 18.5.2009 addressing to the Accountant General Bihar communicating the government decision for grant of pay scale as 1st A.C.P. to the Panchayat Secretaries. Annexure-1.
- 13.7.2010 The State Government has come out with a new notified A.C.P. Rules w.e.f 1.1.2009 but repealing clause one saving provision has been made by the notification No.7549 dated 13.7.2010. Annexure-2.
- 16.3.2012 Petitioner has filed a representation on 16.3.2012. Annexure-3.
- Hence the writ application is being filed.

IN THE HIGH COURT OF JUDICATURE AT PATNA
(CIVIL WRIT JURISDICTION)

C.W.J.C.No. _____ / of 2012

In the matter of an application
Under Article 226 of the
Constitution of India.

And

In the matter of

Arbind Chaudhary son of Late Satyanarayan Chaudhary, resident of Village
and Post Office-Rampur, Police Station-Murliganj, District-Madhepura at
present posted as Panchayat Sewak (Secretary) Kumarkhand block, District-
Madhepura.

-----Petitioner.

Versus

1. The State of Bihar.
2. The District Magistrate Madhepura.
3. The District Panchayat Officer Madhepura.
4. The District Accounts Officer Madhepura.
5. The Block Development Officer Kumarkhand, District-Madhepura.

-----Respondents.

To,

The Hon'ble Ms. Justice Rekha M.Doshit the Chief Justice of the High Court of Judicature at Patna and her companion justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner named above.

MOST RESPECTFULLY SHEWETH

1. That this is an application for issuance of an appropriate writ order or direction for issuance of an appropriate writ order or direction to the respondents for extending the benefit of 1st A.C.P. since ^{5th} June'2008 after completion of 12 years of service on the pay scale of Rs.9300-34800 (pre-revised scale of Rs.5000-8000) despite of possessing all eligibility the same has not been given without rhyme and reason and further give direction to the respondents after granting of the said A.C.P. the arrears of the salary in the revised pay scale be paid to the petitioner for which representation filed by the petitioner is pending and authorities are not taking any final decision.

2. That points for consideration of the present writ application are as follows:-

- (i) Whether the financial benefits extended to a government employee can be with held by the respondents without rhyme and reason and its amounts to violation of Article 21 of the Constitution of India?

- (ii) Whether the respondent authorities can sit over the matter to the legal dues newly of the services rendered as a government employee and continuing in the service as extended by the State Government is a piece of arbitrariness on the part of respondents?
- (iii) Whether non grant of A.C.P. and paying the arrears of the salary aggrieved on the basis of the said A.C.P. promotion will be treated as a delaying attitude of the authorities without any reason?
- (iv) Whether the action of the respondents are again the settled principle of law and for which he may be directed by this Hon'ble Court to perform such obligation which they have to perform towards their employees?

3. That petitioner is citizen of India residing within the territorial jurisdiction of this Hon'ble Court.

4. That petitioner was appointed on the post of Panchayat Sewak by the order of the District Magistrate Madhepura by the order issued vide Memo No.75-2 dated 15.7.1999 w.e.f 5.6.1996 due to the reason this appointment was made by way of promotion from the post of Dalpati to Panchayat Sewak and accordingly the salary, post of Panchayat Sewak was paid to him since 5.6.1996.

5. That after appointment on the post of Panchayat Sewak petitioner was posted at Madhepura Block then he was transferred to Ghelar Block and at present he is working in Kumarkhand block.
6. That petitioner has also passed the Hindi Noting and Drafting Examination conducted by the Department of Rajbhasa, Government of Bihar the examination held on 17.1.2000 for which the result was declared by the Deputy Secretary Raj Bhasa Department, Government of Bihar vide memo No.614 dated 16.8.2001 and the entry in the service book of the passing of Hindi Noting and Drafting Examination has already been made.
7. That after abolition time bound promotion scheme State Government has come out with the Bihar State Government Service Condition (Assured Career Progression Scheme) Rules,2006 w.e.f 1999 by which the provisions has been made those employees who has completed 12 yeas of service the 1st A.C.P. will be given to them and after completion of 24 years the 2nd A.C.P.
8. That petitioner who is working on the post of Panchayat Sewak (Secretary) if there is a cadre there was no promotion but there was a scheme for ex-cadre promotion under a Rule on the post of Panchayat Supervisor (now Block Panchayat Officer) by amendment in 2007 the provisions made under the A.C.P. Rules to those employees who are entitled to be promotion of ex-cadre post by a rule the will get the pay scale of such promotion post of 1st A.C.P. taking into consideration of the said amendment the Department of Panchayati Raj, Government of Bihar has issued a letter

vide Memo No.2015 dated 18.5.2009 addressing to the Accountant General Bihar communicating the government decision for grant of pay scale as 1st A.C.P. to the Panchayat Secretaries of the pay scale of the post of Panchayat Supervisor in Rs.5000-8000 and the said letter was also communicated to all the District Magistrate, District Panchayat Officer and Treasury.

A photo copy of the Letter issued vide Memo No.2015 dated 18.5.2009 is annexed herewith and marked as **Annexure-1** to this writ application.

9. That since the petitioner is in the service in the cadre of the post of Panchayat Sewak (Secretary) since ~~5.6~~ 5.6.1996 he completes the 12 years of service on ~~5.6~~ 5.6.2008 and he has also passed the Hindi Noting and Drafting Examination he was entitled to the extended the benefit of 1st A.C.P. to the post of Panchayat Supervisor in the pay scale of Rs.5000-8000/- (revised scale of Rs.9300-34800) but the district authorities are sitting over the matter they have not extended the same.

10. That it will be important to brought in the notice of this Hon'ble Court later in the year 2010 the State Government has come out with a new notified A.C.P. Rules w.e.f 1.1.2009 but repealing clause one saving provision has been made by the notification No.7549 dated 13.7.2010 in spite of the said repeal of the A.C.P. Rules those employees who have completed

who were entitled the benefit of A.C.P. as per the earlier A.C.P. Rules till 31.12.2008 and the entitlement as provided will be given to them.

A photo copy of the A.C.P. Repeal Rules Notification No.7549 dated 13.7.2010 is annexed herewith and marked as **Annexure-2** to this writ application.

11. That a review of provisions made under the notification as contained in Annexure-2 petitioner's entitlement for the 1st A.C.P. in the pay scale of Rs.5000-8000 (revised scale of Rs.9300-34800/-) is due on 5.6.2008 after completion of 12 years of service in the cadre of post of Panchayat Sewak but in spite of that provisions the District Authorities are sitting over the matter earlier they have took up the stand that after receipt of the service book the same will be given to them but they have not extended the said benefit till date to the petitioner.

12. That even the pay scale which was revised as per the 6th Pay was also not been fixed due to non grant of A.C.P. and payment of salary after grant of said benefit of A.C.P. since 5.6.2008 petitioner is getting the low salary for which he is entitled this shows the delaying the attitude of the District Authorities.

13. That petitioner has filed a representation on 16.3.2012 to addressing to the District Magistrate Madhepura requesting therein for grant

of 1st A.C.P. w.e.f. 8.6.2008 in the pay scale of Rs.5000-8000 (revised pay scale of Rs.9300-34800) along with the arrears has also mentioning the grounds he has completed 12 years of service on 8.6.2008 and has also passed the Hindi Noting and Drafting Examination for which the result was already declared in 2001 and has also mentioned in the service book and due to non grant of said benefit of A.C.P. was facing the financial hardship as also in the circumstances as others employees on the basis of pick and choose who are given the said benefit to the others but not to the petitioner without rhyme and reason.

A photo copy of the representation dated 16.3.2012 is annexed herewith and marked as **Annexure-3** to this writ application.

14. That till this date the authority has not taken any decision and matter is pending before whom petitioner is running from pillar to post.

15. That finding no other way an efficacious remedy than to move this Hon'ble Court petitioner has filing the present writ application.

16. That petitioner has not moved earlier to this Hon'ble Court in the matter of present writ application.

It is, therefore, prayed that your lordships may graciously be pleased to issue Rule NISI calling upon the respondents to show

cause as to why this writ application be not allowed and prayer made in the Paragraph No.1 of the writ application granting the benefit of 1st A.C.P. w.e.f. 8.6.2008 with arrears the pay Scale of Rs.5000-8000/- (revised pay scale of Rs.9300-34800/-) and on return of the rule hearing the parties the same be made absolute.

And/or

Pass such other order or orders as your lordships may deem fit and proper and in the facts and circumstances of the case.

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Arbind Chaudhary aged about 57 years, son of Late Satyanarayan Chaudhary, resident of Village and Post Office-Rampur, Police Station-Murliganj, District-Madhepura at present posted as Panchayat Sewak (Secretary) Kumarkhand block, District-Madhepura do hereby solemnly affirm and state as follows:-

1. That I am petitioner in the present writ application and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same.
3. That the statement made in Paragraph Nos.....1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100..... are true to my knowledge and those made in Paragraph Nos.....1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100..... are true to my information derived from the records of the case and rest are by way of submission of this Hon'ble Court.
4. That the annexures are true/photo copies of its original.

पत्रांक - 44/स-1-109/2008/पंसा०/2015/

बिहार सरकार
पंचायती राज विभाग

ANNEXURE

प्रेषक,

बृज मोहन राय,
उप निदेशक-सह-उप सचिव,
पंचायती राज विभाग, बिहार, पटना।

सेवा में,

महालेखाकार, बिहार,
वीरचन्द्र पटेल पथ, पटना।

पटना, दिनांक 18-05-2009।

विषय : पंचायती राज विभाग के अन्तर्गत पंचायत सचिव पद के लिए सुनिश्चित वृत्ति उन्नयन योजना के ताम के लिए अनुमान्य वेतनमानों की स्वीकृति।

महाशय,

निदेशानुसार उपर्युक्त विषय के संबंध में कहना है कि बिहार राज्य कर्मचारी सेवा शर्त (सुनिश्चित वृत्ति उन्नयन योजना) (संशोधन) नियमावली, 2007 द्वारा बिहार राज्य कर्मचारी सेवा शर्त (सुनिश्चित वृत्ति उन्नयन योजना) नियमावली-2006 में आवश्यक संशोधन के पश्चात बिहार राज्य पंचायत सचिव संघ के मांग के आलोक में ग्राम सचिवों को सुनिश्चित वृत्ति उन्नयन योजना के तहत स्वीकृत वेतनमानों में संशोधन का मामला/प्रस्ताव सरकार के विचाराधीन था।

2. वित्त विभागीय संकल्प संख्या-769 दिनांक 28.01.2008 द्वारा अधिसूचित बिहार राज्य कर्मचारी सेवा शर्त (सुनिश्चित वृत्ति उन्नयन योजना) (संशोधन) नियमावली, 2007 में यह प्रावधान किया गया है कि:-

"यदि किसी संवर्ग के कर्मी को किसी दूसरे संवर्ग के पद पर प्रोन्नति का प्रावधान हो तो, इस संवर्ग के कर्मी को प्रथम वृत्ति उन्नयन के तहत दूसरे संवर्ग का निम्नतम वेतनमान अनुमान्य होगा तथा दूसरे संवर्ग के निम्नतम वेतनमान का अगले उच्चतर पद का वेतनमान द्वितीय वृत्ति उन्नयन के तहत अनुमान्य होगा।"

3. पंचायत सचिवों की कोई संवर्ग नियमावली नहीं है; किन्तु पंचायती राज विभाग के अधीन पंचायत सचिवों को प्रखण्ड पंचायत राज पदाधिकारी (ग्राम पंचायत पर्यवेक्षक) के पद पर प्रोन्नति देने का प्रावधान है। प्रखण्ड पंचायत राज पदाधिकारी (ग्राम पंचायत पर्यवेक्षक) के लिए रु० 5000-8000 का वेतनमान अनुमान्य है।

4. पंचायत सचिवों का द्वितीय प्रोन्नति हेतु पद सोपान परिभाषित नहीं है।

5. उपर्युक्त वर्णित तथ्यों पर सम्यक रूप से विचारोपरान्त पंचायत सचिवों को सुनिश्चित वृत्ति उन्नयन योजना के तहत वित्तीय लाभ देने के लिए निम्न वेतनमानों के अनुमान्यता होगी।

(1) प्रथम वृत्ति उन्नयन के लिए-रु० 5000-8000/-

(2) द्वितीय वृत्ति उन्नयन के लिए रु० 5500-9000/-

6. इसमें वित्त विभाग की सहमति प्राप्त है।

विश्वामाजन्

उप निदेशक-सह-उप सचिव,

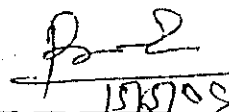
पंचायती राज विभाग, बिहार, पटना।

क०पू०उ०...../

ज्ञापक:- 2013

पटना, दिनांक 18.05.2009

प्रतिलिपि:- सभी जिला पदाधिकारी/सभी प्रमण्डलीय उप निदेशक, पंचायत राज/सभी जिला पंचायत राज पदाधिकारी/सभी कोषागार/सभी उप कोषागार/महामंत्री, बिहार राज्य पंचायत सचिव संघ, बिहार, पटना को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।


उप निदेशक-सह-उप सचिव,
पंचायती राज विभाग, बिहार, पटना।