

(1990) 11 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 1768 of 1990

Chandrika Pd. Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

Bihar Service Rules, 1952 — Rule 103
Constitution of India, 1950 — Article 226, 227

Citation : (1992) 1 PLJR 125

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Dilip Kumar Tewari, for the Appellant; R. Usha, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—This is a writ application under Articles 226 and 227 of the Constitution of India. The Petitioner had joined the Bihar Subordinate Education Service on 30.4.54 and before superannuation his last posting was as a Principal, Primary Teachers Training College, Barh. He remained on this post from 28.6.86 till the date of his superannuation i.e. 31.12.89. It is an admitted fact that on 3.3.87 he was given the additional charge of the post of Sub-divisional Education Officer, Barh which is evident from Annexure-2, being notification No. 179 dated 3rd March, 1987. In paragraph 22 of the writ application it has further been stated that the Petitioner was also given additional charge of S.D.E.O., Patna Sadar and S.D.E.O., Masaurhi with effect from 30.6.89. It is also not in dispute that the Petitioner had held the charge of the aforesaid additional posts till 31.12.89.

2. From the pleadings of the parties, the fact of giving additional charge of three posts i.e. S.D.E.O. of Barh, Patna Sadar and Masaurhi is not in dispute. In their stand the parties are at variance with regard to the nature of duty which has been discharged by the Petitioner in respect of the additional posts which he has held during the periods stated above. I do not wish to investigate as to what was

the nature of the duty which had been discharged by the Petitioner on the additional posts held by him. It will be a matter to be determined by the competent authority in order to assess the additional pay to which the Petitioner will be entitled under Rule 103 of the Bihar Service Code.

3. The Petitioner in this writ application claims that since he was holding the charge of additional posts, apart from his own assignment, under Rule 103 of the Bihar Service Code, he is entitled to receive additional pay. On the other hand, Miss. R. Usha, learned Junior Standing Counsel to the Additional Advocate General No. 1, submits that in view of the circular dated 30th December 1968, issued by the State Government (Annexure-A), the Petitioner is not entitled to any additional pay because the Petitioner had not discharged any duty of the additional posts except that he had taken charge from the outgoing incumbents. Her further submission is that the Petitioner had held the additional charges for a nominal period and therefore, keeping in view this aspect as well, he is not entitled to any claim of additional pay. In my view, the circular referred to as Annexure-A cannot have any overriding effect to the statutory rules incorporated under Rule 103 of the Bihar Service Code. This in unambiguous terms provides that if any government servant is entrusted with additional duties of other independent posts he would be entitled to additional pay. No doubt the quantum of additional pay, to which such government servant would be entitled is to be determined by the State Government and there is an upper limit to it also. In view of this statutory provision it is incumbent upon the State Government to fix the percentage of additional pay to which the Petitioner is entitled in law by evaluating the nature of duty which the Petitioner had discharged in respect of the additional posts held by him.

4. Keeping the above factual and legal aspect in view I hereby direct that the Respondent Joint Secretary, Human Resources Development Department will, within a period of two months from the date of communication of this order, ascertain the nature of duties discharged by the Petitioner in respect of these additional posts held by him and determine the percentage of additional pay to which he is entitled. I further direct that after determination of the quantum of additional pay the same should be paid to the Petitioner within a period of one month from the date of such determination.

5. The further grievance of the Petitioner is that he has superannuated from his posts with effect from 31.12.89 (afternoon) but till this date the final calculations with regard to the quantum of pension, to which he is entitled, has not been done. It has been stated by the Petitioner that the non-computation of his pension is likely to cause irreparable injury. According to him if the calculation of his pension is not made expeditiously, he may lose the benefit of commutation of pension as provided under chapter-13 of the Bihar Pension Rules, 1950. According to him the practice followed is that if the option with regard to the commutation is not exercised within one year from the date of retirement the retired employee is denied the privilege of commutation. In any view of the

matter a person, who has retired from his service, is as a matter of right entitled to the fixation of his pension at the earliest. The State has not come out with any explanation as to why delay is being caused in computation of pension to which the Petitioner will be entitled except saying that it will be done in due course. This stand seems to be most unfair. I hereby direct that finalisation of quantum of Petitioner's pension should also be complete latest by 25th December, 1990.

6. The Petitioner has filed a supplemented petition claiming some other reliefs with regard to the promotion etc. In my view, a separate writ application should have been filed for claiming those reliefs. A grievance, has also been raised on behalf of the Petitioner that in spite of all possible efforts made by him he is not being favoured with release of his provident fund to which he is entitled in full. The Respondent No. 2 is further directed to ascertain the amount of provident fund payable to the Petitioner and thereafter pay the same within a period of two months from the date of communication of this order.

7. The writ application is allowed to the extent as indicated above. Under the facts and circumstances there will be no order as to costs.