

(2011) 07 PAT CK 0242

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10660 of 2001

Mithilesh Kumar Dwivedi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Family Planning Special Provision Rules, 1977 — Rule 1, 3

Citation : (2011) 07 PAT CK 0242

Hon'ble Judges : R.M. Doshit, C.J.;Birendra Prasad Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—This petition under Article 226 of the Constitution of India is filed by a Judicial Officer to claim one additional increment in view of the family planning operation undergone by him on 7th October 1994. The Petitioner claims that the State Government has, in exercise of power conferred by the proviso to Article 309 of the Constitution, framed Bihar Government Servant (Family Planning Special Provision) Rules, 1977. Under Rule 3 of the said Rules the Government has allowed one additional increment to a Government servant below the age of 40 years who undergoes the family planning operation.

2 The learned Advocate Mr. Basant Kumar Singh has appeared for the Petitioner. He has relied upon the order dated 15th September 1999 made in the matter of "Yogesh Narayan Singh v. The State of Bihar and Ors. [CWJC No. 1701 of 1998]". He has submitted that in similar fact this Court has allowed one additional increment to the Petitioner of the said petition.

3. We are afraid, the submission of the learned Advocate appears to be ill founded. Clause (iii) of Rule 1 of the said Rules specifically excludes the Officers of the High Court and of the Courts Subordinate to the High Court from the applicability of the said Rules. It appears that in the matter of Yogesh Narayan Singh, the aforesaid Rules were not brought to the notice of the Court. The order

does not reflect whether that Petitioner was a judicial officer. However, on perusal of the judgment , it does appear that the said Petitioner was an officer in a Court subordinate to the High Court. If that be so the said order is per incuriam Rules of 1977.

4. In view of the express exclusion of the Judicial Officers from the applicability of the 1977 Rules, the claim for additional increment made by the writ Petitioner shall fail. Petition is dismissed.

The parties will bear their own cost.