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**(1997) 06 PAT CK 0003**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 10089 of 1996**

Sachida Nand Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 24-06-1997

**Acts Referred:**

**Citation :** (1998) 1 PLJR 96

**Hon'ble Judges :** S.J. Mukhopadhaya, J

**Bench :** Single Bench

**Advocate :** Pramod Mishra and Ramesh Kumar Thakur, for the Appellant; None, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.J. Mukhopadhaya, J.—The case was earlier heard on 22nd of April, 1997 when the following order was passed:

The present writ application has been filed for direction to the Respondents-authorities of the Health Department to pay the salary and other emoluments to the Petitioner which he was getting prior to issuance of the letter of the Finance Department dated 7.2.1994.

The contention of learned Counsel for the Petitioner is that the Petitioner who was a Compounder was getting his salary in the pay scale of the Pharmacist in terms of the policy decision of the government dated 2.8.67. It has further been contended that as per reports of 2nd, 3rd and 4th Pay Revision Committee, the pay scale of the Petitioner has further been enhanced and he has been getting the pay scale of Pharmacist as recommended by the said Pay Revision Committee.

Though earlier similarly situated person had moved this Court by filing writ petition bearing C.W.J.C. No. 381 of 1995 but the same was disposed of by order dated 4.8.95 with a direction that as the matter was pending disposal before the Director-in-Chief, Health Services, as such, the Petitioner of the said writ petition

would be getting salary and other emoluments which he was getting prior to issuance of the letter dated 22.7.95.

According to learned Counsel for the State, as the matter relates to financial implication, as such, the Health Department does not come into picture and as further letter has been issued by the Finance Department, it should be deemed that the said letter has superseded earlier letter.

In the facts of the case, the Petitioner has been enjoying financial benefits for the last 28 years and he has already superannuated, from service. His benefit of pay scale of Pharmacist which he was getting pursuant to the instruction issued by the Finance Department dated 2.8.67 and revision in the pay-scale pursuant to the reports-of 2nd, 3rd and 4th Pay Revision Committee, cannot be taken away without superseding earlier letter or without taking appropriate decision by the authority.

Let this matter be listed under the same heading after three weeks within one to ten cases.

In the meantime, no recovery would be made from the Petitioner pursuant to Annexure-3 or noting as contained in overleaf of Annexure-5.

2. Till date no counter affidavit has been filed on behalf of the Respondents in spite of time given to them. In this background this Court has no other option but to dispose of the writ petition on the basis of averment made by the Petitioner.

3. The Petitioner superannuated from service on 31st of January, 1995 prior to issuance of the letter dated 18.7.1995. In this case the impugned orders dated 7th of February, 1994 and 22nd of July, 1994 were issued by the Respondents without any notice to the Petitioner, in violation of rules of natural justice. In the aforesaid circumstances this Court has no other option but to set aside the impugned orders, contained in letter dated 7th of February, 1994 and 22nd of July, 1994 (Annexures 3 and 4), so far as it relates to the Petitioner. Further the Petitioner having superannuated from service on 31st of January, 1995 the Respondents cannot recover any amount from the salary of the Petitioner, out of the pension without any appropriate opportunity that too, if permissible under the law.

4. Accordingly, the impugned letters dated 7th February, 1984 (Annexure-3) and 22nd of July, 1994 (Annexure-4) are set aside.

5. The writ petition is allowed with the aforementioned observation.