

(1991) 07 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2471 of 1990 (R)

Sheo Saran Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

Bihar Service Code, 1952 — Rule 97, 97(2)

Citation : (1992) 1 PLJR 106a

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Ram Kishore Prasad, for the Appellant; M.M. Pal and Prakash Chandra, for the Respondent

Judgement

S.B. Sinha, J.—In this application the Petitioner has prayed for the following reliefs:

(i) for immediate fixation of his pay on the second and third revised scale of 1971 and 1981 respectively with promotion as given by the Respondent No. 2 as per Annexures-1 to 4 series for immediate payment of Full pay and allowances from 6.1.1966 to September, 1969;

(ii) for immediate payment of all the arrear legal dues after fixing the revised scale and on the basis of promotion as per Annexures 1 to 4 series and payment of due earned leave salary from 5.8.65 to 28.10.65 and 16.12.65 5.1.66.

(iii) for payment of suitable compensation amount of mental torture by the Respondents on account of illegally with holding the above dues arbitrarily and with malafide intentions.

(iv) for payment of interest on the above amount by way of fixation of his salary and after hearing the parties and perusing the show cause if any, filed by the Respondent be further please to make to Rule (s) Order (s) direction (s) absolute.

2. The fact of the matter lies in a very narrow compass.

3. Sheo Saran Prasad, the original writ Petitioner who died during the pendency of this writ application at all materials times had been working in different capacities under the State of Bihar. He was initially appointed on 3.12.1956 at Hazaribagh Collectorate, but was placed under suspension on 6.1.1966 and was reinstated in the month of September 1969, Slid Prasad was neither paid any salary nor was paid subsisting allowance during the aforementioned period. According to the Petitioner the original Petitioner's care leave was also not sanctioned for the period 5.8.1965 to 28.10.1965 and from 10.12.1965 to 5.1.1966.

4. The original Petitioner further eon? tended that although it should have been directed by the authority concerned that he had crossed the efficiency bar in the year 1966 and thereafter fixed his pay in terms of the recommendations of the third pay revision committee and the 4th pay revision committes which came into force w.e.f. 1.1.71 and 1.4.1981 respectively but no step in that regard at all was taken.

5. In this case a counter affidavit had been filed. In the said counter affidavit it has Men stated as follows:

12. That the deponent states that on the basis of the revised pay, the provisional gratuity and pension has been revised and payment has been made on 8.7. 1991 in the following heads and the wife of the Petitioner has received it.

(1) E.L. on full average pay has be en sanctioned vide D.C. Memo No. 25(i) dated 4.7.91 as follows:

5-8-65 to 28-10-65 85 days full average pay. 16-12-65 to 4-1-66 20 days

5-1-66 to 3-7-66 180 days on half average pay

4-7-66 to 30-9-69 1184 days Extraordinary leave.

(ii) pay in the scale of Rs. 105-3-123 EB-3-129-2-145-EB-2-155. fixed Rs. 260 on 01-1-1971 EB in the above scale on Rs. 123 from 3-12-1964 has been sanctioned by D.C. vide his memo No. 252 dated 4-7-1991.

(iii) Due to promotion in Upper Division Clerk in the scale of Rs. 284-6-324 EB 8-372 from 27-2-1974 fixed Rs. 296 on 27-2-1974.

(iv) As per 4th pay Revision Committee vide Govt, of Bihar Finance Department resolution No. 10770 dated 30-12-1981 pay fixed on 01-4-1981 Rs. 785/-.

(v) Due to promotion in Junior Selection Grade in the scale of Rs. 630-15-890-EB-15-965 from 01-4-1981 pay fixed Rs. 1085/- on 01-4-1981.

(vi) Due to promotion in Senior Selection Grade the scale of Rs. 785-25-1135-EB-25-1210 from 01-4-1986 pay fixed Rs. 1085/ -on 01-4-1986.

But vide letter No. 2597F (2) dated 22-4-88 of Govt, of Bihar Finance Department. The pay of Senior Selection Grade in the scale of Rs. 785-25-1135-

EB.25-12IQ has been reduced in the scale of Rs. 730-15-820-20-980 20-1080/-in this scale pay fixed on 01-4-1986.

In pursuance of the Fifth Revised pay scale the pay in the scale of Rs. 1400-40-1800-50-2300 Fixed vide Govt of Bihar letter No. 6621F (2) dated 18-12-1989 Rs. 1720 on 01-01-1986 and then in the scale of Rs. 1400-40-1600-50-2300-60-2600/- fixed Rs. 1950/- on 01-4-1986.

14. That by office order dated 4-7-1991 passed by Deputy Commissioner full average pay for the period (i) 05-5-1965 to 28-10-1965-85 days (s) for the period 16-12-1965 to 04-01-1966-20 days and half average pay for 05-01-1966 to 03-7-1966 180 days and extraordinary leave for 04-7-1966 to 30-9-1969-1189 days have sanctioned and accordingly bill has been prepared and payment will be made within two weeks.

15. That by another order dated 04-7-1991 the Petitioner has been ordered to cross the efficiency bar in the scale of Rs. 105-3-123-EB-3-129-2-145-2-155.

6. It has been stated in the counter affidavit that the original Petitioner had also been paid substantial portion of his gratuity amount and a provisional pension for 34 months i.e. from 01-4-1988 to 31-01-1991.

7. It is, therefore, clear that the Petitioner does not have any subsisting grievance with regard to the prayer of adjustment of earned leave as also fixation of scale of pay. The only dispute which arises for consideration is as to whether the Respondents were correct in directing in terms of the office order dated 4.7.1991 which is contained in Annexure-C to the counter affidavit that the periods from 5.1.1966 to 3.7.1966 is to be treated on half pay leave and the period from 4.7.1966 to 30.9.1969 to be treated to be a period spent by the Petitioner on extra-ordinary leave.

8. An employee while placed under an order of suspension is entitled to his subsistence allowance out in the event he is reinstan service, a direction in this regard has e made by the authority at the time offing of an order of reinstatement and/or order revoking the order of suspension in s of Rule 97 of Bihar Service Code.

(sic) From the records it does not appear any such order was passed by the com-
(sic) authority in September 1969 while (sic) was reinstated in service.

(sic) It is not the case of the Respondents the Petitioner was not fully exonerated so attract the provisions of sub-rule (2) of 97 of the Bihar Service Code (assuming aid provision had any application to the of this case) and thus, there can not be doubt that the direction of the Deputy missioner, Hazaribagh as contained in face order dated 4.7.1991 (contained in (sic)-C to the counter affidavit) whereby (sic) Petitioner had been directed to only half salary for the period from 5.7. (sic) to 3.7.1966 and the period from 4.7.1966 (sic) 9.1969 be treated as extra ordinary leave be held to be wholly illegal and without action.

It is now well known that for the (sic) of grant of extra-ordinary leave, the re-conditions as laid down under Rule "the Bihar Service Code must be fulfil-Such being not the position here--the (sic) is entitled to the full salary during (sic) period.

Mr. Prasad, submitted that the Petitioners are also entitled to interest. Keeping (sic) the fact that the original Petitioner (sic) this Court after a long time (sic) not inclined to direct payment of any " (sic) on the amount due to them.

However, it is directed that the res-(sic) must pay the legal dues of the original Petitioner to the present Petitioners as mentioned in paragraphs 12, 14 and 15 of the counter affidavit as also in terms of this order as early as possible and not later than two months from the date of receipt of copy off this order, failing which the Petitioner shall be entitled to interest at the rate of 15% p.a. from the date of expiry of the aforementioned period till actual payment.

14. In the facts and circumstances of the case, the Petitioner is also entitled to costs of this application which is quantified at Rs. 1,000/-.

15. Let a copy of this application be handed over to the learned Standing Counsel No. 1.