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**(2006) 11 PAT CK 0164**

**Patna High Court**

**Case No:** LPA No. 169 of 2005

Sheo Ranjan Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Nov. 28, 2006

**Citation:** (2007) 1 PLJR 598

**Hon'ble Judges:** Narayan Roy, J; Ajay Kr. Tripathi, J

**Bench:** Division Bench

**Advocate:** Narendra Prasad, for the Appellant; Shyam Kishore Sharma for the State and Mr. Raghwendra Sharan Pandey, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. Heard counsel for the parties. This appeal is directed against order dated 22.12.2004 in C.W.J.C. No. 12730 of 2003 passed by a learned single Judge of this Court, whereby and whereunder the writ application was dismissed.

2. It appears that the writ application was filed by the appellant for direction to the respondents to pay the salary and other allowances to him on the post of Care Taker as revised from time to time treating his basic salary as Rs. 850-1360-1500-2750. The learned single Judge of this Court on appreciation of the facts and submissions of the parties held that the writ petitioner was not holding Class III post and rightly he was being given the salary of Class IV post, and, therefore, the writ petitioner was not entitled for any relief. From the tenor of the order impugned, it appears that the learned single Judge of this Court having not found convincing materials declined the prayer of the writ petitioner on the ground that the petitioner was never put in scale of Rs. 850-1360 and as such, he was not entitled for the revised scale of Rs. 5000-8000.

3. Learned counsel for the appellant contended that by virtue of the earlier order passed by this Court in C.W.J.C. No. 2490 of 1998 dated 16.9.1999 the appellant was

given the scale of Rs. 850-1360-1500-2750 by the District Magistratecum-Chairman, Lodging House Committee, Gaya vide memo No. 1776 dated 23rd March, 2000, and, therefore, the appellant now is entitled for the replacement scale of Rs. 5000-8000, but the learned single Judge of this Court ignoring this fact dismissed the writ application holding that he was never put in scale of Rs. 850-1360. Learned counsel, therefore, contended that at the face of the order of the District Magistrate, Gaya dated 23rd March, 2000 the appellant would be deemed to be a Class III employee in the scale of Rs. 850-1360 and consequently thereof, he would be entitled for the replacement scale of Rs. 5000-8000.

4. Counsel appearing on behalf of the State and respondent No. 4, on the other hand, contended that the order issued by the District Magistrate, Gaya, dated 23rd March, 2000 was never given effect to and the same was subsequently reviewed by the Collector vide order dated 23.4.2000 and the appellant was allowed the pay scale of Rs. 775-1225 treating him as a Class IV employee, which would be evident from annexure D to the counter affidavit filed on behalf of respondent No. 4 in the writ application.

5. We have gone through the contents of the main writ application and the counter affidavit filed on behalf of the respondents, wherefrom it appears that the scale of Rs. 850-1360 was never given to the appellant nor the order of the District Magistrate dated 23rd of March, 2000, as referred in annexure 2/1 of the writ application was given effect to and this fact is manifestly clear from the writ application itself, as the petitioner asked for a writ of mandamus commanding upon the respondents to give the petitioner the scale of Rs. 850-1360 and consequently revised pay scale and allowances, and, thus, it is now own admission of the appellant that the order of the District Magistrate dated 23rd March, 2000 was never affectuated and the pay scale of Rs. 850-1360 was never given to him.

6. In the background of the facts, as noticed above, in our opinion, the learned single Judge was fully justified in dismissing the writ application holding that since the writ petitioner was a Class IV employee and was never given the pay scale of Rs. 850-1360, he was not entitled for the replacement scale.

7. In the result, this appeal is dismissed. No order as to costs.