

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**L.P.A. No. 572 of 2009**

**State of Jharkhand through the Secretary, Department of Mines & Geology, Government of Jharkhand, Ranchi, officiating at Project Building, PO Dhurwa, PS Dhurwa, District: Ranchi.**

**...Appellant**

**Versus**

**Smt. Meera Das Gupta, W/o Late Sukumar Das Gupta, R/o Kiran Enclave, Bariatu Road, Gandhi Vihar, 1-C, 1st Floor, Near-Siddhi Sai Hospital, PO-Bariatu, PS- Bariatu, District- Ranchi.**

**...Respondent**

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**CORAM :- HON'BLE MR. JUSTICE APARESH KUMAR SINGH  
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

**...**

For the Appellant : Mr. Amit Kumar Sinha, JC to SC-V  
For the Respondents : Mr. Siddhartha J. Roy, Advocate.

**...**

**By Court:** Heard learned counsel for the parties.

2. The correctness and legality of the order dated 26.08.2009, passed by learned Single Judge in W.P.(S) No. 2674 of 2003 is being assailed by the respondents-State of Jharkhand, appellant herein. The learned Single Judge directed the appellant-State to make payment of the salary and other allowances to the writ petitioner for the work taken from him for the post of Deputy Director for the period from 04.04.1996 to 29.06.2001 and for the post of Director, Mines and Geology for the period from 30.06.2001 till the date of his superannuation i.e. 30.06.2003 after deducting the salary already paid to him. He was further entitled to the retiral benefit on the basis of his pay as Director, Mines and Geology, as he was holding the said post on the date of his retirement.

From the undisputed facts on record, it appears that writ petitioner was never promoted to the post of Deputy Director, Department of Geology or Director, Mines and Geology on substantive basis, though vide notification dated 04.04.1996 (Annexure-1) and notification dated 29.06.2001 (Annexure-6), he was made to discharge the duties of his posts Deputy Director and Director of the Geology and Mines respectively on officiating basis.

He was holding the substantive post of Geologist in the Department of Mines and Geology when was made Incharge Deputy Director, Geology vide notification (Annexure-1).

3. Writ petitioner claimed the salaries and allowances attached to the post of Deputy Director and of the Director by relying upon the Rule 58 and 103 of the Jharkhand Service Code. He also relied upon the judgment of a learned Single Bench of the Hon'ble Patna High Court in the case of **"Dr. Sachita Kumar Sinha-versus- State of Bihar & others"**, reported in **1995 (1) PLJR 362**.

4. Learned Single Judge quoted Rule 40, 58 and 103 of the Jharkhand Service Code and following the judgment rendered in the case of **Dr. Sachita Kumar Sinha (Supra)** came to the opinion that in terms of Rule 58 and 103 of the Code, petitioner was also entitled to full salaries and allowances of the higher post, which he held in In-charge capacity; not only that petitioner was entitled to the retiral benefits of the higher post.

5. Learned counsel for the appellant-State has assailed the impugned direction by relying upon Rule-58 and 103 of the Code itself and also judgment rendered by the Hon'ble Apex Court in the case of **"A. Francis -versus- Management of Metropolitan Transport Corporation Limited, Tamil Nadu"**, reported in **(2014) 13 Supreme Court Cases 283**. He submits that in terms of Rule-58 of the Code, an incumbent could be entitled to the higher pay scale and allowances attached to the post from the date he assumes charge of the duty of that post, on being promoted on substantive post. In case the employee holding a lower substantive post is made to officiate in an independent post as a temporary measure, Rule-103 of the Code provides officiating allowances. He submits that in terms of Rule-103 of the Code, a notification has been issued bearing Letter No. 1082/2 dated 22.02.1988 whereunder a person holding charge of additional post could be entitled to 20% of officiating allowance in addition to the pay and allowances of the substantive post, which he is holding. He submits that impugned order of the learned Single Judge is erroneous in law and therefore, deserves to be interfered with.

6. Learned counsel, representing original writ petitioner/ his substituted widow, has not been able to overcome the legal submissions made on behalf of the appellant-State. It is also not disputed that the writ petitioner was ever substantively promoted to the higher post of Deputy Director or Director, Mines and Geology any time before his retirement. It is also not in dispute that he was made to discharge the duty of the higher post only on In-charge basis. Annexure-1 dated 31.12.1996 also clearly states in para-3 thereof that he would be looking after the charge of Deputy Director, Underground Water Cell, Ranchi in addition to his substantive charge. Language used in the notification dated 29.06.2001 also makes it clear that the writ petitioner would hold the post of In-charge Director, Geology while holding his own substantive post and the scale of pay attached to it.

7. In the light of the applicable Rules there is no room of doubt that the writ petitioner, not having been substantially promoted to the higher post, could not claim pay or allowance of the higher post while discharging his duties of the higher post in In-charge capacity.

8. Learned counsel for the appellant has rightly relied upon the opinion of the Hon'ble Apex Court rendered in the case of **A. Francis(Supra)** at para-6 thereof. The impugned order therefore suffers from errors of law. The direction to make payment of salary and other allowances of the higher post of Deputy Director and Director for the periods in question respectively and also holding the writ petitioner entitled to retiral benefits on the basis of the pay as Director, Mines and Geology, cannot be sustained in the eye of law.

9. We can only observe that the provisions of the Code, especially, Rules 58 and 103 have not been appreciated in the right perspective by the learned Single Judge of the Hon'ble Patna High Court, while deciding the case of **Dr. Sachita Kumar Sinha (Supra)**. Reliance upon the said judgment by the learned Single Judge is, therefore, misplaced.

10. Having held as above, we leave it to the writ petitioner i.e. his substituted heir to approach the competent authority under the

appellant-State for the claim of officiating allowances, as may be permissible under the law, for the periods original writ petitioner was made to discharge the duties as In-charge Deputy Director, Department of Geology and In-charge Director, Mines and Geology. However, the same shall be considered on its own merit without being influenced by any observation made in this order. Impugned order dated 26.08.2009, passed by learned Single Judge in W.P.(S) No. 2674 of 2003 is, accordingly, set aside. This Letters Patent Appeal stands allowed.

**(Aparesh Kumar Singh, J.)**

**(Ratnaker Bhengra, J.)**

Jharkhand High Court, Ranchi  
Dated-8th March, 2018  
S.B./KNR-NAFR