
(2012) 03 PAT CK 0108
In the Patna High Court
Case No : CWJC No. 4058 of 2012

Alakh Kumar Sinha and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Citation : (2012) 3 PLJR 654

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Pramod Kumar Sinha, Arvind Kumar Sharma No. 1, Chetan Kumar, for the Appellant; Subhash Pd. Singh, Shiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners and the State. The petitioners are aggrieved by the order dated 21.10.2011 passed by the Joint Secretary, Department of Finance, pursuant to the direction in LPA No. 234 of 2007.

2. The respondents conducted a Combined Competitive Graduate Level Examination for appointment on varied posts, 16 in number. Disparity in pay scale led to institution of CWJC No. 8419 of 1992. A Division Bench in CWJC No. 8419 of 1992 held that there was no nexus in fixing two revised pay scales after 5th Pay Revision in context of these 16 posts. No attempt for classification for such differentiation was put forward by the State. The Division Bench therefore directed parity in pay scale for all the posts with effect from 1.3.1991. The order was directed to be made applicable uniformly to all 16 posts. SLP (Civil) No. 4555 of 1994 preferred against the same was dismissed on 27.10.1994.

3. The petitioners who were appointed as industries Extension Officer in the years 1992-1994 approached this Court for similar relief in CWJC No. 12301 of 2004, ten years later. Relying on the earlier Division Bench judgment it was held on 9.3.2007 that they are entitled to the revised scale of Rs. 5,500-9,000/-.

4. Letters Patent Appeals were preferred by the State Government Concurring in principle with the earlier orders, it was noticed that the process of granting central equivalence pay scale could be achieved without discrimination for which an option was given by the Fitment Appellate Committee. But the State had not opted for the suggested course of action by the committee. It was observed that what shall be the common pay scale for all the 16 services in light of the recommendation of the Fitment Appellate Committee, whether it should be Rs. 5,000-8,000/- or Rs. 5,500-9,000/- should be first decided by the State Government itself by choosing one of the two. If anyone were to be prejudicially affected by reduction they were to be heard and if decision was not taken within six months the petitioners shall be deemed to be entitled to Rs. 5,500-9,000/-.

5. Learned Counsel for the petitioner submits that the impugned order is erroneous to the extent that it takes into consideration the 6th Pay Revision Committee Report after which from 2006 the pay scale of Senior Auditor Grade-II and Senior Auditor Cooperative were given a pay scale of Rs. 4,500-7,000/-. Earlier these posts were in the basic grade who were given the pay scale of Rs. 1,600-2,780/- for which the replacement scale was Rs. 5,500-9,000/-. The respondents are required to decide the eligibility for the pay scale of the 16 services with regard to those recruited under the advertisement of 1998 at the Second Graduate Level Examination and cannot take into consideration subsequent events.

6. Counsel for the State submits that the impugned order fully notices the conditions laid down by the Division Bench for consideration and grants parity in pay scale to all posts which were filled through the Graduate Level Examination.

7. The Division Bench diluted the mandamus issued for grant of the pay scale of Rs. 5,500-9,000/-. The petitioners accepted the finding of the Division Bench that they may be entitled to the pay scale of Rs. 5,000-8,000/- also and may not necessarily be entitled to Rs. 5,500-9,000. If the petitioners were of the opinion that they were entitled to the latter scale only it was for them to question the Division Bench judgment before an appropriate forum. Having accepted the judgment, taken a chance, they cannot now question the grant of the pay scale to them after the decision is not to their satisfaction.

8. The principle was explained in The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, holding as follows:--

12. The doctrine of election is based on the rule of estoppel--the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking

inconsistent stands and prolong proceedings unnecessarily.

9. Similarly in *Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (Intern.) Company Ltd.*, it was held:--

34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate", Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

10. Fixation of pay scale is a complex matter for which the respondents are better suited. It involves host of issues. Time and again judicial pronouncements have held that Courts should not lightly interfere with matters of pay scale unless there is gross arbitrariness or patent illegality. It would not be the jurisdiction of a writ court by process of reasoning to supplant its view over the opinion of the respondents that grant of the pay scale was wrong and substitute its own view.

11. The impugned order in no uncertain terms arrives at the conclusion of parity in pay scale including that of the Labour Enforcement Officer, Labour Officer, Malaria Officer alongwith the petitioners.

12. In the order dated 3.11.2011, disposing the contempt applications and applications for extension of time for compliance, the Division Bench had noticed that parity in pay scale had been granted at Rs. 5,000-8,000/- for Labour Inspector, Labour Officer, Senior Auditor Grade-II. The liberty granted therein to pursue matters further was limited only to those who stood to be deprived by reduction of their pay scale from Rs. 5,500/- to 9,000/-. No liberty was granted to the petitioners as urged on their behalf. The writ application is dismissed.