
(2008) 05 PAT CK 0050
In the Patna High Court
Case No : L.P.A. No. 414 of 1998

Angira Hirday Narayan Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 56 BLJR 2631 : (2009) 1 PLJR 24

Hon'ble Judges : Shiva Kirti Singh, J; Kishore K. Mandal, J

Bench : Division Bench

Advocate : R.N. Mukhopadhyaya and Alok, for the Appellant; Prabhat Kumar Singh, S.C. XXI, Sanjeev Kr. Singh and Ravi Kumar, J.Cs. to S.C. 21, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Kishore K. Mandal, JJ.—Heard learned Counsel for the appellants/writ petitioners in all the three Letters Patent Appeals which arise out of a common judgment and order of the writ court dated 3rd March, 1998 passed in five analogous writ petitions and also heard learned Counsel for the State appearing in all the three appeals.

2. Although the history of the litigation involving the appellants/writ petitioners and the State is long but the issues are very limited. There is no dispute that all the writ petitioners were engaged as Silt Analysts on a consolidated pay scale of Rs. 100/- per month in Units of the Irrigation Department, Government of Bihar, and they are matriculates and not graduates. It appears that in 1972 the State Government decided in principle to extend the benefit of pay scale to employees like the appellants/writ petitioners engaged in Work-Charged Establishments. Since the benefit of such decision was not made available to the appellants and some other similarly situated persons, they preferred a writ petition in the year, 1970, which was disposed of on 19.1.1973 with a direction to the State government to take a final decision. By an order dated 21.5.1974 the benefit of

pay scale was granted to the appellants with effect from 1.4.1964, as employees engaged in Work- Charged Establishment, but by an order dated 9.5.1978 they were ultimately brought in as part of the Regular Establishment of the Irrigation Department with effect from 1.4.1964 itself. The second writ petition preferred in 1973 was disposed of by order dated 13.9.1976 with certain observations indicating that some adjustment on account of over payment was being made from Silt Analysts but the government promised to look into this matter and the writ petition was disposed of on such assurance.

3. It is not in dispute that on account of the decision of the State Government River Valley Project Department was merged with the Irrigation Department in the year, 1974 and that department also had a Cadre having the nomenclature of Silt Analysts, who, according to the State, were required to be science graduates and were admittedly getting a higher pay scale than what was permitted to the appellants on account of the government decision granting them pay scale since 1964. Without protest the appellants continued to receive their pay in the pay scale decided by the government for matriculate Silt Analysts and there is no material on record to show that they ever approached any court or authority raising the grievance that the pay scale fixed for them by the State government between the period 1964 till 1981, when the pay scales were revised on account of Fourth Pay Revision Committee Report, was less or illegal or suffered from disparity compared to the higher pay scale being given to Silt Analysts (Graduates), who had come to the Department of Irrigation on account of merger of River Valley Project Department.

4. On account of the recommendation of the Fourth Pay Revision Committee replacement pay scale of the appellants, who were receiving the pay scale of Rs. 180-242, was apparently replaced by pay scale of Rs. 535-765 and for the other category of Silt Analysts (graduates), who were getting pay scale of Rs. 335-555, the replacement pay scale granted was of Rs. 730-1080.

Although there is some dispute on nomenclature of posts earlier held by the appellants because the posts, having the existing pay scale of Rs. 180-242 prior to Fourth Pay Revision Committee Report, have been described as Gauge Readers-cum-Silt Analysts, and whether the appellants belonged to this category of post or not, but there is no dispute that, in fact, they had been getting the same pay scale as sanctioned for these posts since 1964 and they have never received the scale of Rs. 335-555 shown as existing pay scale for Silt Analysts in the government decision on the basis of Fourth Pay Revision Committee Report.

5. However, admittedly, the appellants/writ petitioners were actually given the replacement pay scale of Rs. 730-1080 by treating them to be Silt Analysts in the pay scale of Rs. 335-555 prior to implementation of Fourth Pay Revision Committee Report. On that basis they received their salary. Such grant of pay scale, which the State is disputing to be wrong grant of higher pay scale by the departmental officials contrary to the decision of the State Government, was admittedly on account of decision by the departmental authorities not by the

State Government.

6. The appellants continued to receive the higher pay scale which, according to the State, they were not entitled, even after the Fifth Pay Revision Committee and till they retired from the service. In respect of one of the appellants, Angira Hirday Narayan Singh we have been hold that he superannuated in 1992 and other appellants have also admittedly superannuated from service.

7. After superannuation, the service records of the appellants went through the scrutiny of the Account General and his office and finding discrepancies in pay fixation and grant of increments etc., the final decision in respect of pensionary benefits was delayed. The appellants preferred writ petitions in the year, 1993. The appellant Angira Hirday Narayan Singh appears to have preferred CWJC. No. 1260 of 1993 seeking direction to fix his salary in the appropriate scale of pay which was given to the Silt Analysts (graduates), that is, Rs. 200-350 with effect from 1.4.1964 and in the corresponding replacement scale of pay of Rs. 385-555 with effect from 1.1.1971. He also prayed for some other reliefs relating to time bound promotion as well as payment of pensionary benefits. That writ petition was disposed of on 2.12.1993 by directing the concerned authority to take a decision in respect of petitioners' claim for proper fixation of pay.

8. Pursuant to such direction of this Court, the Finance Department looked into the entitlement of the appellants for the pay scale they had claimed with effect from 1.4.1964 and in course of same, according to the State, it was detected that since 1981 the appellants had been wrongly paid the replacement scale meant for Silt Analysts (graduates), who were working in the field establishments and doing different complicated work than the task of collecting silt and measuring the same through gauge, being done by the matriculate Silt Analysts such as the appellants. On such scrutiny, the department issued the impugned order contained in Annexure -1 to the writ petition. By that order the government has, in effect, decided to correct its mistake and place the appellants in the replacement scale of pay of Gauge Reader-cum-Silt Analysts on the basis of Fourth Pay Revision Committee Report and to grant them corresponding replacement scale as per Fifth Pay Revision Committee Report and as a result of such decision it appears that the authorities have decided to recover the excess money which the appellants had received.

9. Against such decision the appellants preferred writ petitions along with two others and the writ court by the order under appeal dismissed the writ petitions after holding that the State Government was justified in putting the Silt Analysts like the appellants having qualification of matriculation on a lower pay scale than the Silt Analysts of erstwhile River Valley Project Department, who were graduates, and the authorities of the department had earlier committed mistake in allowing higher replacement pay scales to the appellants.

10. Before us, it has been contended that there is no factual foundation for the finding given by the writ court that the Silt Analysts of River Valley Project

Department were required to be graduates and were doing different work. In the alternative, it has also been argued that since the two departments were merged in the year, 1974, hence it must be presumed that the two grades/classes of Silt Analysts, although under different pay scales, must also have merged into a single Cadre having the same pay scale.

11. We would first take up the second or the alternative submission that on account of merger of two departments in the year, 1974, the two grades/classes of Silt Analysts must be presumed to have merged into a single cadre having the same pay scale. On facts it has already been noticed that till 1981 when the report of the Fourth Pay Revision Committee was considered and implemented, there was no grievance regarding existence of two classes of Silt Analysts, who were, in fact, under different pay scales. The arguments that since the Department of River Valley Project merged with the Department of Irrigation in the year, 1974, therefore, the two cadres of Silt Analysts one in the Irrigation Department having lower pay scale and the other in the River Valley Project Department with higher scale should be deemed to have merged suffers from apparent fallacy.

12. For merger of Cadres, law requires specific orders and notifications showing that the employer has taken a conscious decision to increase or decrease the strength of the employees in different pay scales. There is no material on record to show any such decision by the State of Bihar. Even secondary materials available on record do not show that there was any merger of the two different kinds of employees who were getting different pay scales only on account of merger of the two departments in the year, 1974. Hence, we find no merit in the alternative or the second submission.

13. Coming to the first submission that there is no factual foundation for the finding by the writ court that the Silt Analysts of River Valley Project Department were required to be graduates and were doing different work, we would like to indicate that we were taken through the pleadings in the writ petition as well as in the counter affidavit filed on behalf of the State and we have noticed that neither in the writ petition nor in the Letters Patent Appeal there is any categorical statement that the stand of the State in its counter affidavit regarding Silt Analysts of River Valley Project being graduates and doing different work is false or incorrect.

14. In reply to the counter affidavit in respect of writ petition by Angira Hriday Narayan Singh submissions to the aforesaid effect have been raised in paragraph - 6 but that paragraph has been fairly admitted only to be submissions and not facts true to knowledge or based upon records as is clear from paragraph - 18 of the reply of the petitioner to the counter affidavit of respondents 1 to 4.

15. Categorical statements made by the State and its officials in the counter affidavit show that the Silt Analysts in the Department of River Valley Project were science graduates doing laboratory work of analyzing samples whereas the

Silt Analysts in the Irrigation Department were matriculate doing only the work of collecting samples and their measurement by gauge reading.

16. It was open for the writ petitioners to bring on record rules or regulations to show the prescribed qualification for the post of Silt Analysts in the two departments so as to effectively challenge the averments made on behalf of the State. But that has not been done. We find that the writ petitioners have avoided to give suitable and effective reply to the submissions made on behalf of the State in respect of qualification and nature of work by Silt Analysts of the two different departments which merged in the year, 1974.

17. Hence, on facts we find that the writ court had committed no error in giving its finding and on the basis of such findings it cannot be said that the State has violated Article 14 of the Constitution of India in granting different pay scales to two Silt Analysts having different qualifications.

18. Thus, on consideration of all the relevant facts and submissions, we find no good reason to take a different view in the matter. Hence, the order of the writ court under appeal is affirmed and as a result the writ petitions would stand dismissed. The appeals are found to be without any merits and the same are also dismissed accordingly.