

(2008) 05 PAT CK 0035

In the Patna High Court

Case No : Letters Patent Appeal Nos. 119 and 166 of 1997, 1037, 1050, 1071, 1078, 1086, 1087, 1088, 1106, 1146, 1161, 1191, 1240 and 1239 of 1996, MJC Nos. 1493 of 2002 and 2625 of 2004 and CWJC No. 6101 of 1999

Bihar Agriculture Graduate Service Association and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Citation : (2008) 05 PAT CK 0035

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Letters Patent Appeal No. 166 of 1997 and Letters Patent Appeal No. 119 of 1997 arise out of a common judgment and order dated 10.1.1997 passed in CWJC No. 12050 and 12420 of 1993 respectively whereby the writ petitions have been dismissed by the learned Single Judge. These two matters have been heard in detail and the other 16 analogous matters are admittedly dependent upon the outcome of these two Letters Patent Appeals inasmuch as in those cases the individual writ petitioners have sought either the same relief or further consequential reliefs in respect of subsequent pay revisions granted to members of the Bihar Agriculture Service Class II. Hence, all the matters have been heard together and are being finally decided by this common judgment.

2. Before reverting to essential facts which have already been noticed by the Writ Court, it may be useful to indicate at the outset that the controversy between the parties arose on account of alleged non- implementation of the recommendation of the 5th Pay Revision Committee (for brevity "5th PRC"). According to the writ petitioners/appellants, on account of a government decision 1423 posts of Agriculture Inspectors and other equivalent posts which undoubtedly belonged to Bihar Subordinate Agriculture Service, were upgraded from pay scale of Rs. 850-1360, effective from 1.4.1981, to pay scale of Rs. 1000-1820 which was the pay scale of the officers of Bihar Agriculture Service Class II, vide decision of the

Cabinet dated 1.9.1987 in respect of memorandum of the Agriculture Department, Government of Bihar, dated 25.8.1987. The said decision was communicated to the Accountant General, Bihar vide letter of the Agriculture Department dated 18.9.1987. For the sake of convenience, unless indicated otherwise, the essential facts and documents have been taken up for consideration from the records of LPA No. 166 of 1997. The aforesaid memorandum, the Cabinet decision and the letter are Annexures 3, 4 and 5 to the said LPA. It is further case of the writ petitioners/appellants that besides upgrading the aforesaid 1423 posts in the higher pay scale, the Agriculture Department of the State of Bihar also issued another notification dated 28.1.1988 (Annexure-6) to the effect that as a result of government decision dated 18.9.1987 upgrading 1423 posts of Agriculture Inspector and equivalent posts, 1423 posts were being merged into the cadre of Bihar Agriculture Service Class II and 1383 incumbents working in Bihar Agriculture Subordinate Service in the pay scale of Rs. 850-1360 were now being upgraded in accordance with seniority. Decision in respect of other officers would be taken later. According to the writ petitioners/appellants, the decision dated 28.1.1988 by itself was sufficient to cause an increase in the cadre strength of Bihar Agriculture Service Class II by way of merger of the upgraded 1423 posts. However, the Agriculture Department prepared a memorandum dated 30.3.1988 which was placed for approval of the Cabinet and the Cabinet accorded its post-facto approval on 12.4.1988 vide Annexure-8. It is further case of the writ petitioners/ appellants that by a notification dated 20.3.1989 (Annexure-9) some other posts were included in the cadre strength of Bihar Agriculture Service Class I and by notification dated 23.6.1989 (Annexure-10), the upgraded posts were also included in the cadre of Bihar Agriculture Service Class II and although the notification was sent to the Government Press, Gulzarbagh for publication in the official gazette, it could not be published but for that the writ petitioners cannot be blamed or penalized.

3. According to writ petitioners/appellants, who include a registered Association representing employees like the other petitioners, they faced no difficulty and the incumbents of the upgraded posts continued to receive salary in the upgraded pay scale and they were treated as members of the Bihar Agriculture Service Class II. However, after the resolution dated 18.12.1989 implementing the recommendations of the 5th PRC with effect from 1.1.1986, the writ petitioners were aggrieved on account of being granted a lower replacement scale of Rs. 2000-3800 in place of the replacement pay scale of Rs. 2200-4000 provided to other members of Bihar Agriculture Service Class II. In fact, the 5th PRC had recommended a replacement scale of Rs. 940-1660 for the pay scale of Agriculture Inspectors and other equivalent posts but for the employees who were previously in the pay scale of Rs. 1000-1820 the recommended replacement scale was Rs. 2000-3800. Admittedly, on 25.9.1989 an agreement was reached between the State Government and the registered Association representing the petitioners. A copy of that agreement has been annexed as

Annexure-14 to LPA No. 119 of 1997. According to that agreement, the writ petitioners were to get replacement scale of Rs. 2000-3800 with effect from the date the 1423 posts were upgraded in the pay scale of Rs. 1000-1820. The agreement indicates that Rs. 2000-3800 was to be the replacement scale for the basic grade of Bihar Agriculture Service also. The benefit of actual payment as per the replacement scale was to be from 1.3.1989. However, by resolution of the Finance Department dated 18.12.1989, the replacement scale for the specially declared State services which include Bihar Agriculture Service was approved as Rs. 2200-4000 for the basic grade in Bihar Agriculture Service Class II.

4. The writ petitioners claimed the replacement scale of Rs. 2200-4000 on the basis of State Government decision of merger of 1423 upgraded posts in Bihar Agriculture Service Class II and on that basis they started drawing pay in the replacement scale of Rs. 2200-4000. The matter was examined thoroughly by the Finance Department which came to hold that only the proposal for upgradation of 1423 posts into pay scale of Rs. 1000-1820 had received concurrence of the Finance Department and the Finance Department had never been given opportunity to examine the proposal for merger of such upgraded posts in Bihar Agriculture Service which is a specially declared State service controlled by the provisions of Bihar Agriculture Service Act, 1982 which authorizes the State Government under Sub-section (b) of Section 2 to add or alter or delete any post in the category of posts in Schedule I by a notification in the official gazette. According to opinion of the Finance Department, Government of Bihar, the upgraded 1423 posts could not be treated as part of specially declared State services which include Bihar Agriculture Service controlled by the provisions of the aforesaid State Act of 1982. In view of such decision, the Finance Department by memo No. 314 dated 22.1.1991 approved the replacement scale of Rs. 2000-3800 only for the 1423 upgraded posts. The Finance Department was of the view that the formal concurrence of Bihar Public Service Commission for entry into Bihar Agriculture Service was also lacking in case of 1423 upgraded posts. As a result, the Agriculture Department, Government of Bihar by notification dated 8.2.1991 deleted the 1423 upgraded posts from Schedule I of Bihar Agriculture Service Act, 1982 (Annexure-11). A copy of the aforesaid notification was also sent to Government Press, Gulzarbag, Patna for publication in the official gazette.

5. The aforesaid decision of the Government of Bihar dated 8.2.1991 was challenged by some of the employees who were occupying one or the other 1423 upgraded posts through CWJC No. 767 of 1991. A Division Bench of this Court heard the aforesaid writ petition along with another writ petition bearing CWJC No. 9217 of 1988 which had been filed by aggrieved officers for upgradation of remaining post of Agriculture Inspectors numbering 587 in the scale of Rs. 1000-1820. These posts of Block Agriculture Officers were gazetted and admittedly in higher pay scale than the post of Agriculture Inspectors which were non-gazetted posts. In fact, the post of Block Agriculture Officer was the

promotional post for the Agriculture Inspectors but the government, at the relevant time chose to defer the upgradation of post of Block Agriculture Officers in the scale of Rs. 1000-1820 for the reason that the Block Development Officers, who were the controlling officers of the Block Agriculture Officers were in the pay scale of Rs. 1000-1820 and that created administrative difficulties. The State admitted that the Block Agriculture officers possessed the same qualifications and perform same nature of duties but on account of administrative difficulty, as noticed above, the State Government was unable to remove the anomaly and could not give even parity of pay scale to Block Agriculture Officers.

6. After considering the claim of the upgraded posts of Agriculture Inspectors and equivalent posts as also the claim of the Block Agriculture officers, by judgment and order dated 26.5.1992, the Division Bench rejected the claim of the Agriculture Inspectors and holders of other equivalent posts which had been upgraded on the ground that the decision of the government for merger of the 1423 posts with Bihar Agriculture Service Class II was not a legal and valid decision inasmuch as the Cabinet had not granted any formal approval in regard to addition of the posts in question in the Schedule of the Bihar Agriculture Service Act so as to make them a part of the service and further the cadre strength in the Schedule of the Act could not be added in any other manner except as provided under the Act, that is by a notification in the official gazette which was never done and before that the government decided to reverse the decision for merger of the upgraded posts for Bihar Agriculture Service. At the same time the Division Bench disposed of the writ petition of Block Agriculture Officers with a direction to the State of Bihar to consider their cases for upgradation and to issue appropriate orders in accordance with rules as early as possible preferably within six months.

7. The aforesaid judgment and order of the Division Bench dated 26.5.1992 was challenged by the petitioners of CWJC No. 767 of 1991 through SLP giving rise to Civil Appeal No. 4602 of 1992. By a short judgment and order dated 12.5.1993 (Annexure-12), the Supreme Court held that since by notification dated 8.2.1991 the State of Bihar had downgraded the posts held by the appellants and as a consequence reduced the emoluments which they were drawing as class II officers, such a notification was detrimental to the interest of the appellants but was issued without affording any opportunity of hearing to the petitioners. On this ground alone, without going into the detailed facts, the Supreme Court set aside the notification of the State of Bihar dated 08.2.1991 and directed to issue show cause notice to the appellants if the State desired to downgrade the posts held by the appellants. Such show cause notice was to contain the materials on the basis of which the posts may be proposed to be downgraded. The Apex Court indicated a time schedule for show cause notice, its reply and final decision by a speaking order. It also clarified that the appellants shall not be entitled to the back wages as a consequence of the said order of the Supreme Court. In case the State Government ultimately decides the matter in favour of the appellants then they would be entitled to back wages which should be paid to them within a

reasonable time. Thus, the matter was remitted back to the State Government for fresh decision after giving show cause notice.

8. It is not in dispute that show cause notice was given to the appellants and thereafter a reasoned order dated 11.11.1993 (Annexure-13) was issued by the State Government. The same was challenged before the Writ Court through two writ petitions which were dismissed after final hearing by the judgment and order under appeal dated 10.1.1997.

9. The learned Single Judge has taken pains to notice the factual background of this case including the structure of the Agriculture Department, particularly the three different cadres in Bihar Subordinate Agriculture Service and Bihar Agriculture Service consisting of two classes. The provisions of Bihar Agriculture Service Act, 1982 have also been noticed along with relevant facts leading to impugned order dated 22.1.1991 whereby the petitioners were provided the pay scale of Rs. 2000-3800, in place of Rs. 2200-4000. The learned Single Judge further noticed that all the three government orders dated 22.1.1991, 8.2.1991 and 26.3.1991 contained in Annexures 2, 3/A and 19 had been considered by the Division Bench which had come to the conclusion that those orders suffered from no infirmity. It was noticed that the validity of those orders was again being questioned along with the reasoned order of the State Government dated 11.11.1993 in the present round of litigation. It was also noticed that on the limited ground of non-compliance with requirement of hearing the affected parties, the Supreme Court had set aside the government order dated 8.2.1991 with a direction to the State Government to pass a fresh order after show cause notice to the appellants.

10. The learned Single Judge noticed that the Hon"ble Supreme Court did not set aside the judgment of the Division Bench on merits and gave no indication that any of the questions had been decided erroneously. On perusal of the reasoned order dated 11.11.1993, the learned Single Judge has taken the view that the decision of the State Government is neither unreasonable nor arbitrary. The learned Single Judge also found that the Hon"ble Supreme Court did not quash the order of the government dated 22.1.1991 whereby the Finance Department decided to place the petitioners in the pay scale of Rs. 2000-3800 in place of the claimed scale of Rs. 2200-4000. In fact, the material part of Division Bench judgment has been quoted in paragraph 10 of the judgment under appeal and in view of the reasonings given by the Division Bench the learned Single Judge expressed his inability to interfere in this matter. Besides expressing its agreement with the views of the earlier Division Bench judgment, the learned Single Judge came to a finding that the reasoned order dated 11.11.1993 has been passed after considering all the material aspects and after hearing the persons affected and the same suffered from no illegality. On such findings both the writ petitions were dismissed.

11. On behalf of appellants/writ petitioners several submissions were advanced to persuade this Court to hold that in spite of there being no gazette notification

in the official gazette as required by Section 2(b) of the Bihar Agriculture Service Act, 1982 the cadre of Bihar Agriculture Service Class II stood enlarged on account of decision of the Agriculture Department for merger of the 1423 upgraded posts with Bihar Agriculture Service Class II. However, no argument was advanced to meet the reasonings of the learned Single Judge that once the order dated 22.1.1991 was allowed by the Supreme Court to survive, the writ petitioners could not be entitled to a higher pay scale only on account of quashing of the government's notification dated 8.2.1991. I am also of the view that the notification dated 8.2.1991 is only for amending Schedule I of the Bihar Agriculture Service Act 1982 so as to delete the upgraded posts from the said Schedule. The said notification refers to earlier notification dated 23.6.1989 whereby these upgraded posts were sought to be included in Schedule I of the aforesaid Act. That decision was undone by the order dated 8.2.1991 which has been quashed by the Supreme Court and remanded for fresh consideration by the State Government in accordance with observations of the Hon'ble the Supreme Court already noticed.

Obviously, if the pay scale fixed by the Finance Department for the appellants/writ petitioners in a lower scale than that provided for Bihar Agriculture Service Class II has survived even after being challenged in the earlier round of litigation, there is substance in the reasonings of the learned Single Judge in the order under appeal that the writ petitioners cannot get a higher pay scale by a challenge confined only to the issue arising out of notification dated 8.2.1991 which has been decided against them by the reasoned order of the State Government dated 11.11.1993 which is under challenge now.

12. Learned Counsel for the appellants/writ petitioners submitted that on going through the notings in the files of the Agriculture Department to which the then Chief Minister, who also held the portfolio of Finance Department, had agreed, it would be clear that in fact there was a decision of the government to merge the 1423 upgraded posts of Agriculture Inspectors and other equivalent posts in Bihar Agriculture Service Class II. Learned Counsel for the State and the interveners have controverted this submission and have submitted that in fact some administrative difficulties were expressed in the relevant note-sheets in the file in granting benefits of upgraded posts to the incumbents of such posts and in that context only a suggestion was made that such difficulty could be overcome by treating the upgraded posts to have merged with Bihar Agriculture Service Class II which was then entitled to same pay scale to which the 1423 posts were upgraded. According to the State, no decision was taken even in files for amending the Schedule I of Bihar Agriculture Service Act, 1982 so as to enlarge the cadre of Bihar Agriculture Service Class II and, therefore, file was never sent to Finance Department for previous consultation as required by Rule 12 of the Rules of Executive Business, Bihar 1979.

13. On going through the materials on record it is found that the proposal for upgrading the 1423 posts to higher pay scale was made in consultation with the

Finance Department but no consultation with the Finance Department ever took place in respect of alleged merger. The post facto decision of the Cabinet dated 12.4.1988 was in respect of proposal dated 30.3.1988 (Annexure-7) and that also shows that consultation with the Finance Department was not mentioned. The relevant noting of the concerned file have been annexed as Annexure-25 to LPA No. 119 of 1997. That also suggests that the principle of merger was proposed to be adopted only to meet the objection of the Personnel Department that the incumbents of the upgraded posts could not be given financial benefit of higher pay scale unless a procedure was adopted to appoint them or promote them to the upgraded posts in accordance with service rules. But neither there was any proposal to amend the Schedule I of Bihar Agriculture Service Act, 1982 nor any consultation with the Finance Department on the issue of addition to cadre strength of Bihar Agriculture Service Class II. The reasons contained in the order of the State Government dated 11.11.1993 mention this aspect of the matter and no fault can be found with the reasoning of the State Government either on facts or in law.

14. Learned Counsel for the appellants urged that in many cases where the decision of Government was not notified in a formal manner, the Courts have held the Government bound by its decision. He relied upon three decisions of the Apex Court. In the case of *Bejgam Veeranna Venkata Narasimloo and Others Vs. State of A.P. and Others*, , the Government was held not entitled to claim refund of money from the Rice Millers who had been paid on the basis of declared decision of the government although the same remained to be notified. In the case of *U.D. Lama and Others Vs. State of Sikkim and Others*, , in view of actual knowledge of the concerned Committee and participation on the part of employees by filing their objections before the Committee, the Supreme Court held the plea of defect in notifying the Committee to be of no merit. In the other cited case of *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* (2003) 4 SCC 712, the Hon'ble Supreme Court held that once the Government has formulated its policy by way of Draft rules, it can use the said rules for recruitment even before formal notification.

15. The ratio of aforesaid precedents are different. The first case lays down the equitable rule that State cannot take advantage of its own shortcomings when the other party has acted on its promise to his disadvantage. Even the rule of fairness may support the doctrine of promissory estoppel in appropriate circumstances. In the second case, the ratio was to ignore technical flaws when it has caused no prejudice. In the last cited case the ratio is mere recognition of a well settled legal position that in absence of law or rules, the State is not precluded from acting under its executive powers in large areas including recruitment. Those case laws do not help the appellants in these matters because here the stand of the State is that earlier decisions in favour of the appellants were bad as well as invalid and hence, the State took a conscious decision to reverse those decisions. According to the State, the later decisions are neither arbitrary nor against any law and hence, the State cannot be forced

to continue with earlier orders. This stand appears to be sound in law as well as in facts.

16. So far as relevant legal position is concerned, the earlier Division Bench has rightly held that when the statute lays down the manner of doing a particular thing, it must be done only in that manner or not at all. The statutory requirement of a notification in official gazette cannot be subverted by an executive decision. The Division Bench judgment had noticed a submission on behalf of the writ petitioners that if the decision of the government for addition of 1423 upgraded posts in Schedule I of the Bihar Agriculture Service Act has not been published in the official gazette, a mandamus should be issued for the same. But rightly it was decided not to issue such mandamus when the executive decision had subsequently been found improper and against the Rules of Executive Business and had been clearly withdrawn by another executive decision dated 8.2.1991. No doubt, the notification dated 8.2.1991 has been quashed by the Hon'ble the Supreme Court with a direction to take a fresh decision after giving show cause but again the State Government has come to the same conclusions on proper consideration of relevant facts and after giving opportunity of show cause to the appellants. There is no factual or legal infirmity in the decision of the State Government dated 11.11.1993 so as to warrant interference in exercise of writ jurisdiction.

17. I also find that submission advanced by learned Advocate General on behalf of the State that there was no Cabinet decision for adding to the cadre strength of Bihar Agriculture Service Class II in Schedule I of the Bihar Agriculture Service Act, 1982 is correct. The writ petitioners/appellants have failed to bring on record any material to show that any such proposal was placed before the Cabinet or that such proposal received approval of the Cabinet.

18. There is no difficulty in appreciating and in fact there is no dispute between the parties that if the writ petitioners appellants did not hold a post lawfully included in the cadre of Bihar Agriculture Service Class II on account of addition to such cadre then they would not be entitled to the higher pay scale of Rs 2200-4000 which they are claiming only on the plea that they also belong to one of the 13 specially declared State services for which the aforesaid scale has been accepted as the replacement scale as per 5th PRC.

19. In view of earlier discussion, there is no difficulty in holding that the Schedule I of the Act of 1982 was never enlarged as required by law and hence, the 1423 upgraded posts never became a part of Bihar Agriculture Service Class II. Hence, the claim of the writ petitioners/appellants for the higher pay scale has rightly not been accepted by the State Government.

20. On behalf of the appellants an attempt was made to suggest that the show cause notice dated 12.7.1993 contained in Annexure-21 of LPA No. 119 of 1997, is not a proper show cause notice. In this regard, it is relevant to notice that the Supreme Court had directed the State of Bihar to issue show cause notice to the

appellants if it desired to downgrade the posts held by the appellants. Such show cause notice was required to state the materials on the basis of which the posts were proposed to be downgraded. The directions were in the knowledge of the parties and deficiency in the show cause notice was neither pleaded by the appellants nor they have succeeded in showing any prejudice on account of any omission of any material fact in the show cause notice. A perusal of the show cause notice shows that all the relevant materials had been indicated in the notice which clearly conveyed that the government proposed to affirm its decision fixing pay scale of Rs. 2000-3800 for the appellants. Hence, I find no merit in the submission that the petitioners are entitled to relief on account of defect in show cause notice.

21. I also find no substance in submission that the impugned decision of the State Government should be quashed because it seeks to unsettle a settled decision after passage of long time. From the facts of the case, it is clear that the issues under controversy arose within two years of decisions appearing to be in favour of appellants/writ petitioners in the year 1989. On receiving the views of the Finance Department on the relevant issue, the State Government took the decisions under challenge in the month of January and February 1991 and since then the matter has been under litigation. In these facts it cannot be said that the decision in respect of claim of the appellants had remained settled for a long period of time or that the appellants deserve any relief on account of equity.

22. It is useful to notice that on account of an interim order passed in these appeals on 6.1.2004 the Chief Secretary, Bihar constituted a high level committee of Agriculture Production Commissioner, Bihar, Secretary, Personnel and Administrative Reforms Department, Bihar headed by the Finance Commissioner. The recommendation of that Committee has been brought on record as Annexure-A to second supplementary counter affidavit of respondent Nos. 3 to 5. According to that committee, the merger of 1423 posts in Bihar Agriculture Service was not proper and sanction of competent departments i.e. Finance and Personnel was not obtained for the same. In the light of the recommendation of the said committee, the matter was placed before the Cabinet and the Cabinet in its meeting dated 6.2.2007 approved the proposal for canceling the memorandum dated 30.3.1988 (Annexure-7) and also approved the proposal for removing 587 and 1423 Agriculture Graduates from Bihar Agriculture Service. Thus, it appears that even further review by a high level committee and the Cabinet, of the relevant facts has resulted in rejection of the claim of the appellants/writ petitioners. The State Government has the legal competence to decide such matters of policy which are involved in this case and I am in agreement with the learned Single Judge that there is no good ground to set aside the impugned decisions of the State Government or to allow the claim of the appellants for being treated as members of Bihar Agriculture Service Class II and for replacement pay scale of Rs. 2200-4000 on that basis.

23. As a result of aforesaid discussion, I find no merit in Letters Patent Appeals

No. 166 and 119 of 1997. They are dismissed accordingly.

24. In view of dismissal of the main appeals, the other Letters Patent Appeals as well as the Contempt Applications and the Writ Petition which were dependent upon the outcome of these appeals, are also dismissed for want of merit. There shall be no order as to costs.

Rekha Kumari, J.

25. I agree.