
(2015) 03 PAT CK 0064
In the Patna High Court
Case No : CWJC No. 1017 of 2013

Bihar Judicial Services Association

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 3 PLJR 452

Hon'ble Judges : L. Narasimha Reddy, C.J.;Vikash Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J—In this writ petition, the relief in the form of stepping up of pay of the Additional District and Sessions Judges, to be on par with that of their juniors, is prayed for. Briefly stated, the facts are that the petitioners have been promoted to the post of Additional District and Sessions Judge and have been placed in the pay scales as per the relevant provisions of law. Some of the Subordinate District Judges, who are juniors to the petitioners, did not get promotion for quite some time. They were extended the benefit of assured career progression (hereinafter referred to as the A.C.P.) on completion of five years of service in the same cadre. They were promoted as Additional District Judges at a later point of time. However, in the context of fixation of pay-scale in the promotional post i.e. Additional District and Sessions Judge, it so happened that the pay scales of the officers who got the benefit of A.C.P. and promoted at a subsequent stage were fixed, at a figure, higher than that of those who were promoted earlier in point of time. The petitioners challenge this anomaly and pray for stepping up of their pay scale. Reliance is placed on the judgment of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. P. Jagdish and Others, AIR 1997 SC 1783 : (1996) 11 JT 241 : (1996) 9 SCALE 433 : (1997) 3 SCC 176 : (1997) SCC(L&S) 701 : (1996) 10 SCR 220 Supp : (1997) AIRSCW 1017 : (1998) 5 Supreme 169 .

2. The Government of Bihar as well as the Patna High Court filed counter affidavits. The gist of their contention is that the State of Bihar framed a set of Rules in the year 2003 in exercise of power under Article 309 of the Constitution of India providing for the extension of benefit of A.C.P. and Clause-6 thereof made it abundantly clear that in case the extension of benefit of A.C.P. results in anomaly of a senior in the same cadre drawing lesser pay than the junior, the former shall not be entitled for stepping up of pay.

3. Heard Shri Rama Kant Sharma, learned Sr. Advocate and Shri Rajesh Kumar, learned counsel for the petitioner, Shri Satyabir Bharti, learned counsel for Patna High Court, Shri A.N. Deo, S.C. 26, Mr. P.K. Verma, A.C. to S.C. 26, learned counsel for respondent No. 1 and Shri Madhuresh Prasad, learned counsel for the Accountant General, Bihar.

4. That there is an anomaly wherein the juniors to the petitioners in the post of Additional District and Sessions Judges are drawing higher scale of pay, is beyond any pale of doubt. The relevant service rules themselves provide for correction of such anomalies. Judicial pronouncement are also along on this aspect. Reference can be made to the judgment of the Hon"ble Supreme Court in Union of India and another Vs. R. Swaminathan, AIR 1997 SC 3554 : (1997) 8 JT 61 : (1997) 6 SCALE 109 : (1997) 6 SCALE 105 : (1997) 7 SCC 690 : (1997) SCC(L&S) 1852 : (1997) 4 SCR 94 Supp : (1999) 1 SLJ 102 : (1997) AIRSCW 3659 : (1997) 8 Supreme 219 . We would have certainly" granted the relief to the petitioners had it been a case where the anomaly resulted in the ordinary course of fixation of pay-scales. It has already been mentioned that the only reason that led to the anomaly in the pay-scales is the extension of benefit of A.C.P. to certain Subordinate Judges who were juniors to the petitioners herein; in both the categories. Though such persons were promoted to the post of Additional District & Sessions Judges at a later point of time, they started drawing higher pay on account of fitment of the pay-scale in the post of Additional District & Sessions Judges, based on the increase on account of A.C.P.

5. Clause 6 of the A.C.P. scheme reads as under:--

"Pay Protection: Benefit of financial pay protection shall not be given to any senior employee on the ground that any employee junior to him is getting pay in higher pay scale under the Scheme."

6. From Clause-6 it becomes clear that the rule making authority was clear in its mind that the extension of A.C.P. would result in anomalies in pay-scales wherein the senior will be drawing lesser scale of pay. All the same, it prohibited the stepping up of the pay and the senior to correct the anomaly on account of extension of benefit of A.C.P. to a Junior. The reason furnished in the Rule is that the extension of benefit of A.C.P. is personal to the concerned officer and cannot be treated as a regular feature, available to all the employees in general.

7. The question as to whether such a stipulation can be made, and whether it is violative of any provision of law could have been examined by this Court if only

any specific challenge was made to it. Admittedly, the petitioners did not challenge the Rule, So long as the Rule remains in force, there is no way we can ignore it.

8. We, therefore, dismiss the writ petition leaving it open to the petitioner to pursue the remedies in accordance with law, including the one of challenging the Rule that comes in their way.

9. Learned counsel for the petitioners submits that since the grievance in all of them is common, permission may be granted for pursuing the writ application in representative capacity.

10. We are satisfied with that submission and make it clear that the relief on behalf of the petitioners can be claimed in a representative capacity without the necessity of each and every officer figuring as a petitioner, or paying individual court fee.

11. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.