(2005) 12 PAT CK 0030

In the Patna High Court

Case No : C.W.J.C. No. 3990 of 2004

Bihar Rajya Utpad Sipahi Mahasangh and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Citation : (2005) 12 PAT CK 0030

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the grievance of the petitioners is on account of denial of the pay scale of Rs. 3050- 4590/- as recommended by the Fitment Appellate Committee in its report of 2001, which, according to them, is binding upon the Government pursuant to the undertaking dated 7.5.1999 (Annexure 2).

2. The petitioners are the Bihar Rajya Utpad Sipahi, Mahasangh and its President and General Secretary.

3. According to the case of the petitioners, from the very beginning the Excise Constables used to be treated equivalent to the Constables in Bihar Police like BMP and Forest Guards etc. It is stated that the Constables of Bihar Police, BMP, Excise Department, Jail Department and Forest Department used to be appointed on divisional basis from a joint panel. The Excise Constables received training also at the same place along with their counterparts in Bihar Police. According to the petitioners, their working condition and transfer rules are almost similar and the Excise Constables also received same pay scale as their counterparts used to get to Bihar Police until the Fitment Committee in the year 1996 in its report recommended lower pay scale for Excise Constable in comparison to the Constable of Bihar Police. It is claimed that under Fourth Pay Revision Committee, the Excise Constables and the Bihar Police Constables were granted same pay scale of Rs. 425-625A and under Fifth PRC also they were given normal replacement scale of Rs. 950+400. However, the Fitment Committee in its recommendation recommended Rs. 3050-4950/- for the Constable of Bihar

Police and lower scale of Rs. 2610-3540/- for the Constable of Excise Department.

4. As in the recommendation of the Fitment Committee, several errors and contradictions were there on account of which there was widespread of discontentment among the employees, the Government vide a joint agreement dated 7.5.1999 (Annexure 2) with the Employees'' Union agreed to set up a committee under the Chairmanship of a serving Judge of the Patna High Court to consider the errors or mistakes in the recommendation made by the Fitment Committee. The State Government further agreed that the recommendations of the Committee would be binding upon both the parties and the same would be implemented by the State Government with effect from 1.1.1996, but the monetary benefit would be given only with effect from 1.4.1997.

5. Pursuant to the notice published by the said Committee in the newspaper, the petitioners filed their applications for giving them normal replacement scale of the Fifth P.R.C. as was given to their counterparts in Bihar Police and the said Committee found the grievance of the petitioners as genuine and reasonable and thus recommended for grant of the same pay scale of Rs. 3050-4590/-, vide Annexure 4. After two and half years of the publication of the report of the said Committee, the State Government came out with a resolution dated 12.1.2004 (Annexure 5) under the signature of the Joint Secretary, Finance Department, Government of Bihar, Patna, whereby and whereunder the petitioners have been denied the pay scale of Rs. 3050-4590/- as recommended by the aforesaid Committee.

6. According to the learned Counsel for the petitioners, denial of similar treatment to Excise Constables at par with the Constables in Bihar Police is wholly arbitrary and discriminatory. It has been contended that the State Government, while constituting the Fitment Appellate Committee, committed itself in writing to accept and implement the recommendations of the said Committee, yet the Government arbitrarily declined to grant the scale of Rs. 3050-4590/- to the Excise Constables as recommended by the said Committee.

7. A counter affidavit has been filed on behalf of the Finance Commissioner (respondent No. 3) and rejoinder to the same has been filed on behalf of the petitioners. .

8. In the said counter affidavit it is admitted that the recommendation of the Fitment Appellate Committee has not been accepted as, according to the said respondent, there is no justification for any change in the pay scale of the Excise Constable. According to the said respondent, unlike previous pay revision, scale to scale revision has not been given effect to. Pursuant to the agreement made between the State Government and the different Employees'' Associations, the State Government constituted a Fitment Committee for recommending the Central pay scale along with service conditions for different posts in the State Government at par with their counterparts in Centre. It was also decided that such posts or cadre placed in higher or lower pay scale will be equated with their

counterparts in the Central Government. A photo copy of the constitution of the Fitment Committee, vide Memo dated 2.1.1988, has been annexed as Annexure A to the counter affidavit. It is stated that the Fitment Committee accepted and established its parity with the post of Sepoys of the Narcotics Control Bureau under the Central Board of Excise and Custom and recommended the revised pay scale of Rs. 2610-3540A for the Excise Constables, which has been accepted and notified by the State Government.

9. According to the said respondent, the State Government constituted the Fitment Appellate Committee for considering any anomaly in the recommendation of the Fitment Committee or in the decision of the State Government as pointed out by the Association. It is admitted that the Fitment Appellate Committee considered the matter of the Excise Constables and recommended the pay scale of Rs. 3050-4590/-, subject to the condition that the minimum recruitment qualification should be raised to Matriculation, which was placed before the Cabinet Committee on Economic Affairs, which observed that the Fitment Appellate Committee has also accepted that the Excise Sepoys cannot be equated with police personnel, but recommended the pay scale available for the Police Constable. The Cabinet Committee also observed that the basis of recommendation of Fitment Committee is central equivalence and hence there is no justification for any change in the pay scale and recommendation of the Fitment Appellate Committee was not accepted. It is also stated that it is not correct to say that the Police Constable and Excise Constable were in the same pay scale from the very beginning. The comparative chart has been indicated, which shows that earlier the two posts were in two different pay scales but from 1.4.1981 they were treated at par and were brought in the same pay scale till the Fitment Committee submitted its report in the year 1996.

10. According to the respondent, the State Government constituted a Fitment Committee for recommending the Central pay scale along with service conditions available in the Central Government and in the pay revision, the scale to scale revision or concept of replacement scale was not the terms of reference. It was also decided that posts or cadre placed in higher or lower pay scale than their counterparts in Centre will be equated keeping in view the terms of reference, which was considered by the Fitment Committee, which recommended the revised pay scale of Rs. 2610-3540/- and the same was accepted by the Government. It is, however, admitted that the Fitment Appellate Committee found anomalies in respect of Excise Sepoy and recommended the pay scale of Rs. 3050-4590/-, but the Cabinet Committee found that the recommendation of the Fitment Appellate Committee was not within the terms of reference and hence the recommendation was not accepted.

11. However, in the counter affidavit filed on behalf of respondent No. 3 it is not denied that the Excise Constables used to be treated equivalent to the Bihar Police and other similar uniformed forces like BMP and Forest Guards etc. It is also not disputed that the Constables of Bihar Police, BMP, Excise Department,

Jail Department and Forest Department used to be appointed on divisional basis from a joint panel and that the Excise Constables get training at the same place along with their counterparts in Bihar Police, it is also not denied that the working condition and transfer rules are almost similar. Likewise the Excise Constables also received same pay scale as their counterparts used to get in the Bihar Police until the Fitment Committee in the year 1996 recommended lower pay scale for them in comparison to the Constables of Bihar Police.

12. learned Counsel for the State, however, ventured to submit that as per the terms of reference, the Fitment Appellate Committee exceeded its jurisdiction in recommending same scale of pay for the Excise Constable also as was given to the Constables in Bihar Police. learned Counsel for the State suomitted that in the case of Arvind Kumar and Others Vs. The State of Bihar and Others the learned single Judge of this Court held that equal pay for equal work is not an abstract theory. It varies from the nature of work performed by different employees of different departments and, accordingly, the claim of the petitioners in the said case based on the report of the Fitment Appellate Committee has not been accepted. In this regard, he referred to paragraphs 43 to 45 of the said judgment.

13. I am unable to appreciate the said submission of the learned Counsellor the State. There is no doubt that in the case of Arvind Kumar v. State of Bihar (supra), the learned single Judge held that the writ of mandamus cannot be issued to implement the recommendations of the Fitment Appellate Committee and the State is not bound by the same, but in the same judgment the learned Judge has held that in a case in which for any unjustifiable reason the State Government does not accept such recommendations, its action would be arbitrary and the power of judicial review can be exercised to set it right. The said case was filed by untrained teachers, who were aggrieved by the decision of the State Government, whereby they were denied the scale of pay of trained teachers and excess payment made to them was directed to be recovered. The learned single Judge after considering various aspects found that there was no question of discrimination as trained and untrained teachers grouped separately any according to the said judgment, a qualification which is relevant and acquisition whereof is expected to enhance the potential of the holder certainly can form basis for providing a higher scale of pay. The Court also held that the classification is based on rationality and providing two different scales for trained and untrained teachers is not a class within class.

14. In the instant case, however, the position is completely different. The claim of the petitioners, who represented the Excise Constables, is to treat Excise Constables at par with the Constables in Bihar Police, both of whom belong to uniformed forces and used to be appointed on divisional basis from a joint panel. They also received training at the same place along with their counterparts in Bihar Police. Their working condition and transfer rules are almost similar. Likewise, the Excise Constable also received same pay scale as their counterparts

used to get in the Bihar Police until the Fitment Committee in the year 1996 recommended lower scale of pay for them than the Constable of Bihar Police.

15. It is true that the Fitment Committee was to make recommendation for revision of pay of the State employees in the light of the Central Fifth Pay Commission, pursuant to which the pay of Central Government employees was fixed with effect from 1.1.1996 and while doing so, it was to keep in mind that those State employees, who were getting more or less pay, should also get the pay at par with Central Government employees. Later, in view of discrepancy pointed out by the various Associations, the State Government constituted the Fitment Appellate Committee, vide resolution dated 15.1.2000 (Annexure 3), to consider whatever discrepancy is in the Government decision within the purview of terms of reference and, as such, Fitment Appellate Committee cannot have travelled beyond the terms of reference but it is not the case of the respondent-State that the Fitment Committee had fixed lower pay scale for these petitioners in order to bring them at par with the Central Government employees. The reasoning given by the Fitment Appellate Committee in paragraph 39.3 of the report, contained in Annexure 4, in my opinion, is quite sound and as such in the facts and circumstances aforementioned, the denial of same pay scale to the Excise Constable also at par with the Constable in Bihar Police would amount to denial of equal pay for equal work and would be hit by Articles 39(d), 14 and 16 of the Constitution of India.

16. In the case of P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, , the Supreme Court, while dealing with the case of Senior Draughtsman in the Ministry of Defence Production doing same work and discharging same functions, yet classified in two groups and higher salary fro one group was recommended only on seniority-cum-fitness basis, held that such grouping is violative of Article 14. The Apex Court held that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently.

17. In the case of Randhir Singh Vs. Union of India (UOI) and Others, the Apex Court held that lower scale of pay to Drivers in Delhi Police Force than those in the Delhi Administration and Central Government constitutes unreasonable classification and not in consonance with the principle of ''equal pay for equal work'' and is, therefore, violative of Articles 14 and 16 of the Constitution. The Apex Court further held that the Directive Principles have to be read into the Fundamental Rights as a matter of interpretation and, further, that the principle of ''equal pay for equal work'' is not an abstract doctrine but one of substance. It was also held that the higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service reasonably sustain the classification of the officers into two grades with the different scales of pay. But in cases of unequal scales of pay based on no classification or irrational classification a breach of the principle of ''equal pay for

equal work'' is clearly made out.

18. In the present case, in the facts and circumstances noted above, the learned Counsel for the State has not been able to show any rationale behind the classification between the Excise Constable and Constable of Bihar Police. Both of them are appointed on divisional basis from a joint panel and received training also together at the same place, their working condition and transfer rules are also similar and till revision in the year 1996 recommended by the Fitment Committee, received same pay scale right from the year 1981. The counter affidavit does not explain how the case of the Excise Constables is different from that of the Police Constables and what special factor weighed in fixing lower pay scale for Excise Constables. Apparently, different scales have been prescribed only on account of the fact that they belong to two different departments of the Government irrespective of identity of their sources of recruitment, functions duties and responsibilities, which have not been accepted by the Apex Court in the case of Randhir Singh v. Union of India (supra). Such classification has been held to be irrational by the Apex Court.

19. In the result, the writ application is allowed. The respondents are directed to fix the scale of pay of Excise Constables on par with the Police Constables with effect from the due date, i.e., the date from which the recommendation of the Fitment Appellate Committee was accepted and was made effective in the case of Police force and pay their remaining arrears within eight weeks of the receipt/ production of a copy of this order.