

(1996) 04 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 1075 of 1986 (R)

Brij Bihari Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:

Citation : (1996) 04 PAT CK 0008

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—Being aggrieved by the order dated 4.6.1986 passed by the respondents No. 2, the petitioners have moved this Court in the present writ application. According to the petitioners, they are working since 1976 as Science teachers in different Middle Schools in the Giridih district. The scale of pay of graduate untrained teachers was fixed some times on 4.6. 1973 at Rs. 296/- and that of Intermediate untrained teachers at Rs. 230/- with effect from 1.1.1971. The petitioners were working on the fixed scale of pay of Rs. 296/- till March, 1981. In view of the report of 4th pay Revision Committee, the Finance Department accepted the said report and new pay scale was prescribed accordingly. After resolution of the Finance Department dated 30.12.1981, the decision was communicated to all the officers of the Education Department. On the basis of that, the District Superintendent of Education fixed the revised pay scale of petitioners and got it verified by the Fixation Section by Finance Department. According to petitioners, subsequently by an order dated 4.6.1986 the respondent No. 2 reduced the pay scale of the petitioners and further directed the petitioners for recovery of the amount which was paid to them in excess.

2. Mr. R.C.P. Shah, learned Counsel for the petitioners has contended that this order of the respondent No.2 cannot be sustained in law inasmuch as the same was passed without following the principle of natural justice. According to him, before passing of the said order, neither any notice was issued nor the petitioners were given any opportunity of being heard. In support of his contention, he had

relied an unreported decision of a learned Single Judge of this Court in the case of Sheo Shankar Mandal and Ors. v. State of Bihar and Ors. C.W.J.C. No. 1724 of 1986 (R), disposed of on 28.3.91.

3. Mr. P.D. Agrawal, learned GP 2, on the other hand, has drawn my attention to the order passed on 22.8.1986 and submitted that on the same facts and circumstances, other two writ applications namely CWJC Nos. 1010 and 1011 of 1982 (R) have been dismissed by this Court and as much, the present writ application should also be dismissed. Secondly, it is contended by Mr. Agrawal that the impugned order (Annexure 6) is not an order by which the pay scale of the petitioners has been reduced. On the other hand, the actual pay scale has been fixed as far as the petitioners and other like teachers are concerned. His contention is that if by misinterpreting any provision of law, an order was passed by which petitioners received some benefits, but after realising the mistake if the Government wants to recover the amount paid in excess, that cannot attract the penal consequences for which principle of natural justice should be followed. According to him, Annexure 6 shows that proposal for increase in the pay scale of untrained teachers was not approved by the Department and as such, a clarification to this regard was issued and under these circumstances, it cannot be said that it is a case of reduction in pay scale. Distinguishing the judgment of the learned Single Judge, referred above, Mr. Agrawal submits that as because no counter affidavit was filed by the respondents, on the basis of statements made in the writ petition itself, this Court presumed that it was a case of reduction in pay scale without any notice and in that view of the matter, this Court set aside the order treating the impugned order of that case as an order of reduction.

4. The order dated 22.8.1986 reveals that on the submission made on behalf of the learned Counsel for the parties that the points involved in this case are similar to points in CWJC Nos. 1010 and 1011 of 1982 (R), which were already admitted, this case was also admitted. It was further directed that this application be tagged with those writ application and will be placed for hearing before an appropriate Bench. It appears that CWJC No. 1011/82 (R) Dhanbad District Primary Teachers Association v. State of Bihar was placed for hearing before a learned Single Judge of this Bench and this application was not placed along with the same for the reasons unknown. Relying on the decision in the case of Bijay Shankar Mishra v. State of Bihar reporter in 1988 PLJR 553, C.W.J.C. No. 1011/82 (R) was dismissed by this Court on 10.4.1988. Under these circumstances, in my view, the present writ application, which involves similar points of law, must also be dismissed.

5. However, Mr. Shah has contended that in the aforesaid case the question of violation of principle of natural justice was not decided and as such, the dismissal order of that case cannot have a binding effect on this case. In my considered opinion, the argument of Mr. Sah is not sustainable.

6. In the case of Dhanbad District Primary Teachers" Association and Ors. v.

State of Bihar and Ors. C.W.J.C. No. 1011/82 (R), one of the grounds of challenge was;

Whether the concerned respondents have any jurisdiction to realise and/or recover the amounts already teachers at the scale approved under the Resolution with effect from 1.4.81 till 31.7.82 giving any opportunity to show cause against the aforesaid recovery and whether the same is in violation of the principles of natural justice?

On the other hand, in the instant case also one of the grounds is;

Whether respondent No. 2 had jurisdiction to reduce the pay scales of petitioners and that also without giving them a notice to show cause and chance of being heard?

When this writ application was admitted on the ground that similar points involved in the case of Dhanbad District Primary Teachers' Association (supra) was pending for final hearing, in my view, it will be deemed that point of principle of natural justice was urged before the learned Single Judge but was not found favour by him.

7. In the case of State of Haryana and another Vs. O.P. Sharma and others, , their Lordships after discussion of facts and circumstances of the case, held that such an order passed by the State Government to recover the excess amount in a phased manner could not be termed as arbitrary, unreasonable, unfair or illegal. In the aforesaid case, the Government of Haryana gave ad hoc interim relief to its employees which was not based on any formula and when the formula for grant of additional deafness allowance on the cycle of increase of 8 points in the Consumer Price Index was adopted by the State Government, the State Government realised that the ad hoc interim relief was in excess by Rs. 9.40 to Rs, 45 per month depending on the pay-slab of a Government servant and, therefore, decided to adjust the increase rather than order lump sum recovery of the excess amount.

8. Similarly in the present case, having realised that without approval of the competent authority a pay scale was fixed which was contrary to the policy decision of the Government and when this mistake was realised, the Government took step to rectify the same by issuing Annexure 6. Under these circumstances, it cannot be said that it is a case of reduction in pay scale. On the other hand, it is a case where correct pay scale has been fixed and on such fixation when it was found that by inadvertence and mistake some excess amount were paid to the petitioners, they were asked to refund the same. In these circumstances, in my opinion, the principle of natural justice cannot be applied inasmuch as petitioners cannot be allowed to be illegally enriched taking advantage of the mistake committed by the authority.

9. Similarly in the case of Nirtnal Chandra Mandal v. Accountant General, Bihar, Patna and Ors. reported in 1994 (1) BLJR 605, a Division Bench of this Court

under similar circumstances held that the Government cannot be restrained from recovering the excess amount drawn as salary by any particular government servant. In that case also the petitioner prayed for quashing the direction by which a sum of Rs. 62,587.65 paise have been, ought to be recovered from the petitioner being the excess amount drawn by him against his salaries pertaining to the certain period.

10. I have already noticed certain above that CWJC No. 1011 of 1982 (R) was dismissed in the light of decision reported in the case of Bijay Shankar Mishra (supra). In the reported case his Lordship considered the recommendations of the 4th Pay Revision Committee which has accepted by the Finance Department. Except the ground of violation of principles of natural justice, no other points canvassed before me on behalf of the petitioners.

11. In the result, I find no merit in this application and the same is dismissed. No order as to costs.

However, taking into consideration that the impugned order has remain stayed since 1986, I direct the petitioners to file to petition before an application authority praying therein to allow them to return the excess amount by instalments. If such an application is filed, the respondent concerned is directed to allow the same and to deduct the excess amount by monthly easy instalments which will not effect the economic condition of the petitioners.