
(2012) 06 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4707 of 2003

Chandeshwar Prasad, Arun Kumar Jha and Mohan Kumar
Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Citation : (2012) 4 JCR 388 : (2013) 1 JLJR 360

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Jai Prakash, M/s. Yogesh Modi and Sidhartha Roy, for the Appellant; S.P. Roy, G.A. (Bihar) and Mr. Pankaj Kumar, J.C. to G.A. (Bihar) For Respondent No. 1, Mr. R.N. Roy, G.P.- III and Mr. Ashok Kumar, J.C. to G.P.- III For Respondent No. 4 and Mr. Prabhash Kumar, Advocate, for the Respondent

Judgement

Alok Singh

1. Undisputedly, initially the petitioners were appointed on daily wages basis to perform the duties of Class-III post of Clerk under the Minor Forest Produce Project, Ranchi Circle, Ranchi way back in 1985-86. Undisputedly, in the year 1987, the Forest Development Corporation decided to regularise the appointments of the petitioners and a letter was issued by the respondent-General Manager, Minor Forest Produce, Ranchi Circle, Ranchi on 4th April 1987 directing the daily wages employees to appear in interview and test. Undisputedly, the petitioners appeared in such interview and test held on 20th April 1987 and names of the petitioners were recommended by the Selection Committee for the regularisation pursuant to the interview and test held on 20th April 1987. Thereafter, Corporation had written a letter to the authorities concerned for the regularisation of the services-of the petitioners pursuant to the interview and test held on 20th April 1987. Undisputedly, when approval was not received for the regularisation of the petitioners, the petitioners had filed writ petition before the Hon''ble Patna High Court. Learned Single Judge of Hon''ble

Patna High Court vide Judgment dated 26th June 1997 was pleased to dispose of C.W.J.C. No. 870 of 1993 with the direction to seek approval from the Bureau of Public Enterprises and after obtaining approval from the Bureau of Public Enterprises, services of the petitioners be regularised. Thereafter, the appointment letters dated 16.01.2001 were issued to the petitioners, copy of which, are available on the file as Annexure 2 to the writ application. As per the appointment letter, petitioners were offered pay scale fixed for the regularly appointed Clerk i.e. Rs. 4,000-100-6,000/- with the stipulation that initial basic salary would be Rs. 4,000/- per month. Thereafter, impugned order dated 01.09.2003 was issued by the Respondent No. 8 saying, for the direct appointees on the post of Lower Divisional Clerk, the pay scale is Rs. 3050-4590/- per month, therefore, their pay scale has been reduced to Rs. 3050-4590/- from Rs. 4,000-100-6,000/-.

2. Learned senior Advocate Mr. Jai Prakash, assisted by Mr. Yogesh Modi and Mr. Sidhartha Roy, has vehemently argued that even if it is found to be correct that vide order dated 20th December 2000, the Finance Department has decided to divide the post of Clerk into two classes i.e. Lower Divisional Clerk and Upper Divisional Clerk with the stipulation that posts of Lower Divisional Clerk shall be filled up by direct appointees and the post of Upper Divisional Clerk shall be filled up only by promotion, even then, since, the petitioners are not the fresh appointees on the post of Clerk as were already working right from 1985-86 on the post of Clerk as Daily Wages Employees, and their services are regularised pursuant to the Patna High Court's order, therefore, reduction of pay scale of the petitioners is unjustified.

3. Mr. Prabhash Kumar, learned counsel appearing for Respondent No. 5 has vehemently argued that since petitioners are fresh appointees as Range Clerks, therefore, they shall be deemed having been appointed as Lower Divisional Clerk. He has further argued that petitioners have accepted their appointment letters, therefore, now they cannot agitate that they are not fresh appointees. He has further argued that it is clear from the letter dated 20th December 2000 that the post of Upper Divisional Clerk shall be filled up only by promotion, therefore, petitioners are not entitled for the pay scale, which is fixed for the promotional post only. He further contends that pay scale of Rs. 4,000-100-6,000/- was offered to them by mistake, in fact it should have been Rs. 3050-4590.

4. The argument of learned counsel that the petitioners have accepted the appointment letters, therefore, they shall be deemed as fresh appointees, cannot be accepted because in the letter itself it is mentioned that this letter is being issued pursuant to the direction issued by Hon'ble Patna High Court order dated 26th June 1997 in C.W.J.C. No. 870 of 1993. Since, petitioners were already working as Clerks w.e.f. 1985-86 before the bifurcation of post of Clerk in two classes, therefore keeping in mind their length of service, may it be daily wager, they were rightly given pay scale of Rs. 4,000-100-6,000/- on their regularisation in the year 2001 i.e. after about 15-16 years of service as daily

wagers.

5. In View of the admitted facts that petitioners were initially appointed way back in 1985-86 as Daily Wager to perform the duties of Clerk and prior to December 2000, there was no classification in the cadre of Clerk and classification were made only on 20th December 2000 making it Lower Divisional Clerk and Upper Divisional Clerk, therefore, on the regularisation pursuant to High Court's order, petitioners are entitled for the pay scale, which were initially offered to them, in the appointment (regularisation letter) of 2001. Moreover, even otherwise from the perusal of Annexure /2/VIII, it is transpired that prior to bifurcation of post of Clerk in two classes i.e. Lower Divisional Clerk and Upper Divisional Clerk pay scale for the post of Clerk- Range/Assistant, after revision of Pay Scale, was fixed on Rs. 4,000-100-6,000/- therefore, pay scale of Rs. 4,000-100-6,000/- was correctly offered to the petitioners on their regularisation. Since, the petitioners' appointment is not fresh appointment and shall always be deemed as regularisation pursuant to the Patna High Court's order, therefore, reduction of pay scale by the impugned order seems to be totally unjustified and arbitrary. It is settled principle of law that no service condition shall be altered by the Government which affects the employee adversely. Since, the petitioners were regularised on the pay scale of Rs. 4,000-100-6,000/-, therefore, reduction of the pay scale to Rs. 3050-4590/- cannot be sustained. In view of the above discussions, this writ petition is disposed of with the direction that there shall not be any reduction of the pay scale and the petitioners shall not be deemed to be the fresh appointees to the post of Clerk and shall be deemed to have been regularised pursuant to the order dated 26th June 1997 in C.W.J.C. No. 870 of 1993 passed by Hon'ble Patna High Court. Petitioners shall be paid their salaries in accordance with their regularisation letters dated 16.01.2001.