
(2003) 07 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 3507 of 2003

Charchit Anand and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Citation : (2003) 07 PAT CK 0045

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Petitioners 1 to 6 were appointed as Correspondence Clerk whereas Petitioners 7 and 8 were appointed as Record Keeper and Fee Collector, which are Class-III posts in the scale of pay of Rs. 4000 to 6000. They were appointed on compassionate ground due to death of their father or the husband during their employment in the Bihar State Agriculture Marketing Board (for short the Board). All of them have been appointed subsequent to 20th of June, 2001. Matter in relation to the grant of scale of pay of Rs. 4000 to 6000 to the persons appointed on compassionate ground instead of Rs. 3050 to 4590 came up for consideration before the Board of Directors of the Respondent-Board in its meeting held on 27.2.2003. The Board by its resolution dated 27.2.2003 (Annexure-4) decided that persons appointed on compassionate ground after December, 2000 in the scale of Rs. 4000 to 6000 be paid salary in the scale of Rs. 3050 to 4590 but the amount already paid to them be not recovered. It further resolved that they had to pass the typing examination within a year failing which their services shall be terminated. In light of the aforesaid resolution of the Board of Directors, by memo dated 11.3.2003 (Annexure-3) Petitioners were informed about the aforesaid decision and were asked to submit their consent within one week in case they are ready to work the scale of Rs. 3050 to 4590. Petitioners were informed that their appointment in the scale of pay of Rs. 4000 to 6000 is illegal in view of Circular of the State Government.

2. Petitioners rushed with the present writ application assailing the aforesaid

order and in the meanwhile it seems that they had given their option for continuances in the scale of Rs. 3050 to 4590. During the pendency of the writ application the Respondent-Board had passed the orders dated 20.4.2003 and 8.5.2003 (Annexures-7 and 8) appointing the Petitioners in the scale of Rs. 3050 to 4590 and also directing them to pass the typing test within one year. However it has been made clear that excess salary paid shall not be realised. Their further prayer is to quash the aforesaid orders by issuance of a writ in the nature of certiorari.

3. By order dated 21.5.2003 this Court by interim order observed that any action taken during the pendency of the application shall be subject to the final decision of the writ application.

4. Mr. Narendra Prasad, Senior Advocate appearing on behalf of the Petitioner submits that the Petitioners were appointed in the scale of pay of Rs. 4000-6000, a vested right had accrued to them and hence Respondents cannot reduce their scale of pay. In support of his submission learned Counsel has placed reliance on a judgment of the Supreme Court in the case of Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, and my attention has been drawn to paragraph 7 of the judgment, which reads as, follows:

7. We think that the Appellant's conditions of service were governed by para 13 of Army Instruction No, I/S of 1954 and his previous full pay commissioned service should be taken in the matter of "ante-date" for the purpose of his pay. The condition of service in this regard was not liable to be altered or modified to the prejudice of the Appellant by a subsequent administrative (Army) instruction which was given retrospective effect from 26th October, 1962.

5. Mr. B.K. Singh Chauhan however appearing on behalf of the Respondents submits that the Respondents committed illegality by appointing the Petitioners on a higher scale of pay and when the illegality came to its notice, after giving opportunity to the Petitioners, they have given the scale of pay rightfully due to the Petitioners, which is permissible in law.

6. Having appreciated the rival submission do not find any substance in the submission of Mr. Prasad. It is common ground that the Board itself has not taken any decision which contemplates appointment on compassionate ground but had adopted the decision taken by the State Government in this regard. The memorandum dated 5th of October, 1991 issued by the Personnel and Administrative Reforms Department of the State Government had, inter alia, provided for appointment on compassionate ground and Clause 8 thereof, provides for appointment on compassionate ground to any Class IV post or Class III post in the scale of pay of Rs. 1200 to 1800. After the report of the 6th Pay Revision a question arose as to what would be, the replacement scale of Rs. 1200-1800 and by letter dated 20th of June, 2001 it, was decided that the same for the purpose, of compassionate appointment would be Rs. 3050 Rs. 4590 and

it was made clear that the maximum scale of pay of Class III post on which appointment on compassionate ground can be made is Rs. 3050- Rs. 4590. It is not in dispute that all the Petitioners were appointed on compassionate ground after the issuance of the aforesaid circular which permits appointment to Class III post to the maximum scale of Rs. 3050 Rs. 4590.

7. Respondents in the counter affidavit had clearly stated that because of late delivery of the letter dated 20th of June, 2001 Petitioners were appointed inadvertently in the higher scale of pay of Rs. 4000-Rs. 6000. Thus while appointing the Petitioners on compassionate ground higher scale of pay i.e. Rs. 4000-Rs. 6000 was given and when it came to the notice of the Respondents that Petitioners were wrongly given the said scale of pay, after giving opportunity to them, they have been given the scale of pay which they are legally entitled. do not find any illegality in the same.

8. Now referring to the authority of the Supreme Court in the case of Ex-Major N.C. Singhal (supra) am of the opinion that the same is clearly distinguishable. In the peresent case Petitioners were appointed on compassionate ground in a higher scale which was not permissible whereas in the case referred to above service condition was altered with retrospective effect. In fact Petitioners'' appointment in the scale of pay of Rs. 4000-Rs. 6000 was in the teeth of the decision of the State Government dated 20th of June, 2001 which had fixed the upper limit of Rs. 3050- Rs. 4590 for appointment on compassionate ground.

9. Mr. Prasad then contends that division into two classes of clerks one having the scale of pay of Rs. 4000 to Rs. 6000 and other of Rs. 3050 to Rs. 4590 is illegal. He submits that there cannot be two categories of employees having different scale of pay in the same class. Reliance has been placed on a decision of the Supreme Court in the case of State of Mysore Vs. M.H. Krishna Murthy and Others, and my attention has been drawn to the following passage from paragraph 11 of the judgment, which reads as follows:

In the case of Government servants, the object of such a difference must be presumed to be a selection of the most competent from amongst those possessing qualifications and backgrounds entitling them to be considered as members of one class. In some cases, quotas may have to be fixed between what are different class or sources for promotion on grounds of public policy. If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable. On the contrary, if the facts of a particular case disclose no such rational distinction between members of what is found to be really a single class no class distinctions can be made in selecting the best. Articles 14 and 16(1) of the Constitution must be held to be violated when members of one class are not even considered for promotion. The case before us falls, in our opinion, in the latter type of cases where the difference in promotional opportunities of those who were wrongly divided into two classes for this purpose only could not be justified on any rational grounds Learned Counsel for the State was, unable to

indicate any such ground to us. We therefore, think that the Mysore High Court rightly held that the impugned notifications were unconstitutional.

10. Yet another case on which Sri Prasad has placed reliance is the decision of the Supreme Court in the case of Food Corporation of India Etc. Etc. Vs. Om Prakash Sharma and Others, and my attention has been drawn to paragraph 29 of the judgment which reads as follows:

29. An analysis of the aforesaid rulings shows that the validity of the classification has to be judged on the facts and circumstances of each case. We have already pointed out that in the facts of the present case no material has been placed before us by the Corporation to justify the amendments introducing a classification between graduates and non-graduates. We have also referred to the conduct of the Corporation which chose to accept the judgment of Andhra Pradesh High Court and implement the same on the basis of which the Board decided to withdraw the amendments and representations were made to that effect in the High Courts of Kerala and Madras. As stated earlier, even in the affidavits filed in this Court, the Corporation has referred to the decision of the Board to withdraw the amendments.

11. do not find any substance in this submission of Mr. Prasad also and the authorities relied on have no bearing on the question involved in the present application. As stated earlier an embargo in the scale of pay has been put for appointment of a person on compassionate ground. No distinction has been made in regard thereto. Fixing maximum scale of pay of a post on which appointment can be made cannot be said to be irrational or in any way discriminatory. That being so, the authorities in relation to matter of promotion relied on in no way support the case of the Petitioners.

12. In the result, do not find any merit in the writ application and it is, accordingly, dismissed. No costs.