
(2003) 10 PAT CK 0003
In the Patna High Court
Case No : MJC No. 1396 of 2000

Deo Krishna Paswan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Citation : (2003) 10 PAT CK 0003

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—The Director of Agriculture, Bihar is present in person. Ex. Director Mr. Amir Subhani is also present in person. Heard learned counsel for the parties.

2. The petitioner has come to this Court in C.W.J.C. No. 4721/1998 seeking certain benefits and upgradation of his pay. Vide order dated 26.7.1999 this Court allowed the Writ Application and observed as under:--

"In my view, although the Government has made statement in the counter affidavit that the petitioner being diploma holder was not entitled to the upgradation of the scale, but no such copy of the decision of the Government or any circular was brought on the record. I, therefore, direct the Agriculture Production Commissioner, Respondent No. 2 to examine this matter and in case there is no other justifiable reasons, the petitioner who is holding the same grade of Agriculture Officer should certainly be entitled for upgradation of the scale, provide juniors were granted. Such question requires determination on the basis of the relevant Government decision/circulars.

3. The respondents issued an order on 14.12.1999 annexed with the contempt application so also with the earlier counter. In the said order it was observed that in light of M.J.C. No. 2323/1995 the benefit of upgradation of the scale has been given to the degree holders only and as the petitioner was a diploma holder, he would not be entitled to any benefit.

4. The petitioner contended before this Court that the question that the petitioner was a diploma holder and therefore would not be entitled to upgradation of the pay scale was put in issue in the earlier writ application and this Court, therefore, observed that though the statement has been made in the counter but no supporting orders/documents have been filed. He submits that the direction to the respondent No. 2 was to examine the matter and in case there was no other justifiable reason, the upgradation scale was to be awarded in favour of the petitioner. According to him, the State's defence that the petitioner was a diploma holder, therefore, was not entitled to upgradation of the salary was not accepted by the Court and, therefore, the Court observed that if there was no other justifiable reason the petitioner would be entitled to upgradation of the scale.

5. It is also contended that the order contained in Annexure-C filed with the counter runs contrary to the directions issued by this Court.

6. The respondents present in the Court filed an additional counter today with a copy of order dated 19.11.1996 passed in M.J.C. No. 2323/1995 by the Division Bench of this Court. In paragraph 13 of the Division Bench order, this Court has observed as under:--

"But having regard to the stand taken by the learned counsel for the petitioners, and the State, as well as the order of the Government dated 29.10.1996 (Annexure-Y), we direct that all such Agriculture Officers of Category Nos. 2 to 9, who have already passed B.Sc. Agriculture or other equivalent examinations be provided with upgraded revised scale at once."

7. Taking shelter under these observations it is submitted that when the Division Bench of this Court has already observed that Agriculture Officers of Category Nos. 2 to 9, who have already passed B.Sc. Agriculture or other equivalent examinations would be entitled to upgraded revised scale then the rejection of the petitioner's claim is not unjusticeable..

8. Unfortunately the argument raised by the respondents does not indicate the true state of affairs. In the earlier matter certain directions were issued by the Court in C.W.J.C. No. 6059 of 1990. When the matter was brought in M.J.C. No. 2323/ 1995 for drawing contempt proceedings against the said respondents this Court observed that the Agriculture Officers of Category Nos. 2 to 9, who have already passed B.Sc. Agriculture or other equivalent examinations be provided with the upgraded scale at once. Though the direction was in relation to the applicants before the Court, it was not a general direction. It is a trite law that when the Court hears a contempt matter it considers the question of compliance or non-compliance of the order or the defences which are available to the alleged contemner. In the said matter the defence of the State Government that no diploma holder would be entitled to the upgraded revised scale was held to be valid defence. In the said matter, this Court also observed for the said applicants that the persons, who have passed B.Sc. Agriculture or other equivalent

examinations would be entitled to the upgraded revised scale. If the State Government was of the opinion that the order passed in C.W.J.C. No. 2323/1995 was holding the field then the same ought to have been brought to the notice of the Hon"ble Judge, who heard and disposed of C.W.J.C. No. 4721/1998, out of which the present contempt petition arises. It is to be seen that this Court had observed that the question of passing of B.Sc. Agriculture Examination or obtaining an equivalent degree would not be material because such copy of the decision of the Government or Circular was not brought on record. If the order dated 26.7.1998 was running contrary to the earlier Division Bench judgment then even after filing of the contempt application those respondents could file a review application and could seek modification of the order. They did not do so, they simply tried to over-reach the order passed by this Court in C.W.J.C. No. 4721/1998 by saying that the petitioner would not be entitled to revised upgraded scale in light of the earlier judgment of the High Court.

9. The defence raised by the respondents is per se illegal and contrary to law. It is not a case of passing of a wrong order. Present is a case of disobedience of the order. The respondents are still maintaining that the orders passed by the respondents are perfectly justified in view of the order passed in M.J.C. No. 2323/1995. I have already observed that the order passed in C.W.J.C. No. 4721/1998 was not challenged in Letters Patent nor any application for its modification was made. They did not even think proper to make an application to the High Court that in view of the earlier Division Bench judgment this order should be recalled. If the order stands then this order cannot be ignored by the authorities saying that the order runs contrary to the Division Bench judgment. It is only the Division Bench or a higher authority/higher Court/Appellate Court in the hierarchy which can say that the order passed by the Single Judge is bad, illegal or deserves to be set aside. A person of the Secretary level or the Director level cannot say that he would ignore the order because the order is contrary to the earlier Division Bench judgment of this Court.

10. As the order contained in Annexure-C runs contrary to the directions issued by this Court in C.W.J.C. No. 4721/ 1998 and the respondents have failed to comply with the said directions, let them file a further show cause why appropriate jail sentences be not awarded to them. Put up on 21st November, 2003 on top of the list. The Officers in attendance today shall remain in attendance on the said date also.