

(1999) 06 PAT CK 0053

In the Patna High Court

Case No : L.P.A. No's. 139 and 140 of 1991 (R)

Dinesh Prasad

APPELLANT

Vs

The Regional Institute of Technology and Others

RESPONDENT

Date of Decision : 21-06-1999

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2000) 1 BLJR 342

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Both these appeals have been filed against the one and the same judgment of the learned Single Judge dated 9-8-1991, partly allowing the writ petition, being C.W.J.C. No. 324 of 1991(R), filed by Dinesh Prasad, holding that the writ petitioner therein is entitled to the scales of pay of Rs. 425-605/- in the junior selection grade and Rs. 535-765/- in the senior selection grade and not the scale of pay Rs. 480-680/-. The learned Judge rejected the prayer of the petitioner for pay-scales of Rs. 535-765/- and Rs. 580-860/- in the said two selection grades. Dinesh Prasad has filed LPA No. 139 of 1991 (R) challenging that part of the judgment of the learned Single Judge, whereby his prayer for higher scale of pay has been rejected. The other appeal being LPA No. 140 of 1991 (R) has been filed by the Regional Institute of Technology, Jamshedpur (hereinafter referred to as the Institute) against the other part of the judgment of the learned Single Judge whereby and whereunder the aforementioned two pay-scales have been given to Dinesh Prasad. As both these appeals arise out of the same Judgment of the learned Judge, they are being decided by this Common Judgment.

2. We have heard the learned Counsel for the parties.

3. Dinesh Prasad was appointed in 1964 as the Gestetner Operator in the

Institute. The post of Gestetner Operator is isolated post without any channel for further promotion.

4. The Government of Bihar vide Resolution dated 30-12-1981 accepted the recommendation of the 4th Pay Revision Committee providing for time-bound promotions to the Government servants, the relevant part of which is reproduced below:

With regard to time-bound promotion, the Fourth Pay Revision Committee have made the following recommendations:

(i) Personnel Management should envisage providing at least two promotions to each and every employees in Government service, the first by the end of the ten years of service and the second by the 2nd of 25 years of service.

(ii) If an employee who is otherwise fit for promotion and has not been able to get a single promotion by 10 years of service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the junior selection grade at the end of the tenth years.

(iii) If an employee, although otherwise found fit for a second promotion has not been able to secure a second promotion by the 25th year of his service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the senior selection grade at the end of the 25th year.

(iv) The aforesaid facilities should be extended to all employees whether they belong to any formally constituted service or cadre, or not and including employees holding isolated posts. In their case. The pay-scale immediately higher than the pay-scale prescribed for the basic post should be considered as the pay-scale for the junior selection grade and the pay-scale immediately higher to that of the aforesaid junior selection grade, should be deemed to be pay-scale for the senior scale grade.

(Emphasis supplied)

5. The Institute also adopted the Government's decision providing for the time-bound promotions, first by the end of ten years of service and the second on completion of 25 years of service, in those cases where the employees do not have any channel for promotion. The relevant extract from the minutes of the meeting of the Standing Administrative Committee of the Institute hereinafter referred to as the Administrative Committee) dated 9-10-1986 is reproduced below:

The Committee also approved the implementation of the scheme of time-bound promotion as per the provisions of letter No. 8294F dated 26-12-1985 of the Finance Department, Government of Bihar, for the employees of the Institute drawing their salaries in the scales of pay of the State Government.

6. The pay-scale of the post held by Dinesh Prasad at the time of his first time-bound promotion was Rs. 400-540/-. The first time-bound promotion was given by the Institute to him with effect from 16-10-1985 by order dated 31-5-1988 in the pay-scale of Rs. 535-765/-. In the said pay-scale, he was also given three increments. While granting the second time-bound promotion to him vide order dated 12-1-1990, the Principal of the Institute reduced his pay-scale in the junior selection grade to which he was promoted on the basis of the first time-bound promotion from Rs. 535-765/- to Rs. 435-605/- and his pay in the senior selection grade was accordingly fixed in the pay-scale of Rs. 480-680/-. On a representation filed by Dinesh Prasad against the reduction/fixation of his pay-scales, the Two Member Committee constituted by the Institute passed an order holding the reduction of his pay-scale as unjustified and bad. The finding recorded by the said Committee in this regard is reproduced below:

In case of B. Prasad and A. Lakra, G.O. the 1st time-bound promotion become due on 1-4-81 and the Committee recommended for giving time-bound promotion from 1-4-81. They were appointed in the scale of Rs. 400-540 and the time-bound scale allowed in their cases was Rs. 535-765. In the case of Shri B. Sharma, B.P.M. operator appointed in the same scale of Rs. 400-540. Time-bound promotion was allowed in the scale of Rs. 425-605. Later on when this was detected, the scale of Rs. 425-605 was allowed to Shri D. Prasad and Shri A. Lakra instead of Rs. 535-765. However, it is felt that the scale of Rs. 425-605 is not existing at R.I.T., Jamshedpur. In the existing pay-scale approved for R.I.T, employees the next scale of 400-540 is 535-765. There are many posts in the State Government for which the scale of pay at R.T.I., Jamshedpur is not available. Hence, it will be in fitness of things to allow the next higher scale existing at R.I.T., Jamshedpur in case of time-bound promotion for isolated posts not included in any cadre. Hence, the matter may be placed before the Standing Administrative Committee for consideration and orders.

7. The Administrative Committee of the Institute, however, rejected the recommendation of the Two-Member Committee by Annexure-11 to the writ petition. Not satisfied with the aforesaid order of the Administrative Committee, Dinesh Prasad filed C.W.J.C. No. 1628 of 1990(R) before this Court, which was disposed of on 6-11-1990 with a direction to the Administrative Committee of the Institute to pass a fresh order containing reasons. The Administrative Committee on 18-12-1990, vide Annexure-13 to the writ petition, again rejected his representation and declined to accept the recommendation of the Two-Member Committee and maintained the earlier order passed on 12-1-1990. The relevant part of the said order of the Administrative Committee is reproduced below:

The post of Gestetner Operator, held by Shri Dinesh Prasad, is an isolated post. The basic pay for this post is Rs. 400-540. The scale of pay immediately higher than this is Rs. 425-605, which should be the scale of pay for junior selection grade for this post. Similarly, the next higher scale of pay of Rs. 480-680 should be the scale of pay for senior selection grade. However, the Two-Member

Committee recommended the scale of pay of Rs, 535-765 as the Junior Selection Grade Scale of pay for Shri Dinesh Prasad.

The Standing Administrative Committee noted that the recommendations of the two-member committee are not as per the rules of the Government of Bihar. The recommendation of the two members Standing Committee is inconsistent to the Rules as such not acceptable. The Standing Administrative Committee also noted that the selection grade and time-bound promotion are to be subsequently approved by the Government of Bihar and that anomalous situation would be created for other categories of staff, if the recommendations of the two-member committee is accepted in the case of Gestetner Operator. Considering all these facts and after due deliberations, the Standing Administrative Committee resolved not to accept the Junior Selection Grade Scale of pay for Gestetner Operators recommended by the two-member committee and ordered that the Junior Selection Grade scale of pay for Shri Dinesh Prasad and Shri A. Lakra, Gestetner Operator on their first time-bound promotion should be Rs. 425-605.

8. Being aggrieved by the decision of the Administrative Committee, Dinesh Prasad filed C.W.J.C. No. 324 of 1991(R), which was partly allowed by the learned Single Judge giving rise to the present two appeals.

9. It is the admitted case of both the parties that Dinesh Prasad is entitled to first and second time-bound promotions in Junior and senior selection grades. There is also no dispute between them that Dinesh Prasad is to get on time-bound promotion the pay-scale, which is immediately higher to the pay-scale of the post which he was holding at the time of such promotion. But, there is dispute between them on the question as to what is the pay-scale which is immediately higher to the pay-scale prescribed for the post held by him at the time of his promotion. According to the Institute, the higher pay-scale has to be determined on the basis of the pay structure/scale prescribed by the State Government for the Government servants, according to which Dinesh Prasad is entitled to the scale of pay of Rs. 435-605/- and Rs. 480-680/- in the junior and senior selection grades, Respectively, on two time-bound promotions. The case of Dinesh Prasad on the other hand is that the higher pay-scale has to be determined in accordance with the pay-scales which have been approved and adopted by the Board of Governors of the Institute vide Annexure-3 to the writ petition, according to which he is entitled on two time-bound promotions the scale of pay of Rs. 535-765/- and Rs. 580-860/-.

10. The question for determination in these appeals is as to whether the pay-scale of Dinesh Prasad on his promotion is to be fixed in accordance with the pay structure prescribed by the State Government for the Government servants or it is to be determined in accordance with the pay structure adopted and approved by the Board of Directors of the Institute for the employees of the Institute.

11. Annexure-A to the counter-affidavit filed by the Institute is the Government order dated 30-12-1981 providing for the time-bound promotions to the State

Government employees. Along with the said order, the revised pay-scales of the State Government employees have also been filed as Schedule-I thereto, the relevant extract of which is reproduced below:

3. Rs. 400-7-5470-10-510-EB-10-540

4. Rs. 425-10-565-EB-10-605.

5. Rs. 480-10-620-EB-10-680.

As mentioned earlier the pay-scale of the post held by Dinesh Prasad at the time of his first time-bound promotion was Rs. 400-540/-. According to the pay-scale given in the said Schedule-I to Annexure-A to the counter-affidavit, the immediate higher pay-scale to the pay-scale of Rs. 400-540/- is Rs. 425-605/- and the next immediate higher pay-scale is Rs. 480-680/-. According to the Institute these are the two pay-scales to which Dinesh Prasad is entitled on first and second time-bound promotions.

12. Dinesh Prasad has filed the statement containing the revised scales of pay of Class III and IV posts and other unspecified posts in the Institute as approved by the Board of Governors of the Institute according to which the pay-scale immediately higher to the pay-scale of Rs. 400-540/- is of Rs. 535-765/- which scale was given to him when he was given the first time-bound promotion. The next immediate higher pay-scale in Rs. 580-860/-.

13. It is the admitted case of both the parties that the institute is a society registered under the Societies Registration Act financed by both the Central and State Governments and is "State" within the meaning of Article 12 of the Constitution of India. It is also admitted that the employees of the Institute are not the servants of the Bihar or the Central Governments. The Institute regulates the conditions of service of its employees by framing its own Rules and Regulations and/or by adopting such Rules framed by the Government as it considers fit and proper.

14. According to Schedule-I to Annexure-A to the counter-affidavit, there are 22 pay-scales approved by the State Government for its employees. But, all these pay-scales have not been adopted by the Institute. The Board of Governors of the Institute have fixed/revised the pay-scales for the employees of the Institute, the list of which is contained in Annexure-3 to the writ petition. The Institute being a body different from the State Government and the employees of the Institute not being the Government servants, they can get such pay-scale as are fixed by the Institute. They cannot claim the pay-scales fixed by the Government for its employees unless the same have been accepted and approved by the Institute. The Administrative Committee rejected Dinesh Prasad's representation and upheld his reduction of pay-scale on the ground that he should be given the scale of pay as per Rules of the Government of Bihar. There is no resolution/order of the Administrative Committee or any other competent authority of the Institute adopting the pay-scale prescribed by the Government of Bihar for its

employees. The statement of the pay-scales for the employees of the Institute as contained in Annexure-3 to the writ petition has not been denied by the Institute, Dinesh Prasad, being the employees of the Institute, is entitled to higher pay-scale on time-bound promotion as laid down by the Board of Directors of the Institute. Item Nos. 14 to 18 of Annexure-3 to the writ petition which contains the revised pay-scale as approved by the Board of Directors being relevant in this regard is reproduced below:

from 1-1-71 from 1-4-81 14. Care Taker, Sanitary Inspector 298-8-380-580-10-620- EB-9-423 15-770-EB-15- 860 15. Mechanic-C (W/S), Linemen, 230-6-380- -do- Tracor, Plumbing Mistry(PHE) EB-6-396

16. Mason, Driver, Nurse, Compounder 230-5-280- 535-10-645-15- EB-6-340 690-EB-15-765

17. Dresser 220-4-240- -do- EB-5-290- EB-5-515

18. (a) Electrician 180-2-190-3- -do- 238-4-242 (b) Gestetner Operator, 180-2-190-3- 400-7-470-10- Blue Printing Machine Operator 238-4-212 510-EB-10- 540.

The pay-scale of the post which Dinesh Prasad was holding at the time of his first time-bound promotion was Rs. 400-540/- Next immediate higher pay-scale as approved by the Board of Directors is Rs. 535-765/- which pay-scale was given to him on the first time-bound promotion. The pay-scale immediately higher to the said scale of Rs. 535-765/- is Rs. 580-860/- to which he was entitled on second time-bound promotion. The Principal of the Institute as well as its Administrative Committee were not justified to pay the lower pay-scale to him in terms of the pay-scales applicable to the State Government employees.

15. The learned Single Judge in the impugned judgment has rejected the claims set up by both Dinesh Prasad and the Institute on the following grounds:

(i) As the Administrative Committee of the Institute has accepted the recommendation of the State Government in its entirety, the employees of the Institute are to get pay-scale on promotion in accordance with the pay structure fixed by the State Government for the Government servants ; and

(ii) As the Fourth Pay Revision Committee has recommended the grant of different pay-scales to the Government servants posted in different departments "depending on their seniority, educational qualification, volume of work and other relevant factors" and the Institute has accepted the pay-scales which are applicable to the Department of Science-Technology, Government of Bihar Dinesh Prasad is to get salary in the pay-scales of Rs. 425-605/- and Rs. 535-765/-, which are available.

16. The aforesaid findings/observations recorded by the learned Single Judge have been challenged by both the parties. From the perusal of the Resolution dated 9-10-1986 passed by the Administrative Committee, which has already

been reproduced hereinbefore, it is quite apparent that the scheme of time-bound promotion was accepted/adopted for the Institute "as per the provisions of the Letter No. 8294F dated 26-12-1986 of the Finance Department, Government of Bihar". The said letter of the Government has been filed as Annexure-1 to the writ petition, according to which the time-bound promotion is to be made in accordance with paragraph "11" of the Government Resolution dated 31-12-1981, the relevant extract of which has also been reproduced earlier. Paragraph "11" of the said Resolution says that on time-bound promotion the Government Servant will get pay-scale immediately higher to that of the post held by him at the time of such promotion. In the said paragraph, there is also reference of the pay structure fixed by the Government for its employees. But it nowhere says that if the scheme of time-bound promotion is adopted by an authority/body, which is different from the Government, the employees of such authority/body will get the pay Scale fixed by the Government for the Government servants. The Institute is an authority different from the Government. It has fixed the pay structure for its own employees, who are to get the pay in accordance therewith. The pay structure fixed by the Government for its employees cannot be applied to the employees of the Institute, unless the same has been adopted by the Institute. There is no such Resolution/order of any competent authority of the Institute accepting/adopting the Government pay-scales for the employees of the Institute. If the claim of the Institute is accepted, it will result in a position where a person promoted to junior/senior selection grade on regular line will get the pay-scale in accordance with the pay structure fixed by the Institute, but the person who is promoted under the scheme of time-bound promotion to the aforesaid grades will get the pay in accordance with the pay structure fixed by the State Government for its employees. The resultant position will be that the former will get more salary than the latter. Such a situation should not normally be accepted unless provided for expressly or by necessary implication. There is no such indication in the instant case.

17. No order/resolution of any competent authority of the Institute accepting/adopting the pay-scales fixed by the Government for its employees working in the Department of Science/Technology has been placed before us. In the absence of any such order Dinesh Prasad cannot get the pay-scales of Rs. 425-605/- and Rs. 535-765/- in junior and senior selection grades, respectively. But, for the reasons given earlier, he is entitled to the pay-scales of Rs. 535-765/- and Rs. 580-860/-.

18. The decision of the learned Single Judge in *Anamul Haque and Ors. v. The Bihar State Road Transport Corporation* 1997 (1) PLJR 199, on which reliance has been placed by the learned Counsel for the Institute does not support the case set up by the Institute. In the said case, it was held that under the scheme of time-bound promotion the employees cannot claim pay-scale of the next higher cadre. In the instant case that is not the position. Here Dinesh Prasad (writ petitioner) has already been given time-bound promotion in junior and senior selection grades and the same is not under challenge. The controversy involved

in the present case is confined to the question as to whether the pay-scale of Dinesh Prasad should be fixed according to pay structure laid down by the Government for the Government servants or on the basis of pay structure approved and adopted by the Board of Directors of the Institute. It is no body's case that Dinesh Prasad is claiming pay-scale in the higher cadre.

19. LPA No. 139 of 1991(R) filed by Dinesh Prasad and the writ petition, which has given rise to it, are, accordingly, allowed. The orders impugned in the writ petition are quashed. The impugned judgment of the learned Single Judge is also set aside. LPA No. 140/91 (R) filed by the Institute is dismissed. No cost.

A.K. Prasad, J.

20. I agree.