
(1991) 08 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 324 of 1991 (R)

Dinesh Prasad

APPELLANT

Vs

The Regional Institute of Technology and Others

RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

Citation : (1994) 1 PLJR 38

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sumir Prasad and Sheela Prasad, for the Appellant; Debi Prasad and Anoop Kr. Mehta, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In this writ application the Petitioner has prayed for issuance of a writ of or in the nature of mandamus commanding upon the Respondent to give unto the Petitioner senior selection grade in the higher scale of pay of Rs. 580-860 and for quashing of the orders dated 7.7.1990 as contained in Annexure-11 to the writ application where the representation of the Petitioner had been rejected as also a part of the order dated 12.1.1990 as contained in Annexure-8 to the writ application whereby his pay scale had been reduced and the decision of the Standing Administrative Committee taken in its 26th meeting held on 18.1.2.1990 which was communicated to the Petitioner by letter dated 25.1.1991 and which is contained in Annexure 13 to the writ application whereby the scale of pay of the Petitioner in the junior selection grade on his first time bound promotion was fixed at Rs. 425-605/ -.

2. Bereft of all unnecessary details, the fact of the matter is as follows:

The Petitioner holds an isolated post of Gestetner operator. Admittedly, there is no channel for further promotion. The Petitioner was appointed in the year 1964. Admittedly, at the relevant time, the pay of Gestetner operator in terms of pay structure of the Respondent-institute, as contained in Annexure-3 to the writ

application, was Rs. 405-540/ -. The Petitioner contends that in terms of the recommendations of the 4th Pay Revision Committee, he was entitled to be granted time bound promotion in terms of the decision of the State Government's letter Related 26.12.1985 (Annexure-1) and the decision of a three-member Committee of the Respondent Institute taken in the 17th meeting dated 9.10.1986(Annexure-2).

3. By reason of a notification dated 31.5.1988, the Petitioner was given the first time bound promotion with effect from 16.10.1985 in the scale of pay of Rs. 535-765 and his scale of pay was fixed with one increment as would be evident from Annexure-5 to the writ application. The Petitioner was given second increment on 13.10.1988 and the third increment on 7.12.1989 in the pay scale of Rs. 535-765/ -.

However, by reason of the impugned order as contained in Annexure-8 which is dated 12.1.1990 while promoting the Petitioner to the Senior Selection Grade, his scale of pay was reduced in the junior selection grade from Rs. 535-765/ - to Rs. 435-605/ - and in respect of the senior selection grade the pay scale of Rs. 480-680/ - was fixed, although, as stated Hereinbefore, he had earlier been fitted in the pay scale of junior selection grade of Rs. 535-765/ - and thus according to him he was entitled to the scale of pay of senior selection grade at Rs. 580-860/ -.

4. The Petitioner, thereafter, made a representation on 25.1.1990 before the Respondent No. 3 (Annexure-9); pursuant whereof a two-men committee was constituted. The said committee found that the order as contained in Annexure-8 was not proper. Despite the same, the matter was again directed to be placed before the Standing Administrative Committee for further consideration by an order dated 12.4.1990 (Annexure-10). The representation of the Petitioner was rejected by an order dated 7.7.1990 as contained in Annexure-11 to the writ application. The Petitioner, thereafter, filed a writ petition in this Court being C.W.J.C. No. 1628 of 1990 (R) and this Court by order dated 6.11.1990 disposed of the said writ application with a direction to the Standing Administrative Committee to pass a fresh order assigning reason if it refuses to accept the recommendations of the two member committee.

5. The Standing Administrative Committee in its 26th meeting held on 18.12.1990 resolved not to accept the recommendation of two men committee and directed that the junior selection grade scale of pay of the Petitioner and one Sri A.K. Lakra on their first time bound promotion should be at Rs. 425-625/ - and further the Petitioner would get salary in the next higher scale of pay for senior selection grade at Rs. 480-680/ -. A copy of the said order dated 25.1.1991 is contained in Annexure-13 to the writ application.

6. In this case, a counter affidavit has been filed on behalf of the Respondents wherein it has been contended that in terms of the recommendations of the 4th Pay Revision Committee, a person holding an isolated post and for whom there is

no channel for further promotion; in terms of the recommendation of the 4th Pay Revision Committee, he would be entitled to the pay scale immediately higher than the pay scale prescribed for the basic post. It has further been contended that the pay scale immediately higher to that grade would be the scale of pay of the junior selection grade and the pay scale immediately higher thereto should be deemed to be the pay scale for the senior selection grade and in view of the fact that the scale of pay of Rs. 425-605/- was immediately higher to the scale of pay of Rs. 400-540, the Petitioner was given the said scale of pay in the junior selection grade and the scale of pay of Rs. 480-680/- in the senior selection grade.

7. Mr. Anil Kumar Sinha, learned Counsel appearing for the Petitioner submitted that an error of law has been committed in fixing the scales of pay as mentioned in the 4th Pay Revision Committee payable to its employees on the same (sic -- basis) without taking into consideration the structure of scales of pay as contained in Annexure-3 to the writ application. According to the learned Counsel, the scale of pay for junior selection grade and senior selection grade must be in accordance with the structure of scale of pay as contained in Annexure-3 to the writ application and for that purpose, the scales of pay referred to in the report of the 4th Pay Revision Committee are irrelevant. According to the learned Counsel the pay structure of the employees of the Respondent institute having been adopted by the Board of Governors, the Respondents are bound to pay salary to the Petitioner in terms thereof and not on the basis of the scales of pay mentioned in the preface of the report of the 4th Pay Revision Committee.

8. Learned Counsel submitted that even a driver has been placed in the scale of Rs. 535-765/- and it is inconceivable that a Gestetner operator while being promoted to the post of senior selection grade would be placed in the scale of pay of Rs. 480-680/- only.

Learned Counsel, therefore, contended that the Petitioner must be held to be entitled to obtain salary in the pay scale of Rs. 535-765/- in the junior selection grade and Rs. 580-860/- in the senior selection grade.

9. Mr. Debi Prasad, learned Counsel appearing for the Respondents, on the other hand, submitted that from a perusal of Annexure-8 to the writ application, it would appear that in junior selection grade even a Library Assistant has been placed in the pay scale of Rs. 400-540/- and various persons at serial Nos. 12 to 20 thereof have been placed in the scale of pay of Rs. 425-605/- in the senior selection grade.

10. According to the learned Counsel therefore, in view of recommendations of the 4th Pay Revision Committee, the Petitioner was entitled to next higher scales of pay as provided for in the report of the 4th Pay Revision Committee and not the higher scale of pay as per Annexure-3 to the writ application.

11. The recommendations of the 4th Pay Revision Committee which have been

accepted by the Government of Bihar relating to grant of selection grade and time bound promotion have been extracted by the Standing Administrative Committee in its report which is contained in Annexure-A to the counter-affidavit, the relevant portion whereof reads as follows:

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 the pay scale for the senior selection grade.

(underlining is mine)

The other important conditions for grant of time bound promotion are as follows:

The other conditions, the rules and procedures meant for usual promotion should be followed in case of the aforesaid time-bound system also.

Since the aforesaid scheme meant as an anti-stagnation measure, it should be applicable in case of only such employees who have not been able to get the first or the second promotion, as the case may be. In other words, the benefit of the time-bound system should be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale. The benefit should not be made applicable to such employees who, after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even upgradation. This should require issue of specific orders in case of every employee which should obviously be done only after a careful examination of his service records.

The aforesaid scheme is obviously not intended to deny any employee, earlier promotion that comes in his favour in the usual course.

The above recommendations have been accepted by Government subject to the condition that the benefit of time-bound promotion over and above the selection grade quota of posts as envisaged in para graph 10, will be allowed to eligible employees only after first exhausting the possibility of accommodating such employees against the vacancies available in the selection grade.

12. According to the Respondents, from a perusal of list of revised pay scale occurring in Schedule 1 appended to the aforementioned recommendations of the 4th Pay Revision Committee, it would, appear that there occurs two scales of pay; one being 425-10-565-EB-J0-605 being the next higher scale of pay of Rs. 400-540 and immediately thereafter Anr. scale of pay exists being Rs. 480-10-620-EB-10-680.

13. From the impugned order as contained in Annexure-13 to the writ application, appears that the Standing Administrative Committee held as follows:

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 recommendation 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 rule as such not acceptable. The Standing Administrative Committee also noted that the selection grade and Time Bound Promotions 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/ -.

14. The only question, therefore, which arises for consideration is as to whether the next higher scale of pay as contained in Annexure-13 to the writ application which also finds place in the report of the 4th pay Revision Committee or the same should be as per the pay structure recommended by the Board of Governors as contained in Annexure-3 to the writ application.

15. Evidently, the 4th Pay Revision Committee recommended for grant of time bound promotion so as to avoid frustration in the mind of those persons who have either no channel of promotion having been occupying isolated posts or for some reasons or other could not be promoted for a long time. Such time bound promotions are subject to the other conditions as referred to hereinbefore.

16. Time bound promotion recommended by the 4th Pay Revision Committee, being hedged by conditions, such promotion can be granted only when the conditions therefore are fulfilled.

17. From a perusal of the extracts of the

minutes it appears that report of the Committee constituted for considering time-bound promotion to the employees of the Institute drawing their salaries in the scale of pay of Government of Bihar was approved by the Standing Administrative Committee of the Institute in its 17th meeting held on 9.10.1986 which is contained in Annexure-2 to the writ application.

18. The Standing Administrative Committee in its aforementioned meeting resolved:

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.

19. The recommendations of the 4th Pay Revision Committee was accepted by the State Government in terms of its resolution dated 30th December, 1981, which is contained in Annexure-A to the counter affidavit, the relevant portion whereof read as follows:

The State Government after carefully considering the recommendations of the Fourth Pay Revision Committee have accepted the Revised Scales of Pay indicated in Schedule I. Government have further decided that the existing pay scales of various Gazetted and non-Gazetted posts under the State Government should be revised as shown in the enclosed Schedule II.

20. What was therefore, accepted by the Standing Administrative Committee was the recommendation of the State Government in its entirety. It cannot, therefore, be said that for the purpose of grant of time bound promotion to its employees, the Respondent-Institute was bound to adhere to the pay structure adopted by it in terms of Annexure-3 to the writ application. If the contention of Mr. Sinha to the said effect is accepted, the same would result in anomalies inasmuch as from a perusal of Annexure-3 itself, it would appear that whereas there are class IV, Class III and class I posts in the Respondent- Institute, no post of class II exists therein.

21. It was only with reference to classes of posts, the pay structure had been fixed which was in consonance with the recommendations of the 4th Pay Revision Committee

22. The Petitioner admittedly is a class IV employee. The Petitioner by reason of a time bound promotion, was not entitled to hold a class III posts irrespective of the fact as to whether he is qualified therefore or not. He in terms of the recommendations of the 4th Pay Revision Committee, as quoted hereinbefore and in terms of Annexure-2 to the writ application read with Annexure-A to the counter affidavit, was only entitled to the scale of pay immediately higher than the scale of pay in which he had been placed so far as junior selection grade is concerned and the next higher scale of pay for his senior selection grade.

23. However, the resolution of the Government of Bihar as contained in Annexure-1 to the writ application must be given its full effect. Schedule II relates to different scales of pay only but the same has got nothing to do with the scales of pay payable to the employees holding particular posts. The 4th Pay Revision Committee recommended grant of different scales of pay to the employees posted in different Departments depending of their seniority, educational qualifications volume of work and other relevant factors.

Schedule I of the said recommendation therefore, merely provides at one place

the scales of pay payable to the employees of the State of Bihar; whereas Schedule II refers to the scales of pay to be give to a particular class of employees.

24. For the purpose of grant of time bound promotion, therefore, what is relevant is the scales of pay payable to the employees posted in a particular Department which has no bearing upon schedule I of the said recommendation, but has a nexus with the scales of pay referred to in Schedule II thereof.

25. As the Standing Administrative Committee approved the implementation of the Scheme of time bound promotion for those employees drawing their salaries in the scales of pay of the State Government, in my opinion, the persons who have been granted much time bound promotion would be entitled to the next higher scales of pay payable to the employees of the Slate Government and not a Scale of pay as contained in Annexure-3 to the writ application.

26. Further it is evident from Annexure -- as also Annexure-13 that the Institute had been following the recommendations of the 4th Pay Revision Committee in the matter of grunt of time bound promotion with reference to the scales of pay payable to the employees of the State of Bihar in terms of the recommendation of the 4th Pay Revision Committee.

27. It will, therefore, not be correct to contend that the scales of pay other than what has been contained in Annexure-3 to the writ application has not been specifically approved By the Board of Governors of the Respondent No. 1 and upon a time bound promotion having been granted to the employees, the Respondent-Institute will have to adhere to annexure-3 alone and not to the scales of pay Referred, to in the report of the 4th Pay Revision Committee.

28. However, on a proper construction of the entire recommendations of the 4th Pay Revision Committee, I am of the view that while granting time bound promotion, what is relevant is the scale of pay payable to an employee of a particular department without any particular reference to the scale of pay referred to in Schedule I. The scales of pay payable on account of time bound promotion must be referable to a particular department as referred to in schedule II of the said report.

29. According to the Respondents, they have accepted the scales of pay which are payable to the Department of Science, Technology as far as the same are applicable. From a perusal of the recommendation of the 4th Pay Revision Committee, in respect of the employees employed in the Department of Science, Technology it appears that their scales of pay which are the subject matter of this writ application, namely, Rs. 400-540/ -; Rs. 425- 605/ - and Rs. 535-765/ - are available, but it docs not appear that there is any scale of pay of Rs. 480-6S0/ - although the same has been mentioned in Schedule I of Annexure-13.

30. From a perusal of Annexure-3 to the writ application, it appears that a pay structure was accepted as contained therein showing the revised scales of pay of

class III and IV posts and other unspecified posts of R.I.T., Jamshedpur as recommended by Pay Revision Committee with effect from 1.4.1981 and approved by the Board of Directors. In the said pay structure, the Petitioner's case falls within item No. 183 as the post of Gestetner operator was bracketed with the blue-printing machine operator.

31. It will, therefore, not be correct to contend that the entire pay structure applicable to the Science-Technology Department of the State of Bihar has been adopted by the Board of Governors inasmuch there does not appear to be any scale of pay of Rs. 425-605/ -.

32. For the reasons aforementioned, it is held that whereas the Petitioner was entitled to the scale of pay of Rs. 425-605/ - in the junior selection grade, he was entitled to the scale of Rs. 535-765/ - in the senior selection grade and not the scale of pay of Rs. 480-680/ -.

33. In the result, this application is allowed in part and to the extent mentioned hereinbefore. However, in the facts and circumstances of the case, there will be no order as to costs.