
(2014) 03 JH CK 0032
In the Jharkhand High Court
Case No : L.P.A. No. 134 of 2012

Dr. Ajit Kumar and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : (2014) 2 AJR 624 : (2014) 2 JLJR 299

Hon'ble Judges : R. Banumathi, C.J.;S. Chandrashekhar, J

Bench : Division Bench

Advocate : V.P. Singh, Senior Advocate and Mr. K.K. Singh, Advocate for the Appellant; Shivani Verma, J.C. to A.G. for the Respondent Nos. 1 to 4 and Mr. Ramit Satendar, J.C. to G.A., Bihar for the Respondent No. 5, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, C.J.—This LPA has been preferred for setting aside the order dated 13.1.2012 passed in W.P. (S) No. 4687/2006 and for seeking a direction commanding the State Government to give the pay scale of Rs. 8000-13500/- to the appellants, which was wrongly fixed as Rs. 6500-10500/- on the recommendation of Fitment Committee, with effect from 1.1.1996 and the actual benefit from 1.4.1997. The appellants are the Members of the Jharkhand Health Service and were allowed Class - 1 Central Pay Scale of Rs. 2200-4000/- in the basic/entry grade. Vide resolution dated 2.1.1998, the State Government decided to pay central pay scale along with central service conditions to its employees and therefore, constituted the Fitment Committee to submit its recommendation on the revised pay scale for its employees with effect from 1.1.1996. The Government of Bihar, vide resolution dated 8.2.1999, had accepted the recommendation of the Fitment Committee on revised pay scale for its employees with effect from 1.1.1996 with actual payment in the revised scale with effect from 1.4.1997 and the Government had accepted the revised pay scale of Rs. 6500-10500/- for the basic/entry grade of various State services

including the State Health Services.

2. The grievance of the appellants is that fixing the pay scale of Rs. 6500-10500/- was contrary to the recommendation of 5th CPC, which recommended for grant of higher scale of pay of Rs. 8000-13500/- to the Medical Officers of the Central Services. The appellants represented before the concerned authorities to remove the anomalies regarding the wrong fixation of pay scale in the basic/entry grade of Rs. 6500-10500/- to the proper and appropriate pay scale of Rs. 8000-13500/-. During the pendency of the writ petition, the Department of Finance, Government of Jharkhand, issued resolution No. 3589 dated 17.12.2007, in which it has been decided to provide pay scale of Rs. 8000-13500/- in the basic/entry grade which will be effective from 15.11.2000 and with actual benefit from 1.3.2007. The Government of Jharkhand issued the resolution No. 2464 dated 28.11.2011, by which it was decided to give Dynamic Assured Career Progression Scheme to the Members of non-teaching cadre with effect from 5.4.2002 but the benefit has been given on notional basis and financial benefits were not allowed to the Doctors.

3. The appellants had filed W.P. (S) No. 4687/2006 seeking for a direction to the respondents to give pay scale of Rs. 8000-13500/- with effect from 1.1.1996 and the actual benefit from 1.4.1997, pointing out that Fitment Committee had given its recommendation after hearing all the Associations of the affected employees including that of the appellants and that the appellants had not challenged the findings of the Fitment Committee. The learned Single Judge dismissed the writ petition by the order dated 13.1.2012, which is under challenge in this appeal.

4. Mr. V.P. Singh, the learned Senior counsel for the appellant submitted that the fixation of scale of Rs. 6500-10500/- as Rs. 8000-13500/- was subject matter for long time and in this matter final decision was taken in the year 2007 vide Resolution No. 3589 dated 17.12.2007 and pay scale of Rs. 8000-13500/- has been accepted by the State and would be made effective with actual financial benefit from 01.03.2007 and giving notional benefit from 15.11.2000 and by this the appellants have been denied actual financial benefit for about 15 years. The learned Senior counsel submitted that the period of 5th Pay Commission is from 01.01.1996 to 31.12.2005 and later, the period of 6th Pay Commission starts from 01.01.2006 and while so, the State Government has denied the benefit of the abovesaid period by saying that it would be effective from 01.03.2007 which is illegal and arbitrary.

5. Ms. Shivani Verma, the learned counsel for the State of Jharkhand has submitted that vide Resolution No. 3589 dated 17.12.2007, the State of Jharkhand decided to provide pay scale of Rs. 8000-13500/- in the basic/entry grade to the officers of Senior Grade-II which is applicable to the members of Jharkhand Health Service and it has been decided that the actual financial benefit of the said pay scale would be effective from 01.03.2007 and therefore the appellants cannot have any grievance regarding fixation of pay.

6. Vide Resolution dated 02.01.1998 the then State of Bihar constituted the Fitment Committee headed by Mr. Justice Sarwar Ali to submit recommendation of revised pay scale for its employees with effect from 01.01.1996. For the basic/entry grade of various State Services including the State Health Service, the Fitment Committee recommended pay scale of Rs. 6500-10500/- and the Government of Bihar vide Resolution dated 08.02.1999 had accepted the recommendation of the Fitment Committee. The State of Bihar vide Resolution dated 15.01.2000 constituted the Fitment Appellate Committee headed by Mr. Justice Aftab Alam of Patna High Court to examine as an appellate body, any error or mistake in the recommendations made by the Fitment Committee or the decision of the State Government on those recommendations. According to the respondents, the Fitment Appellate Committee after considering the representations of Associations found no anomaly in the recommendations made by the Fitment Committee as accepted by the Government. The Fitment Appellate Committee in its report at para. 41.8 observed that it would be erroneous to isolate any particular service like doctors and engineers and derive any independent equivalence as such basic grade of Rs. 6500-10500/- given to the State Services does not require any change.

7. In the case of State of U.P. and Others Vs. J.P. Chaurasia and Others, , the Hon"ble Supreme Court held that "equation of pay must be left to the Executive Government and it must be determined by expert bodies like Pay Commission and the court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration". In the case of Shiba Kumar Dutta and Others Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court reaffirmed the aforesaid view and held that credence has to be given to the opinion of expert committee like Pay Commission and the Court should be reluctant to interfere unless the opinion of such committee is arbitrary or invidious discrimination.

8. Pay scale of basic/entry grade of the State Health Service has been examined by the two expert bodies one by the Fitment Committee and another by the Fitment Appellate Committee and the scale of pay of Rs. 6500-10500/- for basic/entry grade of the State Health Service has been found justified.

9. As pointed out earlier, Resolution No. 3589 dated 17.12.2007 has been issued fixing the scale of pay of Rs. 8000-13500/- and its effectiveness has been allowed from 15.11.2000 whereas the actual financial benefit has been allowed with effect from 01.03.2007 which, according to the appellants, ought to have been allowed with effect from 01.04.1997 as duly resolved by the erstwhile State of Bihar vide Resolution No. 660 dated 08.02.1999. It is pertinent to point out that Resolution No. 3589 dated 17.12.2007 was not under challenge before the learned Single Judge. Later, the appellants have filed Interlocutory Application I.A. No. 3840 of 2010 seeking amendment of para-1 and prayer portion of writ petition and sought to challenge the said Resolution No. 3589 dated 17.12.2007. Since the earlier Fitment Committee and Fitment Appellate Committee have

found the fixation of pay scale of Rs. 6500-10500/- as justified, now the appellants cannot challenge the Resolution No. 3589 dated 17.12.2007. We also find much force in the submission of the respondents, if the claim of the appellants for grant of pay scale of Rs. 8000-13500/- is accepted, it will cause great imbalance regarding horizontal relativities amongst the various State Services and thereby inducing other services to demand the same pay scale resulting in a great financial burden to the State Exchequer. In such view of the matter, no liberty be given to the appellants to challenge the said Resolution No. 3589 dated 17.12.2007 by filing a fresh writ petition.

10. The second limb of the grievance of the appellants is with respect to the Dynamic ACP. It is submitted that in the year 2002, as per the recommendation of the Central Fitment Committee a system of Dynamic Assured Career Progression was evolved and the State Government is bound to implement the same in view of its resolution dated 02.01.1998 wherein it has been resolved that the State Fitment Committee is to recommend all the benefits and service conditions for the officers of the State Health Service. The learned Senior counsel submitted that as per the recommendations of the Central Fitment Committee, officers of the Central Health Service was to be given three Dynamic ACPs in 13 years of service whereas on the contrary, the officers of the State Health Service have been recommended to be given three Dynamic ACPs in 18 years and prayed that direction be issued to the respondents to fix Dynamic ACPs on par with Central Health Service. According to the appellants, the State Government should have granted the benefit of Dynamic Assured Career Progression with effect from 05.04.2002 as adopted by the Central Government but the State granted the benefit from 01.04.2009 and arbitrarily given notional benefit of DACP with effect from 05.04.2002. The grievance of the appellants is that the State Government vide Resolution No. 2464 dated 28.11.2011 has wrongly fixed the year of regular service as 6y - 6y - 6y in place of 4y - 5y - 4y interval as adopted by the Central Government vide letter dated 05.04.2002.

11. The Government of Jharkhand vide Resolution No. 2464 dated 28.11.2011 (Annexure-13) accepted in principle to implement Dynamic Assured Career Progression to non-teaching doctors of Jharkhand Health Service in pursuance of letter dated 05.04.2002 of Central Health Service. As per the said Resolution dated 28.11.2011, DACP was given to non-teaching doctors of Jharkhand Health Service on notional basis with effect from 05.04.2002 but on different service span intervals of 6, 12, 18 years against 4, 9, 13 years as adopted in Central Health Service. The Government of Jharkhand vide Notification No. 134 (finance) dated 22.01.2013 accepted in principle to implement (DACP) Dynamic Assured Career Progression to non-teaching doctors of Jharkhand Health Services with effect from 05.04.2002 on notional basis. The Government of Jharkhand vide Notification No. 2394 (finance) dated 11.09.2013 implemented (DACP) Dynamic Assured Career Progression to non-teaching doctors of Jharkhand Health Services with effect from 01.09.2008 on notional basis and decided to give its actual benefit from 01.04.2009. The Department of Health, Government of

Jharkhand issued a notification No. 52(3) dated 15.01.2014 and implemented DACP benefit for 5th Pay Commission (1996-2006) from 01.09.2008 notionally and its actual benefit from 01.04.2009.

12. As discussed hereinabove, since grant of benefit under Dynamic Assured Career Progression and/or "equation of pay" are the matters within the exclusive domain of the executive function therefore, it must be left to the Government and the Court is not to interfere with the decision of the Government either granting or refusing to grant such benefit/equivalence to its employees. Moreover, it is found that the Resolution dated 28.11.2011 vide Annexure-13, the benefit of DACP was granted to the employees on completion of 6 years, 12 years and 18 years of service span against which a grievance has been raised by the appellants, was not challenged by the appellants in the writ proceeding. The learned Single Judge has rightly dismissed the writ petition and we do not find any merit in this appeal and this Letters Patent Appeal is dismissed.