
(2016) 05 PAT CK 0113

In the Patna High Court

Case No : Letters Patent Appeal No.1840 of 2015 (Arising out of Civil Writ Jurisdiction Case No. 12014 of 2014)

Dr. (Mrs.) Kalpana Sinha

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Citation : (2016) 4 PLJR 466

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Y.V. Giri, Senior Advocate and Mr. Sanjay Kumar Giri, Advocate, for the Respondents; Mr. Vinod Kanth, Senior Advocate and Mr. Mukul Sinha, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Mr. Hemant Gupta, J.(Oral) - Heard learned counsel for the parties.

2. The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 30th of March, 2015 in C.W.J.C. No. 12014 of 2014, whereby the writ application filed by the appellant for quashing the office order dated 17th of June, 2014 directing recovery of Rs. 10,64,469/- remained unsuccessful.

3. The facts giving rise to the present Letters Patent Appeal are that the appellant was appointed as Lecturer in the then Bihar College of Engineering, Patna on 13th of January, 1993. The Bihar College of Engineering came to be declared as National Institute of Technology (hereinafter referred to as "the N.I.T."). The Parliament enacted National Institutes of Technology Act, 2007 (hereinafter referred to as "the N.I.T. Act") as an Institute of national importance. Before the Statutory incorporation of N.I.T., the Government of India took over Bihar College of Engineering on 28th of January, 2004. The appellant continued as Lecturer in the N.I.T., Patna. It was vide order dated 16th of

October, 2007, the appellant was granted Senior Scale as Lecturer. As per the appellant her pay was fixed as Rs.12,275/-.

4. The N.I.T. published an advertisement (Annexure-15) inviting applications for different posts including one of Assistant Professor in the pay-scale of Rs. 12,000-420-18,300/- in the subject of Humanities & Social Sciences. The appellant was selected to the post of Assistant Professor of Humanities & Social Sciences in the pay-scale of Rs. 12,000-420-18,300/-, was offered appointment on 8.12.2005. The appellant joined on 30th of January, 2006 as Assistant Professor.

5. The N.I.T. issued Advertisement No. 2 of 2008 inviting applications for the post of Lecturer in the pay-scale of Rs. 8,000-275-13,500/-, Assistant Professor in the pay-scale of Rs. 12,000-420-18,300/- and Professor in the pay-scale of Rs. 16,400- 450-20,400-500-22,400/-. The appellant applied for the post of Professor. After the publication of the said advertisement, the 6th Central Pay Commission Report was notified on 23rd of March, 2008. The Central Pay Commission recommended the change of nomenclature and the pay-scales of the teaching faculties. Earlier in terms of 5th Central Pay Commission, there were posts of Lecturer, Assistant Professor, and Professor though there were Senior Scale and Selection Grade for Lecturers. On the basis of the recommendations of the 6th Central Pay Commission, the Human Resources Development Ministry of the Government of India issued a circular on 31st of December, 2008.

6. The Government of India communicated on 31.12.2008, the implementation of recommendation of 6th Central Pay Commission proposing revision of pay of Teachers and equivalent cadres in the Universities and Colleges following the revision of pay-scales of the Central Government Employees. The relevant extract from the circular reads as under:-

"Subject :- Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission.

Sir,

I am directed to say that the Government of India have decided, after taking into consideration the recommendations made by the University Grants Commission (UGC) based on the decisions taken at the meeting of the Commission held on 7-8 October 2008, to revise the pay scales of teachers in the Central Universities. The revision of pay scales of teachers shall be subject to various provisions of the Scheme of revision of pay scales as contained in this letter, and Regulations to be framed by the UGC in this behalf in accordance with the Scheme given below. The revised pay scales and other provisions of the Scheme are as under:-

1. General

(i) There shall be only three designations in respect of teachers in universities

and colleges, namely, Assistant Professors, Associate Professors and Professors. However, there shall be no change in the present designation in respect of Library and Physical Education Personnel at various levels.

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(iii) The pay of teachers and equivalent positions in Universities and Colleges shall be fixed according to their designations in two pay bands of Rs. 15600-39100 and Rs. 37400-67000 with appropriate "Academic Grade Pay" (AGP in short). Each Pay Band shall have different stages of Academic Grade Pay which shall ensure that teachers and other equivalent cadres covered under this Scheme, subject to other conditions of eligibility being satisfied, have multiple opportunities for upward movement during their career.

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2(a) (i). Persons entering the teaching profession in Universities and Colleges shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs. 15600- 39100 with AGP of Rs. 6000. Lecturers already in service in the pre-revised scale of Rs. 8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs. 6000.

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(viii) Posts of Associate Professor shall be in the Pay Band of Rs. 37400-67000, with AGP of Rs. 9000. Directly recruited Associate Professors shall be placed in the Pay Band of Rs. 37400-67000 with an AGP of Rs. 9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

(ix) Incumbent Readers and Lecturers (Selection Grade) who have completed 3 years in the current pay scale of Rs. 12000-18300 on 1.1.2006 shall be placed in Pay Band of Rs. 37400-67000 with AGP Pay of Rs. 9000 and shall be redesignated as Associate Professor.

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9. Date of implementation of revised pay and allowance and payment of arrears:

(i) The revised Pay and revised rates of Dearness Allowance under this Scheme shall be effective from 01.01.2006. The revised rates of all other applicable allowances such as House Rent Allowance, Transport Allowance, Children Education Allowance etc. and the non-compounded advance increments shall take effect from 1.09.2008."

7. After issuance of the said circular, Corrigendum (Annexure-21 to the writ application) to an earlier Advertisement No.02 of 2008 was issued inviting applications in the revised pay structure i.e. Assistant Professor in the Pay Band of Rs. 15,600- 39100/- (PB-3) with AGP Rs. 6,000/-, Associate Professor in the Pay Band of Rs. 37400-67000 (PB-4) with AGP Rs. 9,000/- and Professor in the Pay Band of Rs. 37,400-67000 (PB-4) with AGP Rs. 10,000/-. Admittedly, no

appointments in pursuance of such advertisement and corrigendum were made.

8. In terms of Circular dated 31st of December, 2008, the pay of the appellant was fixed in the Pay Band of Rs. 37,400- 67,000/- with Academic Grade Pay of Rs. 9,000/-. It is the Academic Grade Pay of Rs. 9,000/- which was withdrawn vide the order impugned in the writ application (Annexure-1). The basis of the order is that an Associate Professor without completing three years service in the old pay-scale of Rs. 12,000-420-18,300/- or A.G.P. of Rs. 8,000/- is not entitled to AGP of Rs. 9,000/-. It is the said order which is challenged by the appellant before this Court in the writ application.

9. The writ application has been dismissed by the learned Single Bench, inter alia, holding that N.I.T., Patna is not a University and is a Technical Institute governed by All India Council for Technical Education Act, 1987 (hereinafter referred to as "the A.I.C.T.E. Act". The learned Single Bench examined the contentions by framing the following issue:-

- (i) Whether the petitioner was a direct recruit to the post of Associate Professor?
- (ii) Whether the NIT P is a University or a Technical Institute of national importance established under NIT Act?
- (iii) Whether AICTE is vested with authority under AICTE Act, 1987 to regulate pay scale and service condition of NIT P?
- (iv) Whether the respondents have committed the Contempt of Court by making false statement?

10. Regarding Issue No. (i) the learned Single Bench returned a finding that the appellant joined on 30th of January, 2006 as Assistant Professor and, therefore, could not be given a grade of Associate Professor. Regarding Issue No.(ii) the learned Single Bench returned a finding that N.I.T., Patna is not a University rather a Technical Institute under the A.I.C.T.E. Act for providing instructions and research in different branches of engineering and ethnology for academic excellence in technical education. In respect of Issue No. (iii) the learned Single Bench held that the pay-scale and service conditions of the N.I.T. are governed by the provisions of A.I.C.T.E. Act. Issue No. (iv) is not relevant for consideration in the present appeal.

11. Learned counsel for the appellant vehemently argued that the findings recorded by the learned Single Bench are not tenable for the reason that the appellant joined on 30th of January, 2006 as Assistant Professor in view of the posts and the pay structure available at that time in terms of 5th Central Pay Commission. The recommendations of the 6th Central Pay Commission came on 23rd of March, 2008 and were implemented by Government of India on 31st of December, 2008 but with effect from 01.01.2006. Therefore, the appellant could not have been appointed as Associate Professor on 30th of January, 2006. It is argued that the erstwhile post of Assistant Professor created under the 5th Central Pay Commission is now a post of Associate Professor in terms of the

recommendations of the 6th Central Pay Commission. The Associate Professor has been granted revised pay of Rs. 37,400-67,000/- and AGP of Rs. 9,000/- at the time of giving appointment and that the appellant was rightly placed in the said pay scale by virtue of an order (Annexure-12). Once, the post of Assistant Professor under the 5th Central Pay Commission is treated to be the post of Associate Professor on the basis of the recommendation of the 6th Central Pay Commission with effect from 1st of January, 2006, the appellant would be entitled to the same pay-scale as has been assigned to Associate Professor. The entire confusion has arisen because of the nomenclature of Assistant Professor against which the appellant was appointed directly vide Appointment Letter dated 8th of December, 2005. The post of Assistant Professor under the 6th Pay Commission is the entry level post whereas, the appellant was appointed against the middle level post, now called Associate Professor. Therefore, her pay and allowances have to be fixed against the post of Associate Professor, she having joined on 30th of January, 2006.

12. On the other hand, Mr. Y.V. Giri, learned senior counsel for the respondents supported the reasoning given by the learned Single Bench. It was argued that an Associate professor would be entitled to Academic Grade Pay of Rs.9,000/- only after putting three years. It is also argued that N.I.T. is a technical institute and, therefore, governed by the A.I.C.T.E. Act. As a consequence thereof, the revision of pay-scale and service conditions meant for the teaching faculty of the technical institutes would be applicable to the appellant. Incidentally, the post of Associate Professor is in the Pay Band of Rs. 37,400-67,000/- with Academic Grade Pay of Rs. 9,000/- even in the Technical Institutes. The relevant clause reads as under:-

"(viii). Posts of Associate Professor shall be in the Pay Band of Rs. 37400-67000, with AGP of Rs. 9000. Directly recruited Associate Professors shall be placed in the Pay Band of Rs. 37400-67000 with an AGP of Rs. 9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment."

13. We have heard learned counsel for the parties and find that the order of the learned Single Bench is not sustainable in law. The appellant was a directly appointed Assistant Professor when there were three level of posts-Lecturer, Assistant Professor and Professor in the pay-scale of Rs. 8,000-275-13,500/-, 12,000-420- 18,300/- and Rs. 16,400-450-20,400-500-22,400/- respectively. The said pay-scales were in force prior to the implementation of recommendation of the 6th Central Pay Commission which were implemented by the Government of India with effect from 01.01.2006. The nomenclature has undergone change which led to the present litigation. The Assistant Professor under the 5th Central Pay Commission became Associate Professor under the 6th Central Pay Commission. The corresponding pay-scale was revised. The pay-scale of Assistant Professor was revised to that of Associate Professor by the 6th Central Pay Commission, as is evident from the extract of Annexure-9 reproduced above. Since the appellant joined on 30th of January, 2006, after the date of

implementation of the 6th Central Pay Commission i.e. 1st of January, 2006, therefore, her pay was rightly fixed vide Annexure-12.

14. The First Statutes were notified by Government of India in terms of Section 26 of the N.I.T. Act. The Statutes have been notified on 23rd of April, 2009. The Statute 24 deals with General Terms and Conditions of Service of Permanent Employees. A reading of Clause (24) would show that the employees of the Institute are governed in the matter of allowances as admissible to Central Government Employees, Medical Reimbursement as per Central Civil Services (Medical Attendance) Rules, 1944, Central Civil Services (Conduct) Rules, 1964, Pension Scheme as announced by Government of India, Leave Travel Concession (LTC) as admissible to Central Government Employees, Overtime and night allowance as is admissible to Central Government employees. Thus, in all material aspects, the employees of the Institute have been given pay-scale and allowances as admissible to Central Government Employees. The Circular (Annexure-9 to the writ application) deals with grant of revised benefits to all those employees of Universities and Colleges who are granted pay as per the Central Government Employees.

Merely because the N.I.T. is not mentioned in the subject of the circular will not mean that the said circular is not applicable to the N.I.T. It is the intention of the circular which makes it clear that it is applicable to all those employees who are in the pay-scale as that of the Central Government Employees.

15. Keeping in view the intent and the purpose of the circular dated 31st of December, 2008 (Annexure-9 to the writ application), we find that the appellant as also other employees of the Institute are governed by the said circular and are entitled to revision of pay in terms of the said circular.

16. Argument of Mr. Y.V. Giri that the appellant would be entitled to the A.G.P. Grade of Rs. 9,000/- only after she has worked in the A.G.P. Grade of Rs. 8,000/- for three years is not tenable as a direct recruit Associate Professor, which she is deemed to be, she is entitled to Pay Band of Rs. 37,400-67,000/- and A.G.P. of Rs. 9,000/- as per the norms of Human Resource Department Circular as well by the Rules of A.I.C.T.E.

17. In view thereof, the order passed by the learned Single Bench is set aside. The Letters Patent Appeal and the writ application are allowed. The order (Annexure-1) is quashed. As a consequence thereof, any recovery effected from the salary of the appellant shall be refunded to the appellant and also the appellant will be entitled to all consequential benefits.