

(2013) 04 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 13469 of 2007

Gopi Kant Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 4 PLJR 420

Hon'ble Judges : S. Nayer Hussain, J

Bench : Single Bench

Advocate : Ravi Shankar Ganguli, for the Appellant; G.P. Ojha, for the Respondent

Final Decision : Disposed Off

Judgement

S. Nayer Hussain, J.—Heard learned counsel for the petitioner and learned counsel for the respondents. Learned counsel for the petitioner submits that this writ petition has been filed in the year 2007 and subsequently nomenclature of respondent No. 2 i.e. Secretary, Secondary, Primary & Adult Education, has been changed as Principal Secretary, Education Department, Government of Bihar. Hence, he seeks permission to change the nomenclature of respondent No. 2. Since, it does not make any difference as counter affidavit has already been filed on behalf of the respondents in the instant case, he is permitted to make necessary corrections in that regard.

2. This writ petition has been filed by the petitioner for directing the respondents to revise the pay scale of the petitioner from Rs. 6500-10,500/- to Rs. 8000-13,500/-, claiming that the petitioner was not only discriminated from the employees of the same posts of the similar establishments situated in different States, being constituted under the same provision, but also from the employees of the same establishment, where he is currently posted and some of such employees have been directed to be given the revised pay scale of Rs. 8,000-13,500/- with retrospective effect on the intervention of this Court.

3. Learned counsel for the petitioner states that the petitioner was earlier working in the State Institute of Education Technology (hereinafter referred to as "S.I.E.T." for the sake of brevity) and was getting pay scale of Rs. 2,200-4,000/-, which was supposed to be revised into a pay scale of Rs. 8,000-13,500/-, but inspite of such revised pay scale, the petitioner was given a pay scale of Rs. 6,500-10,500/-. Hence, the petitioner being aggrieved filed his representation before the Director, who turned it down and issued letters instructing the petitioner for not corresponding any more on the issue of the revision of pay scale.

4. Learned counsel for the petitioner submits that five persons including the petitioner, Satyendra Kumar and Ranjan Sinha were appointed as Producers exactly in similar manner and in the same pay scale vide order of the Director dated 26.9.1996. However, subsequently when the pay scale of the said persons i.e. Rs. 2,200-4,050/- was not replaced by scale of Rs. 8,000-13,500/-, two of those persons, namely, Ranjan Sinha and another filed a writ petition vide C.W.J.C. No. 12268 of 2001, which was allowed by a Single Bench of this Court on 26.7.2005, directing the authorities to give replacement scale of Rs. 8,000-13,500/- to the said petitioners declaring them to be entitled to the said scale since the date of the revision. The said order was challenged by the State of Bihar and its authorities before a Division Bench of this Court vide L.P.A. No. 125 of 2006, but the same was dismissed on 18.4.2006 and the order of the Single Bench was affirmed.

5. Learned counsel for the petitioner avers that another similarly situated person, namely, Satyendra Kumar also moved this Court vide C.W.J.C. No. 11192 of 2007, which was allowed by a Bench of this Court on 9.10.2012 directing the Director (Administration)-cum-Joint Secretary, Education Department, Government of Bihar to immediately revise the pay scale of that petitioner from the date when the central pay scale was revised, which was said to be 1.4.1997 and ensure that the said petitioner was paid the difference of salary within a period of three months from that day.

6. Learned counsel for the petitioner relies upon a resolution of the meeting of the Governing Body of S.I.E.T. dated 15.3.2007, in which it was decided that all the five Producers mentioned above including the petitioner would be given the aforesaid new pay scale as per the orders of this Court passed in M.J.C. No. 1157 of 1992.

7. Learned counsel for the petitioner claims that there were several persons of S.I.E.T. apart from those five Producers and two other persons, who were deprived of the said new pay scale as would be apparent from adoption and fixation of central scales by the S.I.E.T. on the basis of Fitment Committee Report (Annexure-6).

8. Reliance of learned counsel for the respondents upon an order of the Single Bench of this Court dated 10.5.2001 passed in C.W.J.C. No. 6160 of 2001

(Annexure-"C") is also challenged by learned counsel for the petitioner asserting that it is completely different as the petitioner of this case had appeared before the Fitment Appeal Committee, whereas, the petitioner of that case had not appeared and that was the reason of the said order having been passed. It is also challenged on the ground that the invitation of the response of the Bihar Education Project Council dated 25.2.1999 clearly shows that emolument was Rs. 8,000/- i.e. as per the revised pay scale. Hence he argues that there was no occasion for the authorities to take a different view in the case of the petitioner and deprive him of his entitlement.

9. On the other hand, learned counsel for the respondents vehemently opposes the contentions of learned counsel for the petitioner and submits that S.I.E.T., Bihar, Patna, was an autonomous organization, funded by the Government of India, but in the year 2003, the Central Government informed the State Government that they would not provide any financial assistance to S.I.E.T. and the State Government should owe the responsibilities of financial assistance. Thereafter, a meeting of the Governing Body of S.I.E.T. was held on 15.3.2007 and it was decided to dissolve the S.I.E.T. under Rule 13 of the Societies Registration Act and its assets and liabilities were put under the control of State Council of Educational Research and Training.

10. Learned counsel for the respondents also states that the Executive Committee of the S.I.E.T. in its meeting dated 28.6.1999 has decided to provide the scale of Rs. 6,500-10,500/- as the replacement scale of Rs. 2,200-4,000/-, which had been given by the State Government. A policy decision had also been taken that the pay scale of all the posts in S.I.E.T. should be at par with sanctioned pay scale of State Government and not with other such S.I.E.T./ C.I.E.T. of the Central Government.

11. Learned counsel for the respondents averred that when S.I.E.T. was dissolved on 15.3.2007, the services of its employees were absorbed in the State Government, hence they were entitled only to the scale, which was provided by the State Government. As per resolution dated 19.12.2007, the services of the working officers and employees of S.I.E.T. had to be adjusted in various offices of Human Resources Development Department against the sanctioned and vacant post in equivalent pay scale of State Government.

12. In this connection, learned counsel for the respondents relied upon the decision of a Single Bench of this Court dated 10.5.2011 (Annexure-"C") passed in C.W.J.C. No. 6160 of 2001, in which claim of similarly situated person was rejected and petitioner of that case was given liberty to file his claim before of the Director of the Institute, who was directed to forward it to the Department of Finance, Government of Bihar, whereafter the Finance Department was to examine the petitioner's claim and advise the Director of the Institute or whosoever might be the competent authority, to pass appropriate orders on the petitioner's claim, in accordance with law.

13. Hence, in view of the aforesaid decision of this Court, the Finance Department examined the matter and advised that the officers of the State Government having been given the scale of Rs. 6,500-10,500/-, as the replacement scale of Rs. 2,200-4,000/-, the representation of the said petitioner claiming the scale of Rs. 8,000-13,500/- as the revised scale of Rs. 2,200-4000/- was not acceptable. Thus, the writ petition is fit to be dismissed.

14. Considering the averments made by learned counsel for the parties and the materials on record, it is not in dispute that petitioner, alongwith Ranjan Sinha and Satyendra Kumar were working as Producers in S.I.E.T., where they were paid scale of Rs. 2,200-4,000/-. It is also not in dispute that the S.I.E.T. was a registered Society under the Societies Registration Act and was fully financed by the Ministry of Human Resources, Government of India, which had financial, administrative and pervasive control over the Society.

15. It is also not in dispute that there was revision of pay, whereafter a report of the Fitment Committee was also submitted, which provided that scale of Rs. 2,206-4,000/- would be equivalent to the scale of Rs. 8,000-13,500/-. In the said circumstances, at the time of revision of pay, the S.I.E.T. was under the control of the Central Government and the petitioner and other similarly situated employees were entitled to revised pay scale of Rs. 8,000-13,500/-.

16. Even according to the claim of the respondents, the Governing Body of S.I.E.T. decided to dissolve S.I.E.T. under Rule 13 of the Societies Registration Act in the meeting held on 15.3.2007 and it was only thereafter that the S.I.E.T. came under the control of the State Government. But before that the petitioner and other similarly situated employees had become entitled to the revised pay scale of Rs. 8,000-13,500/- as is apparent from the decision of a Division Bench of this Court dated 18.4.2006 passed in L.P.A. No. 125 of 2006.

17. So far reliance of learned counsel for the State and its authorities upon the decision of a Single Bench of this Court dated 10.5.2001 passed in C.W.J.C. No. 6160 of 2001 is concerned, it was, admittedly, decision of a learned Single Judge, whereas, the matter was subsequently considered by a Division Bench of this Court vide L.P.A. No. 125 of 2006 and a reasoned order dated 18.4.2006 had been passed in favour of the person, who was situated exactly similarly to the petitioner.

18. So far the claim of the respondents that the order of the Division Bench of this Court dated 18.4.2006 passed in L.P.A. No. 125 of 2006 was prior to 15.3.2007 when S.I.E.T. was dissolved, whereas, the instant writ petition had been filed on 9.10.2007 much after the dissolution of the S.I.E.T. and hence the position at the time of the disposal of the said appeal was completely different to the situation after the said dissolution when the instant writ petition was filed, is concerned, it is quite apparent that the claim of petitioner and other similarly situated persons, including Ranjan Sinha, were exactly same, since much before the dissolution of the S.I.E.T. and all of them were entitled to the revised pay

scale of Rs. 8,000-13,500/- and hence it hardly matters whether after passing of the Division Bench order, S.I.T.E. was dissolved or not.

19. In this regard, it may be mentioned that exactly similarly situated person, namely, Satyendra Kumar had also filed C.W.J.C. No. 11192 of 2007 after the dissolution of S.I.E.T. on 15.3.2007, claiming the same relief of fixation of pay at Rs. 8000-13,500/- and the said writ petition was decided by a very well considered order dated 9.10.2012 allowing the claim of the said petitioner and directing the Director, (Administration)-cum-Joint Secretary, Education Department, Government of Bihar, to immediately revise the pay scale of the said petitioner from the date the central pay scale was revised, which was said to be 1.4.1997 and ensure that the petitioner was paid the difference of salary within a period of three months from that day.

20. Nothing has been produced to show that either the said order of this Court dated 9.10.2012 had ever been challenged by the respondents or it has been set aside by any of the higher court, hence the said order has attained finality. In the said order, the learned Single Judge has very carefully considered the similarity of the claim of the petitioner of that writ petition, namely, Satyendra Kumar and that of the earlier writ petitioner, namely Ranjan Sinha and other similarly situated persons and had held that the resolution in question of the Governing Body of S.I.E.T. itself had provided that all those persons were entitled to receive the pay scale of Rs. 8,000-13,500/- right from the time it was revised and the said revision was considered affirmatively by the Fitment Committee also.

21. The learned Single Judge had also considered the applicability of Article 14 of the Constitution as well as the policy resolution of the Government dated 31.3.2011, specially clause 4C thereof and on its basis it had been held that the State Litigation Policy is a policy evolved by the State and is binding on all officials of the State including the State itself and when the said policy clearly envisages that all similar matters have to be similarly treated and litigations should not be introduced then it was the duty of the authorities to treat all such similar matters in similar manner, but it is quite apparent that the authorities of the State have not followed the said policy in the case of the petitioner. In the said circumstances, this writ petition is disposed of with a direction to the respondents including the Principal Secretary and the Director to immediately revise the pay scale of the petitioner from the date of the revision of the central pay scale i.e. 1.4.1997 and to ensure that the petitioner is paid the difference of salary for the entire period within three months from the date of receipt/production of a copy of this order.