
(1999) 06 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 1945 of 1989

Janardan Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Citation : (1999) 3 BLJR 1645 : (1999) 3 PLJR 102

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Judgement

B.P. Singh, J.—The 14 petitioners herein are the employees of the Rajendra Agricultural University holding non-teaching posts. They have prayed that the respondent-University be directed to pay to the petitioners the pay-scale of Rs. 1,000-1,820/- with effect from 18th September, 1987 since the scale of pay was upgraded by the State Government by its decision as contained in Annexure-4, dated 18-9-1987 and was approved by the Board of Management of the Rajendra Agriculture University in its meeting held on 30th May, 1988 which are Annexures 4 and 8 respectively. Their grievance is that despite the decision of the State Government and approval of upgraded pay-scale by the Board of Management of the respondent-University, they have been denied the upgraded pay-scale which is being paid to employees of the State of Bihar as well as the employees of the Birsa Agriculture University who hold the same or equivalent posts.

2. Petitioner No. 1 along with others was temporarily appointed to the post of Agriculture Inspector Junior Research Assistant in the scale of Rs. 355-555/- by order dated 4th July, 1975. The letter of appointment mentions that pending finalisation of the statutes, the appointees will be governed by the same service conditions as are applicable to the Bihar State Government servants. Petitioner No. 2, since deceased, was promoted temporarily to the post of Junior Research Assistant in the pay-scale of Rs. 355-555/- by the Rajendra Agriculture University by order dated 18th March, 1977. Petitioners No. 3 to 14 were

appointed as Agriculture Inspectors in the Rajendra Agriculture University in the scale of pay of Rs. 850-1,360, by order dated 26th November, 1982. They were appointed by the process of direct recruitment and were to be on probation for a period of two years from the date of their joining. They were required to execute an agreement bond to serve the respondent-University for a period of three years. They were also entitled to the benefit of contributory provident fund. The order of appointment have been collectively marked as Annexure-1. The petitioners, therefore, submit that they have been appointed as Junior Research Assistants/Agriculture Inspectors by the respondent-University and it is their case that they have been holding their posts since the dates on which they assumed charge.

3. It is the case of the petitioners that similar posts of Agriculture Inspector exist in the department of Agriculture, Govt. of Bihar, as also in the Birsa Agriculture University with similar duties and responsibilities. The State Government in the department of Agriculture issued the letter dated 18th September, 1987, Annexure-4 addressed to the Accountant-General, State of Bihar, communicating the Government's decision to upgrade the pay-scale of Agriculture Inspectors and those holding equivalent posts from Rs. 850-1,360/- to Rs. 1,000-1,820/-. Such upgradation was ordered in respect of posts which existed, excluding such posts at the block level, since it was not considered appropriate for administrative reasons to upgrade the pay-scale of such officers at the block level until and unless a decision was taken with regard to upgradation of the scale admissible to Block Development Officers. In respect of all such posts at other levels, including sub-divisional level, and under various projects of the State Government as also under World Bank Projects, the upgradation of scale was allowed. A list of posts so upgraded was appended to the communication Annexure-4, dated 18th September, 1987. A copy of the said communication was also sent to the Vice-Chancellor of the Rajendra Agriculture University, Pusa.

4. Pursuant to the said decision of the State Government, the Agriculture Inspectors and others holding equivalent posts in the department of Agriculture were given the benefit of the upgraded pay-scale of Rs. 1,000-1,820/-. Similarly, the Birsa Agriculture University, Kanke, Ranchi, by order dated 2nd February, 1988 decided to grant the benefit of the upgraded pay-scale to all regularly-appointed Agricultural Inspectors, Junior Research Assistants and Senior Technical Assistant (ICAR Posts) who possessed the minimum basic qualification of B.Sc. (Agri.)/B.Sc. (Forestry) or B.Sc. Vety. Science and A.H., who were working in the pay-scale of Rs. 850-1,360/-. The benefit of upgraded pay-scale of Rs. 1,000-1,820/- was allowed with effect from 18th September, 1987 i.e. the date of issue of Government order, Annexure-4.

5. So far as the Agriculture Inspectors of the Respondent-University are concerned, they were not given the benefit of upgraded pay-scale, but the Director Administration of the University by his letter dated 22nd March, 1988, Annexure-6, wrote to the heads of all centres to submit a list of employees

working on the posts of Agriculture Inspector and equivalent posts in the pay-scale of Rs. 850-1,360/-. The particulars were to be furnished in the prescribed form and information was to be furnished also as regards those Agriculture Inspectors who were not graduates. According to the petitioners, this was done, with a view to take steps for allowing the upgraded pay-scale to them.

Thereafter a high-level Committee comprising the Vice-Chancellor and other high officials was constituted for the purpose of re-designating Agriculture Inspector, Junior Research Assistant, Junior Statistical Assistant, etc. as Technical Supervisor. The high-level Committee at its meeting held on 5th of May, 1988 decided to re-designate the posts of Agriculture Inspector, Junior Research Assistant, etc. as Technical Supervisor and further decided that the existing incumbents of different non-teaching posts shall continue to hold the post till they relinquished the post on account of promotion, transfer, retirement or death. The posts with such designation so vacated shall be allowed to be phased out in course of time. A copy of the decision of the high-level Committee dated 5th May, 1988 has been annexed as Annexure-7.

6. It is the case of the petitioners that the decision of the high-level Committee was placed before the Board of Management of the respondent-University in its meeting held on 30th May, 1988 and the Board of Management approved the aforesaid decision of the high-level Committee. In the same meeting, the Board further approved the upgrading of the pay-scale to Rs. 1,000-1,820/- with effect from 18-9-1987. The petitioners have produced Annexure-8 which contains an extract of the agenda note prepared for the 11th meeting of the Board of Management to be held on 30th May, 1988. They have also annexed the resolution of the Board of Management under item No. 13 in support of their claim that the Board of Management approved the upgraded pay-scale of Rs. 1,000-1,820/-, for the Agriculture Inspectors and others holding equivalent posts with effect from 18-9-1987.

7. It is also contended on behalf of the petitioners that under Statute 12.1 of the Rajendra Agriculture University Statutes (Chapter XII as amended) the employees of the University whose pay-scale is at par with the employees of the State Government shall be paid the scale as per the regulation of the State Government. Relying upon the said Statute, it is argued that since the Agricultural Inspectors of the State of Bihar in the same pay-scale have been granted the upgraded pay-scale, the same should be made applicable to the employees of the respondent-University as well.

8. The grievance of the petitioners is that despite the decision of the State Government, the recommendation of the high-level Committee, and the approval of the Board of Management, the University has refused to grant to the petitioners the upgraded pay-scale which action is illegal, arbitrary and mala fide. The petitioners made several representations (Annexures-9 series), but their grievance has not been redressed. In these circumstances, the petitioners have prayed that a writ of mandamus be issued commanding the respondents to abide

by the upgradation of pay-scale by the State Government and the approval of the Board of Management of the respondent-University as contained in Annexures 4 and 8 to the writ petition and grant to the petitioners upgraded pay-scale of Rs. 1,000-1,820/- with effect from 18-9-1987 as is being paid to the similarly placed employees of the State Government and the Birsa Agriculture University.

9. A counter-affidavit has been filed on behalf of Rajendra Agriculture University and its Vice-Chancellor, but despite opportunity given to the State of Bihar, it has not filed a counter-affidavit opposing the writ petition.

10. In its counter-affidavit, the respondent-University has contended that the writ petition contains factually incorrect statements. It is not disputed that the petitioners are working as Technical Supervisors, but it is further stated that they are holding plan and I.C.A.R. posts and therefore, they cannot be confirmed or treated to be permanent as the scheme posts are temporary. Secondly, it is submitted that apart from the officers designated by the Statutes of the University, there are four categories of employees of the University. The petitioners belong to Category-III. To the officers who belong to Category-II, a higher category, the pay-scale admissible is Rs. 1,000-1,820/-. It would, therefore, be unreasonable to pay Category-III employees the same pay-scale which is admissible to the superior officers who belong to Category-II. Thirdly, it is submitted that the petitioners have not correctly stated the facts. Referring to the Statutes of the respondent-University, it has been stated that there is nothing in Chapter-XII of the statutes to support the contention of the petitioners that the employees of the respondent-University shall be entitled to the same pay-scale as is admissible to the employees of the State of Bihar. It is contended that the Rajendra Agriculture University is a distinct legal entity and as an employer it is empowered to create posts, determine salaries payable, etc. to its employees on the basis of its requirement and its financial position. It is, therefore, of no consequence that in another University, namely, the Birsa Agriculture University, the employees have been given the benefit of the upgraded pay-scale. According to the respondent-University, the Statutes make it clear that the scale of pay of employees of the University, other than the Vice-chancellor, shall be as prescribed by the Syndicate with prior approval of the State Government and various financing agencies involved. In fact, even the State Government has not granted the same scale to all Agriculture Inspectors. In any view of the matter, the University is entitled to take its own decision having regard to all relevant circumstances bearing on the question of upgradation of scale including the nature of job, the responsibilities shouldered by an employees, the financial capacity of the University, etc.

11. The respondent-University contends that certain misleading facts have been stated in the writ petition. The decision of the State Government to upgrade the pay-scale of Agriculture Inspectors, etc. was not applicable to employees of the Universities and applied only to the employees under the State of Bihar in the

Department of Agriculture. The posts have been specified in the list appended to Annexure-4 which does not include the posts under the respondent-University. The petitioners have incorrectly stated that the proposal placed before the Board of Management on 30th May, 1988 relating to grant of upgraded pay-scale to the Agriculture Inspectors, etc. was approved by the Board of Management. In fact, at its 11th meeting held on 30th May, 1988, the proposal was deferred and later dropped. What has been annexed to Annexure-8 is only a decision of the Board of Management re-designating the posts of Agriculture Inspector, etc. as Technical Supervisor, but in the pay-scale of Rs. 850-1,360/-, and not in the upgraded pay-scale. The first page of Annexure-8 does relate to a proposal for grant of upgraded scale but the second page of Annexure-8 contains a decision of the Board of Management on a different subject, namely, re-designation of the posts. The Board of Management did resolve to re-designate the posts of Agriculture Inspector, Junior Research Assistant, etc. as Technical Supervisor. This matter was considered at the 12th and 13th meetings of the Board of Management held on 23rd July and 7th October respectively and the proposal for re-designation of the posts was approved and consequently office orders dated 12-8-1988 and 31-10-1988 were issued which have been annexed as Annexures A and B. It is, therefore, submitted that at no stage, had the Board of Management ever taken a decision to upgrade the scale admissible to persons holding the posts of Agriculture Inspector and other equivalent posts.

12. In sum and substance, it is contended on behalf of the respondent-University that the Government decision in regard to upgradation of scale is not applicable to the petitioners, and the respondent-University at no stage have taken a decision to allow the upgraded pay-scale to the petitioners. The authority to determine the salary, allowances, etc. payable to the employees of the University is the Syndicate which has never resolved to allow the upgraded scale as contained in Government decision, Annexure-4, dated 18-9-1987 applicable only to State Government employees.

13. A rejoinder has been filed on behalf of the petitioners substantially reiterating the case made out in the writ petition. It is stated that in view of the decision of the University, the petitioners who were holding the post of Agriculture Inspector have now been re-designated as Technical Supervisors, and this has been done only with the object of denying them the benefit of upgraded pay-scale. The petitioners have denied that they belong to the category of I.C.A.R. and contend that they are holding non-plan posts in the respondent-University duly sanctioned by the State Government as would be evident from the office order of the University dated 21st April, 1987, Annexure-10.

14. It is not disputed that the Government did take a decision as communicated to the Accountant-General in its letter dated 18-9-1987, Annexure-4, to upgrade the pay-scale of its employees holding the posts of Agriculture Inspector and other equivalent posts, except for the posts that existed at the block level. The upgraded pay-scale was applicable to such posts held at other levels including

posts under various projects of the Government of Bihar and under the World Bank Project. It is also not disputed that the benefit of upgraded pay-scale was given to the employees of the Agriculture Department of the State of Bihar and the same benefit was also extended to those holding the posts of Agriculture Inspector, etc. under the Birsa Agriculture University in the light of the decision of the Government dated 18-9-1987. In both the cases, the effective date from which such benefit was given, is 18-9-1987. Counsel for the petitioners submitted that the petitioners are also entitled to the benefit of upgraded pay-scale as contained in Annexure-4. On the other hand, the respondent-University contends that Annexure-4 is not applicable to employees of the Rajendra Agriculture University and is only applicable to the employees of the State of Bihar in the Department of Agriculture.

15. Reading Annexure-4 as it is, it does not appear that the Government intended to extend the benefit of upgraded pay-scale to employees other than the employees of the State of Bihar in the Department of Agriculture. The upgraded pay-scale has been made admissible in respect of posts enumerated in the list appended to the decision. Admittedly, that list does not contain the posts of Agriculture Inspector, etc. under the Rajendra Agricultural University. Moreover, the statutes of the Rajendra Agriculture University provide that the pay-scale of employees of the University, other than the Vice-Chancellor, shall be as prescribed by the Syndicate with the prior approval of the State Government and various financing agencies involved. The respondent-University is, therefore, correct in submitting that the decision of the State Government does not, ipso facto, apply to the employees of the University unless the same are made applicable by the competent authority.

16. The case of the petitioners is that the University has given to its employees the benefit of upgraded pay-scale because the Board of Management of the University has taken a decision to grant to the petitioners the upgraded pay-scale with effect from 18-9-1987. There is considerable controversy on this issue and the respondent-University denies stoutly the claim of the petitioners that the University ever decided to give the benefit of upgraded pay-scale to the petitioners and others like them.

17. It appears from Annexure-6 dated 22nd March, 1988 that the Director, Administration, of the respondent-University did require the heads of department of its various centres to furnish in the prescribed form particulars relating to those holding the posts of Agriculture Inspectors and other equivalent posts who were in the pay-scale of Rs. 850-1,360/- furnishing the particulars of those employees who were not graduates. The subject of the letter also indicates that this was being done in connection with upgradation of the pay-scale of Agriculture Inspectors and equivalent posts. Annexure-6, however, does not contain any decision, and as rightly submitted by Counsel for the University, this was being done with a view to collect relevant particulars so that the same may be used at the appropriate time.

Annexure-7 is the recorded proceeding of the meeting held on 5th May, 1988 in the office chamber of the Vice-Chancellor of the University. The petitioners have described the Committee as a high-level Committee which was constituted by the University. A mere perusal of the proceeding of the meeting discloses that the Committee was considering a proposal for change of designation of various non-teaching technical posts, viz., Agriculture Inspector, Junior Research Assistant, Junior Statistical Assistant, Demonstrator, etc. all carrying the pay-scale of Rs. 850-1,360/- to one designated post, namely, Technical Assistant in the scale of Rs. 850-1.360/-. For the reasons mentioned in the proceeding, the proposal was accepted by the Committee. There is nothing in Annexure-7 to suggest that the so-called high-level Committee ever recommended the upgradation of the pay-scale of Rs. 850-1,360/- then payable to the officers concerned.

18. Annexure-8 is an extract of the agenda note prepared for the 11th meeting of the Board of Management of the University held on 30th May, 1988. The extract relates to "Agenda Note XXIV" and the subject is "Granting the scale of Rs. 1,000 to Rs. 1,820/- to Agricultural Inspector, Junior Research Assistants and equivalent in the scale of Rs. 850-1,360/ -" A proposed resolution which may be adopted forms part of the agenda note. If the said proposed resolution were to be adopted by the Board of Management, no doubt, the petitioners would have become entitled to the upgraded pay-scale of Rs. 1,000-1,820/- with effect from 18-9-1987. The question is whether the said resolution was ever adopted by the Board of Management. The second page of Annexure-8 is said to contain the decision of the Board of Management, though there is nothing in page 2 of Annexure-8 to show that the resolution therein contained was passed by the Board of Management on any particular date. However, Counsel for the University submitted that even the resolution annexed as part of Annexure-8 does not relate to the upgradation of the scale, but only relates to re-designation of the posts. The resolution is extracted below for ready reference.

Resolved that the designation of B.Sc. (Ag.) degree-holders working on the posts of Agriculture Inspector, Junior Research Assistant, Assistant Demonstrator, Junior Technical Assistant 85 Senior Technical Assistant in the pay-scale of Rs. 850-1,360 be given as Technical Supervisor. In a similar manner, the designation of Junior Statistical Assistant be also re-designated as Technical Supervisor (Statistics) and they may be Science graduate.

The resolution, even if that be considered to be the resolution passed by the Board of Management, does not relate to the upgradation of the scale of pay, but only relates to re-designation of several posts as technical supervisor. I am, therefore, satisfied that the petitioners have not produced any material to show that that the University ever accepted any proposal to grant the benefit of upgraded pay-scale to the petitioners. On the other hand, it is the assertion of the University that the proposal as contained in the Agenda Note, Annexure-8 was considered by the Board of Management on 30th May, 1988 and was deferred. Later, the proposal was dropped. Only the proposal to re-designate the

posts was approved by the Board of Management and accordingly, office orders were issued re-designating the posts including the posts of Agriculture Inspector as Technical Supervisor.

19. I, therefore, hold that there is no substance in the plea of the petitioners that the University had ever acted or decided to grant to the petitioners the upgraded pay-scale of Rs. 1,000-1,820/- as contained in the decision of the State Government, Annexure-4, dated 18-9-1987. The only question which now remains to be considered is whether the petitioners can be granted any relief. The University statutes make it clear that the competent authority to determine the scale of pay of the employees of the University is the Syndicate which has to take a decision in the matter with prior approval of the State Government and various financing agencies. The petitioners contend that principle of "equal pay for equal work" should be followed since the Agriculture Inspectors under the State of Bihar and under the Birsa Agricultural University perform the same duties and shoulder the same responsibilities as the Agriculture Inspectors under the Rajendra Agriculture University. The benefit of upgraded pay-scale has been extended to Agriculture Inspectors working under the State of Bihar and those working under the Birsa Agricultural University. There is no reason why the same benefit should not be extended to the petitioners. It was contended before me that the Agriculture college at Kanke, Ranchi was originally a college under the Rajendra Agriculture University, but later Birsa Agriculture University was established and the Agriculture College at Kanke became part of the Birsa Agriculture University. It was, therefore, argued that the Agriculture Inspector under the Rajendra Agriculture University performs the same duties and shoulders the same responsibilities as those under the Birsa Agriculture University. There is no justification, therefore, to withhold the benefit of upgraded pay-scale from the petitioners when the same has been granted to Agricultural Inspectors of the Birsa Agriculture University.

20. On the other hand, Counsel for the University contends that in a matter of upgradation of pay-scale for any category of employees, various factors have to be taken into account and complicated questions arise when University undertakes an exercise to grant benefit of upgraded scale to any category of employees. The University as the employer has to take into account the nature of posts, the responsibilities shouldered by employees belonging to a particular category as compared to the responsibilities shouldered by the employees belonging to other categories. Grant of upgraded pay-scale to a particular category of the employees as an isolated case, is neither practicable nor desirable, because that gives rise to a chain of claims made by other employees of the University who may claim similar upgradation of pay-scale. The University has to consider the matter as a whole, and in doing so, it has to keep in mind the financial implications and its financial capacity to pay higher wages. Though the decision has to be taken by the Syndicate of the University, it has to seek the approval of the State Government as also of the various financing agencies. The exercise is a complex exercise and cannot be considered in an isolated manner. It

was also submitted that the principle of "equal pay for equal work" may apply as between the employees under the same employer, but not always as between the employees working under different employers. Moreover, the question as to whether the Agriculture Inspectors under the Government of Bihar perform the same duties and shoulder similar responsibilities as the Agricultural Inspectors under the University, is a question of fact which has to be determined by the competent authority. It would, therefore, not be appropriate for this Court in exercise of its writ jurisdiction to direct payment of upgraded pay-scale to the petitioners merely, because the same has been granted to Agriculture Inspector under the State of Bihar.

21. There is considerable force in what is urged on behalf of the University. At the same time, it cannot be lost sight of that Agriculture Inspectors and others holding equivalent posts have been given the benefit of upgraded pay-scale by the State of Bihar. Following the policy decision of the State Government, the Birsa Agriculture University has also given the benefit of upgraded pay-scale to its Agricultural Inspectors who are graduates. All the petitioners before this Court claim to be graduates, and they have furnished material in support of their claim. In these circumstances, I am satisfied that the petitioners have at least made out a case for consideration of their claim by the University. Though no effective relief can be granted to the petitioners by this Court in exercise of writ jurisdiction, in the interest of justice, the Vice-Chancellor, respondent No. 2 is directed to take all necessary steps to place the matter for consideration by the Syndicate so that the Syndicate may, if considered necessary, seek approval of the State Government and various financing agencies involved and take a final decision in the matter within six months from today. If the Syndicate seeks approval of the State Government, the State Government must act promptly so that a final decision is taken within the stipulated period. Needless to say that the Syndicate will take into account all relevant circumstances and take a final decision one way or the other within the stipulated period. In case the Syndicate is not duly constituted, or is non-functional for any reason, the decision shall be taken by the authority which is competent under the law to exercise powers of the Syndicate in its absence.

22. This writ petition is disposed of accordingly.