

(2012) 08 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14436 of 2002

Krishna Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 4 PLJR 332

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Girish Nandan PD. Singh and Mr. Sanjay Kumar Pandey, for the Appellant; Anwar Karim, AC to SC-16, for the Respondent

Judgement

Honourable Mr. Justice Chakradhari Sharan Singh

1. Heard Mr. Girish Nandan Prasad Singh, learned counsel for the petitioner and Mr. Anwar Karim, learned Assistant Counsel to Standing Counsel No. 16 for the State of Bihar and other official respondents. The present writ application has been filed seeking quashing of the part of resolution No. 660 dated 8.2.1999 (Annexure-10), whereby petitioner's revised pay scale has been fixed in the scale of Rs. 3050 to Rs. 4590 instead of Rs. 4000 to Rs. 6000 as allowed to Electricians working in other departments of the Government of Bihar with effect from 1.1.1996 on the basis of Central pattern. The petitioner has, accordingly, prayed for issuance of a direction to the respondents to grant the benefit of revised higher pay scale and its benefit in fixation of pay on grant of Assured Career Progression.

2. As per the pleadings in the writ application, petitioner was initially appointed by the Board of Revenue as an Electrician in Bihar Survey Office under a scheme of re-organization of the Office. Subsequently the petitioner was confirmed on the post of Electrician with effect from 26.3.1979 under the orders of the Director, Land Reforms vide memo No. 109 dated 17.1.1984 (Annexure-2) issued by the Bihar Survey Office, Gulzarbagh, Patna.

3. The contention of the petitioner that from the very beginning, i.e., right from the implementation of the recommendation of the Fourth Pay Revision Committee's report, his pay has been fixed in a lower scale than what he was entitled to as per the recommendation of the report of the Fourth Pay Revision Committee. It is the case of the petitioner that he was in the scale of Rs. 230- to Rs. 340 and after implementation of the recommendation of the Fourth Pay Revision Committee his pay should have been fixed in the scale of Rs. 535 to Rs. 765 but the same was wrongly fixed in the scale of Rs. 480 to Rs. 680.

4. In support of the contention, learned counsel for the petitioner has placed reliance on the report of the Fourth Pay Revision Committee, relevant portion of which have been annexed as Annexure-4 to the writ application. At page 169 of the said report the recommendation with respect to Electrician is there in paragraph 13.7. While assigning the reason for fixation of the scale of the Electrician working in various departments, the Committee recommended pay scale of Rs. 535 to Rs. 765 for the Electrician in various departments of the State Government. The said pay scale has been shown to be replacement of Rs. 230 to Rs. 340 which the petitioner was getting.

5. The grievance of the petitioner is that though the recommendation of the Fourth Pay Revision Committee in respect of the Electrician applied to the petitioner also working in Survey Office, the same was denied to him, whereas persons working in other departments were given the scale of Rs. 535 to Rs. 765 as per the said recommendation. In case of the petitioner, however, he was granted scale of Rs. 480 to Rs. 680, which according to him is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The further plea of the petitioner is that Anomaly Committee was constituted in the year 1982 to look into the grievance of the employees on the question of wrong fixation of pay scale. The petitioner had approached the Anomaly Committee by filing representation (Annexure-6). The plea of the petitioner in paragraph 10 is that the Anomaly Committee did not mention anything about the post of Electrician. On grant of first time bound promotion subsequently, the petitioner was placed in the scale of Rs. 535 to Rs. 765. Had he been placed in the scale of Rs. 535 to Rs. 765 on the basis of the recommendation of the Fourth Pay Revision Committee, his pay would have been fixed in the scale of Rs. 580 to Rs. 860 on grant of time bound promotion.

6. In course of time the State Government decided to revise the pay scale of its employees with effect from 1.1.1986 on the basis of the report of Fitment cum-Pay Revision Committee. Since the petitioner was placed in lower pay scale than what was recommended by the Fourth Pay Revision Committee, he was given the pay scale of Rs. 975 to Rs. 1590 instead of Rs. 1200 to 1800. Again the petitioner represented against the wrong pay fixation to the Member Secretary to the Committee vide his representation dated 30.5.1987 (Annexure-8) to the writ application. The plea of the petitioner is that his grievance remained unattended.

7. Thereafter in view of the recommendation of the Fifth Pay Commission

constituted by the Government of India the State of Bihar constituted a Fitment Committee for fixation of revised pay scales for the employees under the State Government for fixation of their pay on central pattern. The Fitment Committee was constituted vide Finance Department resolution No. 660 dated 8.2.1999 (Annexure-10). This time again the petitioner approached the Fitment Committee to grant him pay scale of Rs. 1200 to Rs. 1800 instead of Rs. 975 to Rs. 1540 for the purpose of his fixation of pay scale of Rs. 4000 to Rs. 6000/-. The petitioner's grievance is that his pay was not fixed on the basis of pay scale of Rs. 4000 to Rs. 6000 with effect from 1.1.1986 and instead he was granted scale of Rs. 3050 to Rs. 4590 vide the impugned resolution as contained in Annexure-10. He has been granted this scale of Rs. 3050 to Rs. 4590 because of the lower scale which he was getting as on 1.1.1996 because of wrong fixation of the pay. Further plea of the petitioner is that vide his representation dated 29.4.2000 (Annexure-12) addressed to the Appellate Committee, he again submitted that his pay was wrongly fixed at Rs. 3050 to Rs. 4590 instead of Rs. 4000 to Rs. 6000/-. The petitioner has further referred to a communication by the Assistant Director of Bihar Survey Office addressed to the Director, Land Records and survey, Bihar for rectification of the anomaly in the pay scale of the Electrician working in Survey Office. 8. Learned counsel for the petitioner would submit that non-acceptance of the recommendation of the pay scale by the Fourth Pay Revision Committee in case of the Electrician of Survey Office while accepting the same for Electrician working in the other offices under the State Government is discriminatory and violative of Articles 14 and 16 of the Constitution of India. According to him, the petitioner fulfills all the qualifications/criteria of the Post of Electrician and there was no justification for the State Government to give a different and lower pay scale while accepting the recommendation of the Fourth Pay Revision Committee with effect from 1.1.1996 in case of the Electrician working in other departments.

9. Learned counsel for the petitioner in support of his submission has placed reliance on a judgment of the Apex Court reported in *Purshottam Lal and Others Vs. Union of India (UOI)* and Another, to contend that if the Government has made reference for revision of pay of all the employees of the State Government and it accepts the recommendation of the Pay Revision Committee, it is bound to implement the recommendation in respect of all Government employees and if does not implement the report regarding some employee only, it commits a breach of Articles 14 and 16 of the Constitution of India. For the benefit of quick reference, paragraph 16 of the said judgment is being quoted hereinbelow:

The learned counsel next contends that there has been great delay in bringing this petition and we should not exercise our discretion. There has been some delay but on the facts of this case we are of the opinion that there has not been undue delay, especially as in his letter dated March 23, 1967 the President, Forest Research Institute and Colleges, said that the points were being examined and if necessary the Ministry would be consulted.

10. While answering to a query, whether it was too late for the petitioner to challenge the pay fixation on the basis of the Fourth Pay Revision Committee's report at this stage so as to seek enhanced pay fixation on 1.1.1996, learned Counsel for the petitioner has submitted that he cannot claim recovery of pay with effect from 1981 or with effect from 1986 for the purpose of payment of arrears but he submits that the petitioner is well within his right to claim pay scale on the Central Pattern with effect from 1.1.1996 as the petitioner was entitled for correct pay scale at each and every time when the exercise of pay fixation was done for revising the pay scale of the employees of the Government. Learned Counsel for the petitioner submits that though it is correct that the petitioner cannot claim realization of arrears of salary for the past period i.e. prior to 1.1.1986, still he would be entitled to proper fixation of his pay in accordance with law.

11. Learned Counsel for the petitioner has placed reliance on a judgment of the Supreme Court reported in (M.R. Gupta Vs. Union of India and others,). According to said judgment of the Supreme Court, the grievance of wrong fixation of pay is an assertion of continuing wrong and its give rise to recurring cause of action each time he is not paid his salary which was not computed in accordance with law.

12. In view of the submissions advanced on behalf of the learned counsel for the petitioner, this writ petition cannot be dismissed on the ground of the claim being belated one.

13. The dispute involved in the present place is with regard to the claim of the petitioner of denial of pay scale to the Electrician of Survey Department and non-implementation of the recommendation of the Fourth Pay Revision Committee in their cases while implementing recommendation for Electrician in other departments. In paragraphs 21 and 22 of the writ petition the specific plea of discrimination has been taken.

14. A counter affidavit has been filed on behalf of the State of Bihar. There is no denial of averments made in the writ application. The only plea which has been taken in the counter affidavit is that vide letter No. 181 dated 18.3.2003 the Finance Department has rejected the petitioner's claim. The said letter dated 18.3.2003 has been annexed as Annexure-F to the counter affidavit and it is completely non-specking and contains no reason as to why petitioner's claim has been rejected. The State has not made out any case as to why Electricians working in the Survey Office would be entitled for lower scale of pay. However, this Court cannot determine the pay scale which an employee or class of employee would be entitled to on the basis of averments made in the affidavits of interested parties. It can be determined only by expert bodies like Pay Commission and the Government, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors.

15. In that view of the matter, this writ application is disposed of with a direction

to the Finance Commissioner, Bihar to consider the petitioner's case firstly for the entitlement of his scale of Rs. 535 to Rs. 735 with effect from 1.4.1981 on the basis of the report of the Fourth Pay Revision Committee. If the Finance Commissioner is satisfied that the petitioner was entitled to the scale of Rs. 535 to Rs. 735 with effect from 1.1.1981 instead of Rs. 580 to 680, then the petitioner's case be considered for revision of his pay scale on that basis with effect from 1.1.1986 and thereafter with effect from 1.1.1996.

16. The petitioner will be entitled for arrears of salary with effect from 1.4.1997 if the Finance Commissioner is satisfied that the petitioner's pay scale was required to be revised with effect from 1.1.1996 in the light of the petitioner's claim of Rs. 535 to Rs. 765 with effect from 1.1.1981. The petitioner has not claimed and will not be claiming any arrears of salary for the period prior to 1.4.1997 even if in the opinion of the Finance Commissioner the pay scale of the petitioner is required to be revised in his favour. In case the Finance Commissioner comes to the conclusion that the petitioner's pay has rightly been fixed right from the very beginning, he would pass a reasoned order indicating particularly, as to why the Electrician working in Survey Office were required to be treated differently from those working in other Departments of the State Government. This exercise should be completed as expeditiously as possible and in any case within three months from the date of receipt/production of a copy of this order.

17. This writ application is disposed of in terms of the observations and directions made hereinabove.

18. No order as to costs. Needless to say that if the petitioner's case is decided favourably by the Finance Commissioner, he will be entitled for consequential benefits as regards revised fixation of pay and other post retiral benefits and payment thereof and fixation of pay in view of grant of Assured Career Progression.