

(2011) 03 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 1495 of 2011

Krishna Nandan Chodhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2011) 59 BLJR 3387 : (2011) 3 PLJR 55

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Heard Learned Counsel for the Petitioner and Learned Counsel for the Respondent-Bihar State Electricity Board.

2. The Petitioner seeks quashing of the order contained in Notification dated 30.11.2010 by which two additional increments granted to the Petitioner for having passed Certificate Course on Computer Concepts (hereinafter referred to as "CCC") has been withdrawn with immediate effect.

3. Earlier the Board had by a Notification dated 29.1.2000 took a decision for prerequisite condition of having computer knowledge for new recruits to all officer grades and Class-III posts under the Board. It was further decided that the existing officers and employees who are below the age of 50 years as on 1.4.2000 are required to clear computer literacy test before 31.3.2002, failing which their annual increment shall not be sanctioned after 31.3.2002. The test was to be conducted normally once in each quarter, i.e., four times in a year by the Board and one time incentive of Rs. 2,000/- was to be paid to those passing the said computer literacy test. The said notification was amended by another Notification dated 16.8.2002 in which it was decided to give two additional increments as incentive to those who passed the computer literacy test which was to be conducted by the Director, Information Technology at least twice in a

year. Again the said Notification was modified by a Notification dated 24.12.2004 in which it was decided that in place of conducting the Computer Literacy Test by the Board in assistance with the NIC, Patna Office, the Course of Computer Concept (CCC) examination conducted by the DOEACC Society (an autonomous body under Ministry of Communication & I.T., Government of India) is adopted and the employees were directed to apply directly to the said Society and after passing the said examination to produce the authenticated copy of the certificate before the competent authority for getting the benefit of the two additional increments.

4. Again by Office Order No. 1387 dated 19.4.2007 it was stated that during implementation of the award of two additional increments as per Board's Notification No. 84 dated 16.8.2002 and Notification No. 109 dated 24.12.2004 it was noticed that mode of implementation had not been uniform in case of workmen and officers and in order to bring about uniformity it was decided to award two additional increments in the following manner:

1. Two additional increment shall be allowed at the mode of increment being drawn by the officers and workmen from the day of passing of C.C.C. (Certificate Course on Computer Concept) examination.

2. Two additional increments so sanctioned shall be non-absorbable, i.e., sanctioned additional increments shall be shown separately till their retirement and in no way shall affect normal course of annual increments/stagnation increments due to officers and workmen in their respective scale of pay.

Subsequently the Petitioner passed the said C.C.C. Examination conducted by DOEACC Society and by Notification dated 20.4.2009 he alongwith others was sanctioned two additional increments with immediate effect till retirement. The Petitioner thereafter started receiving the said benefits when the impugned Notification dated 30.11.2010 was issued stating that in terms of the decision taken in the Board's Resolution No. 8565 it was decided to stop the payment of two additional increments with immediate effect and the earlier Notifications and Orders in this regard were withdrawn. Aggrieved by the same the Petitioner has approached this Court.

5. Learned Counsel for the Petitioner submits that it was not open to the authorities of the Board to withdraw the benefits which had been conferred upon the Petitioner and other employees till their retirement. It is submitted that at best the Notification and the decision taken therein could have been withdrawn with prospective effect without affecting the vested rights of the Petitioner.

6. It is urged that the benefit conferred in the present matter is not without any extra effort on the part of the Petitioner and Ors. that it could be withdrawn at the whims and caprices of the authorities of the Respondent Board; rather the Petitioner and other similarly situated persons had spent time and money to pass the C.C.C. course conducted by the DOEACC Society under the Ministry of Communication and IT, Government of India. In the said circumstances, the

Petitioner having acted upon the promise made by the Respondent-Board it is not open to the Respondents to go back on the said promise and withdraw the benefits conferred in favour of the Petitioner.

7. Learned Counsel for the Respondent Board, on the other hand, submits that the grant and withdrawal of the benefits relate to policy matter of the Board and thus the same is not fit to be challenged under the Writ Jurisdiction of the Court.

8. It is also submitted that the decision has been taken for the reason of resource crunch and better utilization of the limited resources and thus the same ought not to be interfered with.

9. It is urged by Learned Counsel for the Board that the decision has been taken after appraisal of those employees given benefit of two additional increments after passing of the C.C.C. Examination was undertaken and on the basis of the proper enquiry and proper consideration the decision to withdraw the same has been taken. It is thus stated that the decision has been taken in the Board's larger interest.

10. On a consideration of the rival submissions, this Court does not find any force in the submission of Learned Counsel for the Respondent-Board. The decision to grant additional two increments was not a benefit conferred without any quid pro quo. It involved certain effort and exertion to be put in by the employees to pass the C.C.C. course before they became entitled for the two additional increments till their superannuation. It was thus on the promise made by the Board to grant the two additional increments that the Petitioner took the examination and got the said C.C.C. certification from the DOEACC Society and the two additional increments were also granted to the Petitioner for the said effort having been put in by him. The Board having made a representation to its employees like the Petitioner and they pursuant to the said representation having changed their position by making extra efforts to avail of the said benefit, it is not open to the Board to say that the same was a mere benefit conferred by the Board which could be taken back at any time at its own sweet will or at the whims and fancies of the Respondents.

11. Although the stand of the Board is that decision for withdrawal of the two additional increments is a policy matter taken for good reasons, this Court is of the view that the same could only have been taken with respect to those who have not yet acted in the matter pursuant to the earlier decision of the Board and gone ahead and obtained C.C.C. certification. It could not have been applied to employees who had been given the said benefits on the basis of the efforts put in by them on the expectation that they will continue to get the two additional increments till their superannuation as was specifically emphasized in the earlier decision of the Board.

12. Lastly, the submission regarding resource crunch is to be noted only to be rejected. The issue of resource crunch is not something new that has emerged in the year 2010 rather it has been persistent problem of the Board going back to

several decades and even at the time when the Board's decision was taken, hence the said stand is only for the purpose of defeating the claim of the Petitioner.

13. In any case, it must be remembered that the Board being a State under Article 12 of the Constitution it is expected to be a model employer which abides by the assurance and promise held out by it to its employees.

14. In the light of the aforesaid discussions, the writ application is allowed. The impugned Notification dated 30.11.2010 (Annexure-4) as also the Board's Resolution No. 8565 are quashed.