
(2012) 10 PAT CK 0037

In the Patna High Court

Case No : CWJC No's. 10488 of 2011 and 13753 of 2012

Manish Kumar Upadhya and Sheo Bansh Singh and Others	APPELLANT
Vs	
The Bihar School Examination Board, and Others	RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Citation : (2012) 4 PLJR 975

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Awadhesh Kumar Mishra in 10488 and in 13753, M/s. Awadhesh Kumar Mishra and P.K. Neogy in 13753, for the Appellant; Ajay in 10488 and Mr. Satyabir Bharti in 13753, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—In both the writ petitions, the reliefs claimed and the grounds taken as well as the respondents are the same and hence they had been heard together and are being decided by this common order. Petitioners of both the writ petitions have challenged order dated 1.8.211 passed by the Secretary of Bihar School Examination Board (hereinafter referred to as the "Board" for the sake of brevity) directing that the employees of the Board, who had retired or who had died between 9.8.1999 and 23.3.2006 shall not be given the benefit of difference of salary by way of Assured Career Progression Scheme (hereinafter referred to as the "A.C.P." for the sake of brevity), excluding the benefit of other difference of salary, which would be permissible. The said petitioners also sought directions to respondents to grant financial benefit with respect to A.C.P. to them as per Board's order dated 1.12.2008, by which financial benefit of A.C.P. including difference of salary was directed to be paid to all the employees of the Board and to pay difference of salary and other admissible financial benefits to the petitioners with effect from 9.8.1999 till the date of the retirement of the employees and also to implement order dated 18.5.2011 passed by a Bench of this Court in C.W.J.C. No. 8992 of 2011 in its letters and spirit.

2. I.A. No. 5613 of 2012 has also been filed by petitioners in the second writ petition i.e. C.W.J.C. No. 13753 of 2012 challenging Board's decision dated 27.9.2006 (Annexure-"A" to the counter affidavit), another Board's decision 14.12.2007 (Annexure-"B"), decision of Screening Committee dated 7.7.2009 (Annexure-"D") and Board's order of approval dated 27.4.2012 (Annexure-"E") in view of A.C.P. Scheme issued by the Government as well as in view of Board's decision dated 18.11.2008 (Annexure-"C") and office order issued on 1.12.2008 (Annexure-2).

3. Petitioner of the first writ petition is the adopted son of late Bainath Upadhyaya, who was a Peon in the Board and after serving in the Board for long decades he died on 22.5.2003 in harness. It was also stated that the said Bainath Upadhyaya became entitled for A.C.P. benefit on 9.8.1999, but his pay scale was fixed as per A.C.P. on 12.2.2009 by the Secretary of the Board. However, after death of Bainath Upadhyaya, this petitioner was declared as living guardian of his minor sisters by learned District Judge, Patna vide order dated 10.8.2010 passed in Guardianship Case No. 81 of 2010, whereafter Secretary of the Board had given family pension to the minor sisters of the petitioner, who are the daughters of the said deceased employee and in that capacity petitioner filed a representation before the Board for payment of difference of salary by way of A.C.P., but no heed was paid to the said request by the respondents.

4. There are nine petitioners in the second writ petition, who claimed that after rendering long services as Sr. Assistants and Section Officers in the Board, they had retired on different dates between 2002 and 2005. Thereafter, Board vide its office order dated 1.12.2008 decided that the employees, who had died or retired on 9.8.1999 or thereafter, would be granted A.C.P. in one round lump sum, whereafter the Board also sanctioned Rs. 8,16,21,862.00 for making payment of difference of salary etc. in respect of A.C.P. on 18.11.2008. However, when even after the said office order, A.C.P. was not given to the petitioners, they filed representations before the authorities of the Board to that effect, but when those representations were also not heeded, some of them filed C.W.J.C. No. 8992 of 2011, which was disposed of by a Bench of this Court vide order dated 18.5.2011 directing the authorities of the Board to consider and dispose of the claim of the petitioners of that writ petition within a period of three months from the date/production of a copy of the said order and in case any amount was found payable to the petitioners, the same was also directed to be paid within a further period of two months thereafter. Thereafter, the said petitioners produced a copy of the aforesaid order of the High Court alongwith their representation dated 30.5.2011 before the Board, but they later learnt that vide order dated 1.8.2011 Screening Committee of the Board directed that financial benefits in respect of A.C.P. shall not be given to the employees, who had died or retired between 9.8.1999 and 23.3.2006, excluding other benefits, which were payable to them.

5. Learned counsel for the petitioners of both the writ petitions averred that the

cut-off date i.e. 9.8.1999 for A.C.P. was prevalent in the State as well as in the Board and all procedures of the State had been adopted by the Board *mutatis mutandis* and A.C.P. Rules of the Government had been adopted by the Board *cent per cent*, hence when the State Government had decided to make payment of difference of salary by way of A.C.P. to all its employees, who had retired or who had died on 9.8.1999 or thereafter, there was no occasion for the Board to deprive its employees, who had died or retired between 9.8.1999 and 23.3.2006, of the said benefits.

6. Learned counsel for the petitioners argued that neither in the impugned order dated 1.8.2011 (Annexure-5) nor in the "Sanlekh" of the Board dated 27.4.2012 (Annexure-"E") any reason had been assigned and hence in such matters the petitioners' right to get benefits of difference of salary by way of A.C.P. cannot be legally taken away by the authorities. In this regard, he placed reliance upon a decision of the Apex Court in case of *K.M. Mishra Vs. Central Bank of India*, .

7. On the other hand, learned counsel for the respondents stated that the term "*mutatis mutandis*" did not mean "as it is", rather it meant "with necessary changes" and hence Board did not have to follow the exact cut-off date as prescribed by the Government, rather it had to make its own cut-off date for giving benefit to its employees regarding difference of salary by way of A.C.P. and hence the Board considered as to what should be the cutoff date and in that respect several directions etc. were given from time to time, whereafter the Screening Committee held its meeting and made recommendations and Secretary of the Board forwarded his proposal in terms of the recommendation of the Screening Committee of the Board on 27.4.2012 and Board approved the said proposal and hence it was quite legal and proper.

8. Learned counsel for the respondents submitted that the fixation of cut-off date i.e. 23.3.2006 was according to Government's notification dated 23.3.2006, but the Board showing sympathy with its employees went ahead by giving notional benefits from 9.8.1999 to 23.3.2006 also for fixation of pensionary benefits to those, who retired between those two dates.

9. Learned counsel for the respondents argued that the Board had the power under its executive domain to make such fixation regarding pay etc. and no discrimination had been shown as the principle was meant for all. In this regard, learned counsel for the respondents relied upon a decision of the Apex Court in case of *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*, .

10. Considering the averments made by learned counsel for the parties and the materials on record, the main emphasis of the petitioners is that the provisions of Bihar Service Code and Government Service Conduct Rules will *mutatis mutandis* apply to the employees of the Board as has been prescribed in Rule 28 of Chapter-X of the Bihar School Examination Board Regulations, 1964 (hereinafter referred to as "the Regulations" for the sake of brevity) and,

accordingly, when the A.C.P. Rules of the Government was adopted by the Board, it was adopted cent per cent and in the said Rules the cut-off date for giving benefit of difference of salary by way of A.C.P. was 9.8.1999 and as such the same should have been followed by the Board without denying such benefits to its employees, who had retired or died between 9.8.1999 and 23.3.2006.

11. No doubt, the term "mutatis mutandis" has been used in the aforesaid Rule 28 of the Regulations, but Black's Laws Dictionary gives its meaning as "with necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices and the like". Wharton's Law Lexicon defines "mutatis mutandis" as "with necessary changes in points of detail". The same meaning of "mutatis mutandis" has been given in Law Lexicon of British India.

12. Considering the aforesaid definitions in detail as well as the provisions given in the Regulations and the A.C.P. Rules of the Government and its "mutatis mutandis" adoption by the Board, it becomes quite clear that generally the Board had adopted A.C.P. Rules of the State Government making it effective from 9.8.1999 and only in details a change has been made that all other benefits would be given as per the said cut-off date including the notional promotions etc. but only those employees of the Board, who had retired or who had died between 9.8.1999 and 23.3.2006, shall not be given the benefit of difference of salary by way of A.C.P. This clearly comes within the said meaning of the term "mutatis mutandis" and, thus, by incorporating the said condition in the impugned order etc., the Board has violated neither the provisions of the Regulations nor the provisions of the Bihar Service Code nor even the provisions of A.C.P. Rules and nor either the circular of the Finance Department.

13. Furthermore, since the condition of the State Government and that of the Board as well as the situations of their respective employees are not the same and cannot be the same, the Board must have the power to make necessary changes with respect to the points of detail considering the financial condition and requirements of the Board. It cannot be legal, just and proper to assume that whatever the State does, the Board has to follow without any necessary changes according to its specific requirements.

14. In the aforesaid circumstances, the case law relied upon by learned counsel for the petitioner in case of K.M. Mishra (supra) is not applicable to the instant case. The Board is, thus, rightly empowered to make such fixation regarding pay etc. in its executive domain. However, necessary condition must be that the said fixation should be fair, proper and without any discrimination. In the instant cases there has been no discrimination against the petitioners as the principle laid down by the Board is made equal for all and the reasons have been fully, assigned in the recommendation of the Screening Committee (Annexure-"D"), the proposal of the Secretary of the Board and the final approval granted by the Board dated 27.4.2012 (Annexure-"E").

15. Furthermore, it may be noted that the fixation of cut-off date according to Government notification dated 23.3.2006 is 23.3.2006, but the Board went ahead by giving notional benefits from 9.8.1999 to 23.3.2006 also for fixation of pensionary benefits to its such employees, who retired/died between those two dates. In the aforesaid facts and circumstances, this Court does not find any merit in the aforesaid two writ petitions, which are, accordingly, dismissed.