
(2010) 07 PAT CK 0163
In the Patna High Court

Moti Lal Mochi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0163

Hon'ble Judges : Shiva Kirti Singh, J;Birendra Prasad Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Birendra Prasad Verma, JJ.—This appeal has been preferred against the judgment and order of the Writ Court dated 25.1.2005 whereby writ petition preferred by the appellant bearing CWJC No. 6600 of 2002 was dismissed. Thereafter, the appellant preferred civil review bearing No. 62 of 2005 but that was dismissed on 28.6.2006. While dismissing the writ petition on the ground that facts did not require interference with the order dated 6.4.2002 whereby recovery was ordered in respect of excess payment of salary in higher scale to which the petitioner was not entitled, the Writ Court observed that the authorities are directed to recover the amount in easy installments from the pension of the petitioner. In the review application the petitioner disclosed that such observation or direction was not necessary because the excess amount had already been recovered. In that view of the matter, while dismissing the review petition the court cautioned that no amount beyond the actual excess amount should be recovered from the petitioner.

2. Learned Counsel for the appellant first attempted to show to us that the appellant was in fact entitled to the scale of Rs. 220- 315 with effect from date of his appointment i.e. 1.7.1971 in view of a notification of the Finance Department bearing No. 6053 dated 2.6.1976 whereby certain recommendations of the Anomaly Removal Committee had been accepted by the Government. Item 32 of that notification deals with the case of employees of Health Department in Mass Vaccination Scheme and BCG Technician of TB Centre who as per

recommendation of the Anomaly Removal Committee were granted the replacement scale of Rs. 220- 315 if they were earlier in the pay scale of less than Rs. 120- 225 and for those in higher pay scale, the replacement scale was accepted as Rs. 240-396. On bare reading of the aforesaid notification relating to item No. 32 it is clear that the same does not relate to the post of petitioner which was a post of Health Worker.

3. On the other hand, learned Counsel for the State has produced before us Government Resolution No. 10770 dated 30.12.1981 on the subject of revision of the scales of pay of government employees on the basis of recommendations of the 4th Pay Revision Committee with effect from 1st April, 1981. That document supports the case of the State because it mentions in the category of other post in the field establishment of Health Department, three posts of Health Worker and also their existing pay scales (as per 3rd Pay Revision Committee) and also the revised pay scale as per the 4th Pay Revision Committee. The scale of Rs. 165-204 is of Health Worker (Untrained) and its replacement scale is Rs. 400-540. The post of Health Worker (Trained) had the pay scale of Rs. 180- 242 which was also revised to the same replacement scale of Rs. 400- 540. The third similar post is described as Basic Health Worker which had the existing pay scale of Rs. 220- 315 which was revised to scale of Rs. 535- 765.

4. The service book of the petitioner which is Annexure-3 to the writ petition as well as his appointment letter show that he was appointed on 1.7.1971 in the pay scale of Rs. 75- 85 and apparently due to 3rd Pay Revision Committee, that was revised to pay scale of Rs. 165-204 with effect from 1.7.1971. Thereafter, the petitioner without any justification, was placed in the scale of Rs. 220 - 315 with effect from 1.7.1971 itself so as to get the replacement scale of Rs. 535-765. The exercise of changing his pay scale from Rs. 165- 204 to Rs. 220- 315 and on that basis grant of replacement pay scale admissible to Basic Health Worker as per 4th Pay Revision Committee, was clearly against the decision of the Government and unauthorized. The objection to such a grant by the Accountant General suffers from no illegality and the petitioner has failed to show his entitlement to such higher scale. There is no dispute that petitioner was never appointed as Basic Health Worker and he could never be entitled to replacement scale of Rs. 535- 765 admissible only to Basic Health Workers.

5. In view of aforesaid finding the only question falling for determination is whether the decision of the authorities to recover the excess amount, suffers from any illegality or not. The answer is obviously No. The only other consideration which can help the petitioner is on the ground of equity. This issue was considered in detail by a Full Bench of this Court in the case of Ram Binod Singh v. Bihar State Electricity Board reported in 2007 (2) PLJR 398 to which one of us (Shiva Kirti Singh, J.) was a member. In that case the Full Bench held that where the grant was by way of undue favour, arbitrary, malafide, ultra vires and/or void ab initio then in such cases of clear disobedience of policy or rules of the Government by ministerial action or clear dishonest decision causing undue loss

to public money cannot be overlooked so as to interfere with an order for recovery of the excess money paid to the employee. In that case it was also held that in the circumstances indicated above superannuation of the concerned employee cannot stand in the way of recovery. No doubt, the Full Bench clarified that theory of simple mistake or error to justify recovery will not hold good where the grant did not suffer from patent illegality or perversity so as to attract Wednesbury principle or the vice of malafide in law. As an instance it was pointed out that where two interpretations of a provision were possible and one was consciously approved and adopted by the competent authority for general application to all concerned, any error in such decision of competent authority if corrected at a later stage may apply only prospective, more so if the decision has been followed for many years. In such cases involving reinterpretation or readjudication, no recovery should be made if the earlier view was of a competent authority and bonafide even if it was wrong, mistaken or erroneous. Applying the aforesaid principle we do not find this case to be covered by the exception which prohibits recovery. In the present case, the grant of undeserved higher scale was clearly arbitrary and an act of undue favour. In such circumstances, the decision of the competent authority for recovery of the public money paid in excess unauthorizedly, needs no interference.

6. As a result, we find no merit in this appeal. It is accordingly dismissed. There shall be no order as to costs.