
(2015) 02 PAT CK 0111
In the Patna High Court
Case No : CWJC No. 4399 of 1998

Mustafa Ansari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 9-A

Citation : (2015) 2 PLJR 926

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : M.P. Sinha, Ratan Kumar Sinha and Madhukar Pandey, for the Appellant; Shivendra Kishore and Jai Kishore Poddar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J—This writ application has been filed seeking direction to the Respondents to pay to the petitioners their salary/arrears of salary by treating them to be in the scale of Rs. 1,400-2,300/-, which, though they are entitled to, has been denied right from 1.3.1994. Certain facts are not in dispute which are relevant for the purpose of adjudication of the present case. Petitioners were appointed against the post of Scraper Operator/Dozer Operator on different dates between 1957-1958. It seems that they were given scale of Rs. 335-555/- with effect from 1.1.1971, Rs. 730-1080/- with effect from 1.4.1981 and Rs. 1,400-2,300/- with effect from 1.1.1986. Thereafter, by letter No. 2305 dated 9.9.1992, issued under the signature of Executive Engineer (Mechanical Division), Water Resources Department, Government of Bihar, their pay scale was reduced to 1,200-1,800/- with effect from 1.1.1986 in place of 1,400/- to 2,300/-. This is not in dispute that the decision to reduce the pay scale was on the basis that they were wrongly granted the scale of Rs. 335/- to 555/- with effect from 1.1.1971, in place of Rs. 296-432/- and scale of Rs. 730/- to 1,080/-, in place of Rs. 580/- to 860/-. On the ground that the petitioners and

other persons working against various similar posts received salary more than what they were actually entitled to, the amount said to have been received in excess was sought to be recovered.

2. On a dispute having been made, the appropriate Government made reference to the Labour Court, giving rise to Misc. Case No. 1/1994. Petitioners No. 1, 2 and 3 in the present proceeding, were applicants No. 4, 3 and 8 before the Labour Court, Purnea. Before the Labour Court, a question arose as to whether the Chief Engineer (Mechanical), Water Resources Department, Government of Bihar, who had granted the petitioners and other similarly situated persons the scale of Rs. 335 to 555, had authority to grant such case or not.

3. The Labour Court came to specific conclusion in paragraph-23 that the Department failed to establish that the Chief Engineer (Mechanical), Water Resources Department, was not competent to allow the said scale of Rs. 335-555/- with effect from 1.1.1971. It also came to a finding that the decision to reduce the scales of the petitioners, as noted above, was taken without any prior notice to them. In paragraph No. 31 of the award, the Labour Court held that reduction in salary of the petitioners was illegal and was in breach of Section 9-A of the Industrial Disputes Act, 1947. Accordingly, the Labour Court, dealing with individual cases of these petitioners and other applicants before it, held that they were entitled for the arrears of salary, accordingly.

4. It is in the background of these facts in general and the award made by the Industrial Disputes Tribunal in particular that the petitioners claim that they are entitled for salary in the scale of Rs. 1,400-2,300/-. The petitioners have relied upon an order of this Court dated 10.3.2000 passed in C.W.J.C. No. 4391 of 1998 to contend that similarly situated persons, who were applicants before the Labour Court had approached this Court for grant of their post retiral benefits treating their scale to be Rs. 1,400-2,300/-, and this Court allowed the writ application by the said order, in the light of award of the Labour Court.

5. A counter affidavit has been filed on behalf of the Respondents-State of Bihar stating therein that the petitioners were wrongly granted the scale of Rs. 1,400-2,300/-, which scale was neither approved by the Finance Department nor recommended by the 5th Pay Revision Committee. It has been submitted that the Water Resources Department, Patna, rightly allowed the approved scale of Rs. 1,200-1,800/- in the 5th Pay Revision.

6. Learned Additional Advocate General appearing on behalf of the Respondents-State of Bihar submits that the petitioners were not entitled for the scale of Rs. 335-555/- with effect from 1.1.1971, which was wrongly granted by an officer, not authorized to grant the scale. He has tried to convince the Court that there is no finding by the Labour Court to the effect that the petitioners were entitled for the scale of Rs. 1,400-2,300/-. He has next submitted that the cases of the persons who had approached this Court by filing C.W.J.C. No. 4391 of 1998 and cases of these petitioners are distinguishable on facts since they were persons

who had retired and were seeking retirement benefits treating them to be in the scale of Rs. 1,400-2,300/-.

7. At the first place, I am not convinced with the submission made on behalf of the Respondent-State of Bihar that cases of these petitioners could be distinguished from the cases of those who were petitioners in C.W.J.C. No. 4391 of 1998 (Naresh Kumar & Ors. vs. State of Bihar and Ors.) allowed on 10.3.2000.

8. From the facts as narrated above in the writ application and those noted in the order of this Court dated 10.3.2000 read with the order of the Labour Court, I am of the considered opinion that cases of these petitioners are identical to the cases of the petitioners of C.W.J.C. No. 4391 of 1998.

9. This Court while deciding C.W.J.C. No. 4391 of 1998 granted the relief to the petitioners of that case holding that Respondents could not be allowed to deprive the benefit of the award of the Labour Court. This is not in dispute that as regards these petitioners also, the award of the Labour Court has not been altered and is in force.

10. The submission that the Chief Engineer (Mechanical), Water Resources Department, Government of Bihar was not competent to grant the scale of Rs. 335-555/- as advanced by Mr. Shivendra Kishore, learned Additional Advocate General, can also not be accepted in view of the conclusion arrived at by the Labour Court which has not been disturbed by any Superior Court. As a matter of fact, on the basis of the award, this Court had allowed the writ application being C.W.J.C. No. 4391 of 1998. The only distinction between the petitioners of this case and petitioners of C.W.J.C. No. 4391 of 1998 is that while the petitioners of that case, had retired at the time of filing of the writ application, whereas the petitioners of the present case were still in service.

11. In view of the above, I am of the considered opinion that the petitioners of the present case will be required to be treated by the authorities at par with those who were petitioners in C.W.J.C. No. 4391 of 1998, in the matter of fixation of their pay/salary and other related dues. If the petitions have retired during the pendency of the writ application, they will be entitled for the pensionary benefits accordingly, treating their scale to be Rs. 1,400-2,300/- as on 1.1.1986.

12. Respondents are, accordingly directed to treat scales of petitioners to be Rs. 1,400-2,300/- with effect from 1.1.1986, by treating their pay scale as on 1.1.1971 to be Rs. 335-555/-. The petitioners will be entitled for corresponding salary, arrears of salary, pension, arrears of pension and other post retiral dues. Arrears of salary and post retiral dues, as the case may be, should be computed and paid to the petitioners, within a period of six months from the date of receipt/production of a copy of this order. This application is allowed accordingly.