
(2012) 01 PAT CK 0140
In the Patna High Court
Case No : CWJC No. 6029 of 2011

Nagendra Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 3 PLJR 166

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Pramod Kumar Sinha and Arvind Kr. Sharma, for the Appellant; Anil Kr. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Despite indulgence shown to the State no counter affidavit has been filed on their behalf. There are four petitioners in the present writ application. All four came to be appointed as Laboratory Incharge in the Department of Zoology, Botany, Physics and Chemistry. The appointment was made by the College which is known as B.D. Evening College, as far back as on 29.8.1980 as would be evident from Annexure-1 series. After some time the State Government sanctioned those posts on regular basis which would be evident from the notification contained in Annexure-5 dated 28.4.1983 which has been issued under the signature of the Additional Secretary, Department of Education, Govt. of Bihar. This notification not only indicates the number of posts sanctioned but also the pay scale which those posts were entitled to So far as the present petitioners are concerned for the post of Laboratory Incharge, the pay scale shown was Rs. 730-1,080/-

2. Petitioners were made permanent in the college and they drew their salary on the pay scale which was also notified by the University. They are also drawing upgraded pay scale of Rs. 785-1,210/-. The decision with regard to the pay scale was also indicated by a notification issued by the University as far back as on 4.10.1991. All was well till a notification issued on 18.5.2009 under the signature

of the Registrar of Magadh University came into existence which is Annexure-14 to the writ application. By virtue of this notification the pay scale of the petitioners were down graded on the basis of so-called notification issued in the year 1991 which has been annexed as Annexure-R/1 to the counter affidavit filed on behalf of the University.

3. Submission of the counsel for the petitioners is that an objection was raised by the auditor deputed by the State Government at the University level. Orders have been issued to effect recovery of so-called excess amount paid to the petitioners and this is the reason under which the petitioners have rushed to the court seeking direction against such an arbitrary decision. The order under question is Annexure-17 as well as Annexure-19 which were issued from time to time by the University.

4. Primary contention of the learned counsel is that when the petitioners were appointed on the post of laboratory Incharge, on a duly sanctioned post, under a decision taken by the State Government which is Annexure-5, it also indicated the pay scale to which they were entitled to draw. A subsequent notification dated 1.9.1991 cannot be used to downgrade their pay scale. There cannot be two divergent notifications with regard to the issue emerging from the State Government as that will create an anomalous situation for the petitioners or any employee over a period of time. It is also their contention that even if for the sake of argument 1991 notification had indicated a different pay scale for Laboratory Incharge, which is said to be Rs. 680-985 then that notification will apply prospectively to those who may be appointed after the notification and the date given therein. Since there was already a decision taken at the level of the State Government to give these petitioners a particular pay scale in terms of Annexure-5 then after more than a decade and a half the same cannot be taken away unilaterally on the objection of the Auditor posted at the University level at the behest of the State Government.

5. Effort has been made on behalf of the University to justify the decision on the basis of the notification contained in Annexure-R/1 dated 13.4.1991. It is further their stand that they have no discretion in the matter since after all money is released by the State Government for payment and the University has no discretion in the same.

6. The notification contained in Annexure-R/1 has to be read in the light of Annexure-5. There cannot be two different notifications for two different pay scales with regard to the same post on which the petitioners came to be appointed. Since there was specific notification in favour of the petitioners contained in Annexure-5 duly supported by other notification issued by the University as far back as in the year 1991 any effort to after that on the objection raised by the auditor to make recovery by assigning a different pay scale to the petitioner now would not only be arbitrary but also in teeth of Full Bench decision of this Court in the case of Bihar State Electricity Board and Others Vs. Ram Kumar Bharti @ R.K. Bharti and Others .

7. It is evident from the affidavit filed on behalf of the University that these petitioners were not in any manner responsible to get a different pay by misrepresenting or fraudulently obtaining of the same, with regard to the pay. The respondents cannot be allowed to raise this issue now on the objection of the auditor at this stage so long as Annexure-5 continues to exist. Annexures-17 and 19 are hereby quashed. No recovery as indicated in the said order will be made against the petitioners. The writ application is allowed. The petitioners are allowed to draw their salary on the pay scale which was fixed for them in terms of Annexure-5.