

(2015) 04 PAT CK 0105

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3505 of 1999

Nagendra Sahani

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Citation : (2016) 2 BBCJ 386

Hon'ble Judges : Mr. Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : CWJC No. 3505 of 1999.; Mr. Abhay Shanker Singh, Mr. Prem Ranjan Pd. Sinha, Mr. Amit Kr. Mishra and Ms. Manisha, Advocates, for the Petitioners; Mr. J.P. Karn, AAG IV and Mr. Ranjan Kumar, AC to AAG IV, for the Respondents; CWJC No. 4335 of 1999; Mr. Vivek Prasad and Mr. Jitesh Singh, Advocates, for the Petitioners; Mr. J. P. Karn, AAG IV and Mr. Ranjan Kumar, AC to AAG IV, for the Respondents

Final Decision : Allowed

Judgement

Mr. Chakradhari Sharan Singh, J.(Oral)—Heard learned counsel for the petitioners and learned counsel representing the State of Bihar.

2. Since both the writ applications involve same issues, they are being disposed of by this common judgement.

3. Posts under the Agriculture Department, Government of Bihar have been placed in nine categories, depending upon the nature of job they are required to perform. Qualifications for the posts in various categories are different. The petitioners belonged to Bihar Agriculture Subordinate Service, falling under categories VIII and IX of the said categorization, holding the posts of Inspector, Weights and Measures and Statistical Assistants. Prior to implementation of 4th Pay Revision Committee's recommendations, they were getting the pay scale of Rs. 850- 1360/-. The posts of Block Agriculture Officers fall under category-I who were also entitled for same pay scale of Rs. 850- 1360/- prior to implementation of 4th Pay Revision Committee's recommendations. Upon implementation of 4th

Pay Revision Committee's recommendations, a controversy arose with respect to pay scale of Block Agriculture Officers vis-a-vis Agriculture Inspectors, which posts also fall under category-I. The matter came up to this court and by a judgement dated 26.07.1992, allowing the claim of Block Agriculture Officers, this court held that their cases required to be considered for up gradation in the scale of Rs. 1000- 1820/-, corresponding to Rs. 2000-3800/-. The persons belonging to category II-IX thereafter approached this court by filing CWJC No. 6059 of 1990 which came to be disposed of by an order dated 05.11.1992 in the following terms:-

"Accordingly, we allow this writ application with a direction to the Respondents to consider the case of the petitioners in the light of the ratio decidendi in CWJC No. 9217 of 1988, Supra."

4. In the light of the order of this court dated 05.11.1992, dealing with members of Bihar Agriculture Subordinate Service (category II-IX), the Agriculture Department on 08.12.1993 issued a communication to the effect that the members of Bihar Agriculture Subordinate Service from category II-IX will be entitled for the scale of Rs. 2000-3800. It was, however, communicated through the said communication dated 08.12.1993, which has been brought on record as Annexure-2 to CWJC No. No. 3505 of 1999, that this decision would be subject to the opinion to be received from the Finance Department. Subsequently, on 31.12.1993, the Department came out with another communication to the effect that members of Bihar Agriculture Subordinate Service, holding the posts under category II-IX, will get the said pay scale of Rs. 2000-3800/- indicating that decision was taken by the State Government. In the communication dated 31.12.1993, the condition which existed in the earlier communication dated 08.12.1993, that decision to grant pay scale of Rs. 2000-3800/- would be subject to the opinion to be received from the Finance Department was not mentioned.

5. It appears that a contempt application complaining disobedience of this court's order passed in CWJC No. 6059 of 1990 was filed by association of members of Bihar Agriculture Subordinate Service (category II-IX). They raised a grievance that despite the decision of the State Government communicated through letters dated 08.12.1993 and 31.12.1993 to grant them pay scale of Rs. 2000-3800/-, the actual benefits were not being extended to them. In the contempt proceedings the State respondents took a plea that actual payment to the persons belonging to category II-IX would be made immediately after getting concurrence from the Finance Department. They also took a plea that cases of persons in the said service (category II-IX) cannot be equated with those in category-I, who are Agriculture Officers holding the qualification of B. Sc (Agriculture). Stand was accordingly taken that the persons not having B. Sc (Agriculture) qualification might not be entitled for the same scale which the officers falling under category-I, i.e., Block Agriculture Officers/Agriculture Inspectors were getting. This court disposed of the contempt application by an

order dated 19.11.96 in following terms:-

"But having regard to the stand taken by the learned counsel for the petitioners, and the State, as well as the order of the Government dated 29.10.1996 (Annexure-Y), we direct that all such Agriculture Officers of category Nos. 2 to 9, who have already passed B. Sc. Agriculture or other equivalent examinations, be provided with upgraded revised scale at once."

6. In the meanwhile, the Agriculture Department had issued a notification dated 30.10.1996 allowing them the pay scale of Rs. 2000-3800/- but had imposed a condition that such scale will be admissible to only such officers who held bachelor degree in Agriculture or any other equivalent qualification.

7. Before I proceed further, I must indicate, which is not in dispute, that minimum qualification prescribed for appointment against the posts of Inspector, Weight and Measures is graduate in Science, Engineering or Agriculture by a recognised University. My attention has been drawn in this regard to Rule 25 of Bihar Weights and Measures (enforcement) Rules, 1960. Though nothing has been brought on record to show as to what was the minimum qualification for Statistical Assistants at the time when the petitioners of CWJC No. 3505 of 1999 were appointed, a resolution dated 07.01.2010 issued vide memo No. 69 dated 07.01.2010 has been produced before me which indicates that graduation in Agriculture, Statistics or Mathematics is the minimum qualification for appointment against posts in category IX (Statistical Assistants). It was also indicated that a person holding the qualification of B. Sc (Agriculture) or graduation in Engineering or Science can be considered for the posts of Inspector, Weights and Measures. Persons holding qualification of B. Sc (Agriculture) or graduation in Mathematics or Statistics can be considered for appointment as Statistical Assistants. Thus, for the purpose of appointment as Inspector, Weights and Measures and Statistical Assistants, alternative equivalent qualifications have been prescribed.

8. It appears that consequent upon notification dated 30.10.1996, Annexure-7 to CWJC No. 3505 of 1999, dealing with the cases of Statistical Assistants and Annexure-6 to CWJC No. 4335 of 1999, dealing with cases of Inspector, Weights and Measures, the petitioners received their salary on the basis of upgraded pay scale of Rs. 2000-3800/-. Nearly two and half years later, Agriculture Department, Government of Bihar came out with notification dated 10.03.1999 to the effect that in terms of order of this court passed in MJC No. 2323 of 1995 (All Field and Specialist Officers & anr. v. the State of Bihar & Ors.), only such persons in category II-IX were entitled for upgraded pay scale of Rs. 2000-3800/- who held B. Sc (Agriculture) qualification and not otherwise. In the said notification, it was specifically mentioned that there was no equivalent qualification to B. Sc (Agriculture) which the petitioners and similarly situated persons possessed. The said notification is based on the opinion given by the Finance Department to the effect that B. Sc (Math), B.Sc. (Statistics), M.A./M. Sc cannot be treated to be equivalent to B. Sc (Agriculture). Accordingly, it was

decided to grant the officers of Bihar Agriculture Subordinate Service (category II-IX), scale of Rs. 1600-2780/- if they did not hold B. Sc (Agriculture) qualification. The said notification contains names of these petitioners with respect to whom it has been mentioned that they were not entitled for upgraded pay scale of Rs. 2000-3800/- as they did not hold B. Sc (Agriculture) qualification. Accordingly, canceling the earlier notification, granting them pay scale of Rs. 2000-3800/-, it was decided to recover the excess amount paid to them because of wrong fixation of their pay in the pay scale of Rs. 2000-3800/-. The decision dated 10.03.1999 of the State Government is under challenge in the present writ application.

9. On 23.04.1999, when the matter was taken up, this court had restrained recovery of any amount from the petitioners, sought to be made in compliance of the notification dated 10.03.1999, issued by the Agriculture Department.

10. Learned counsel for the petitioners has assailed the impugned decision primarily on two counts. It has been submitted that there cannot be two different scales for one post on the ground of qualification, which a particular person holds, particularly, when such qualification is not mandatory for the post. It has been contended that a person having qualification of B. Sc (Agriculture) or B. Sc. Statistics/Math can be appointed as Statistical Assistant. Therefore, it will be highly absurd, arbitrary and discriminatory, which has been done by notification dated 10.03.1999, to grant pay scale of Rs. 2000-3800/- only to such persons who hold B. Sc (Agriculture) qualification. Similarly, it has been contended that for the post of Inspector, Weights and Measures B. Sc (Agriculture), B.Sc. Engineering or Bachelor of Science are the minimum qualifications and it has accordingly been submitted that there can be no rationale behind granting higher pay scale of Rs. 2000-3800/- to such Inspectors, Weights and Measures who hold B. Sc (Agriculture) qualification.

11. It has been submitted on behalf of the petitioners that there is no disparity in the pay scale of members of Bihar Agriculture Subordinate Service right from category I-IX in as much as all of them have been given same pay scale of Rs. 5000- 8000/- upon implementation of 5th Pay Revision. It has, accordingly, been submitted that dispute in the present case is confined to the period 24.01.1994 to 01.01.1996 for which the respondents are trying to grant the petitioners, belonging to category II-IX, the said pay scale, i.e., the pay scale lower than what has been allowed to officers belonging to category-I. It has been submitted that petitioners received the payment in prescribed pay scale of Rs. 2000-3800/-, pursuant to the decision of the State Government, and it will be highly unjust and unfair on the part of the State respondents to recover the said amount by reducing their pay scale by a subsequent decision. It has been contended that it will cause a lot of hardship to the petitioners if the amount already paid to them is allowed to be recovered. Reliance has been placed in this regard upon a Supreme Court judgement reported in AIR 2015 SC 696 (State of Punjab v. Rafiq Masih) to submit that their cases fall under paragraph 12(i) of the

said judgement and, therefore, recovery is impermissible.

12. Learned counsel for the State-respondents, on the other hand, opposed the writ applications and has contended that the order of this court dated 05.11.1992 passed in CWJC No. 6059 of 1990 (All Filed and Specialist Officers category II-IX & anr. v. the State of Bihar & Ors) is based on judgement of this court in case of Awadh Bihari Singh & ors. v. the State of Bihar & Ors (CWJC No. 767 of 1991 and another analogous case). He has submitted that this court granted upgraded pay scale to Block Agriculture Officers which post fell under category-I of Bihar Agriculture Subordinate Service as this court found disparity in pay scale of Block Agriculture Officers and Agriculture Inspectors. He has submitted that this court, comparing the previous status of Block Agriculture Officers vis-a-vis Agriculture Inspects, came to a conclusion that Block Agriculture Officers were entitled for at least same pay scale which Agriculture Inspectors were entitled to. He has submitted that the impugned notification dated 10.03.1999 was issued in tune with the order of this court passed in MJC No. 2323 of 1995 dated 19.11.1996, since this court had clearly observed that persons holding B. Sc (Agriculture) qualification in category II-IX or equivalent qualification shall be entitled for upgraded pay scale. He has, accordingly, supported the impugned notification dated 10.03.1999.

13. I find force in the submission made on behalf of the petitioners that there is no rationale behind allowing upgraded pay scale to such officers of Bihar Agriculture Subordinate Service in category II-IX who hold B. Sc (Agriculture) qualification. I do not find any reason to differentiate between the persons who hold B. Sc (Agriculture) qualification or any other equivalent qualification while performing the same duties and holding same/similar posts. This was certainly not the spirit of the observation made by this court in the order dated 19.11.1996 passed in MJC No. 2323 of 1995 (supra). The order of this court had to be viewed in the context of the qualification prescribed for various posts in Bihar Agriculture Subordinate Service. I am, therefore, of the view that it was thoroughly absurd and arbitrary on the part of the State respondents to have been created a class on the basis of qualification, among the officers of Bihar Agriculture Subordinate Service holding same post of Statistical Assistants or Inspector, Weights and Measures. The matter would have been different had the State Government taken a decision that none of the officers holding post of category II-IX would be entitled for upgraded pay scale of Rs. 2000-3800/-. The decision of the State Government as contained in notification dated 10.03.1990, for the reasons discussed above, is not sustainable and is, accordingly, quashed.

14. I am convinced with second limb of submission made on behalf of the petitioners also that, in the facts and circumstances of the case, if the State Government was of the view that the petitioners were not entitled to upgraded pay scale of Rs. 2000-3800/- , they could not have proceeded to recover the same amount after three years, they being class-III employees.

15. Learned counsel for the petitioners has rightly relied upon the Supreme Court

decision in the case of State of Punjab v. Rafiq Masih (supra), paragraph 12 of which reads as follows:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

16. In view of discussion, as above, and in view of the Supreme Court decision in the case of State of Punjab v. Rafiq Masih (supra), relevant portion of which has been quoted above, the writ applications succeed. The impugned notification issued vide memo No. 864 dated 10.03.1999 (annexure-8) is quashed. These applications are accordingly allowed.

There shall be no order as to costs.