(2015) 11 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 9760, 3224 of 2012 and Miscellaneous Jurisdiction Case No. 2901 of 2012

Nirmal Kumar Sinha and Others APPELLANT

Vs

Bihar State Beverages Corporation Ltd. and Others RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 16

Citation : (2015) 11 PAT CK 0011

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Mayanand Jha, Bipin Bihari Singh, Ashutosh Ranjan Pandey and Uday Pratap Singh, Advocates, for the Appellant; Vikash Kumar and Girijesh Kumar, Advocates, for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. The prayer of the petitioners in both the writ applications is virtually one and the same, namely, for a direction to the respondent Bihar State Beverage Corporation Limited (hereinafter to be referred to as ''the Corporation'') to implement and grant pay-scale of 6th Pay Revision to the petitioners with effect from 1.1.2006 with the financial benefits with effect from 1.4.2007. The only additional prayer made in CWJC No. 9760 of 2012 is to also quash the resolution of the Board of Director of the Corporation dated 27.3.2012 wherein the Corporation had resolved to pay the salary to its employees recruited on deputation from other Corporation in the same scale of pay which they were getting in their respective parent Corporation.

3. The facts giving rise to both the writ applications, in fact, lie in a narrow compass. The Corporation is said to have come into existence in view of a decision of the State Government in the year 2006 when it was incorporated as a government company in terms of Section 617 of the Companies Act with its main objective being to improve the excise revenue of the Government of Bihar.

According to the petitioners, the Corporation had issued an advertisement on 18.8.2006 for making appointment by way of contract/deputation only of the employees of other Board and Corporation wherein not only the working employee of such Board Corporation but even also retired employees of the Board and/or Corporation of State or Central Government were made eligible to seek appointment on contractual basis. Such appointment was to be made on the post of Manager, Accounts Officer, Accountant, Assistant Accountant, Depot Manager etc. and the advertisement also had prescribed pay-scale which was then prevalent in the State Government as per its recommendation of the 5th Pay Revision Committee. According to the petitioners, such advertisement dated 18.8.2006 was followed by three more advertisement dated 16.11.2006, 16.4.2008 and 23.7.2009 for making further appointment either on contractual or on deputation basis.

4. From the averments made in the writ application in CWJC No. 3224 of 2012, it becomes clear that the petitioner No. 1, 2 and 10 were working as an employee of the Bihar State Corporation Coordinating Unit (BISCOMAUN) whereas petitioner Nos. 3, 4, 5 & 7 were the employees of Bihar State Pharmaceutical and Chemical Development Corporation. Similarly, petitioner Nos. 6, 8 & 9 are the employees of Bihar State Handloom and Handicraft Development Corporation and petitioner No. 11 was an employee of Sone Command Area Development Agency.

5. In CWJC No. 9760 of 2012, the petitioner No. 1 at the time of his appointment in the Corporation was working as an employee of Land Mortgage Bank whereas petitioner No. 2 and 3 were the employees of BISCOMAUN while the petitioner No. 4 was an employee of Pandaul Cooperative Spinning Mills Limited and the petitioner No. 5 as an employee of Bihar State Chemical and Pharmaceutical Development Corporation.

6. Thus, the 16 petitioners in these two writ applications have claimed that as they were appointed pursuant to an advertisement in the newspaper followed by selection on various posts in Corporation and advertisement had prescribed the pay-scale of 5th Pay Revision Committee of the State Government, they, in view of the government notifying the pay-scale as per recommendation of the 6th Pay Revision Committee would be entitled to get necessary revision in their pay-scale with the consequential financial benefits with effect from 1.1.2006, the cut off date of the 6th Pay Revision Committee report for the employees of the State Government. To that extent, they draw inspiration and support from Clause 65(5) of the Article of Association of the Corporation which empowers the Board of Director of the Corporation to appoint and promote persons on the post of Manager, Secretaries, Officers, Clerks, agents and servants, employees in permanent, temporary or special services as also to determine their powers and duties and fix their salaries or emoluments with the only rider that no such appointment or promotion to any post in the Corporation will be made maximum pay of which would exceed Rs. 30,000/- per month with the prior approval of the

High Level Committee constituted by the State Government.

7. The petitioners in fact also in this regard seek to borrow the enforcement of the terms and conditions of their employment in the Corporation at par with government servants on account of Corporation adopting the provisions of Bihar Civil Service Rules, Bihar Civil Servants (Classification, Control and Appeal) Rules, 1956, Bihar Government Servant Conduct Rules and other services as in force in the State of Bihar from time to time, inasmuch as, under Clause 65(5) of the Article of Association, such rules applicable to the government servant were to also govern the service condition of the employees of the Corporation till the Corporation had made its own service regulations. The added emphasis of the petitioners in both the cases in this regard is that till date the Corporation has not framed its own service regulation and, as such, as per Clause 65(5) of the Article of Association, they are to be governed by the rules of the Government in the matter of determination of the service condition which would also include their payment of their salary in the revised pay scale by the State Government for its own employees.

8. It is the case of the petitioners that they have been appointed on various posts in terms of the advertisement issued by the Corporation from time to time in the prescribed pay-scale and their right to get the pay revision of the 6th Pay Revision Commission of the State Government is sought to be obstructed/ restricted by the impugned resolution passed by the Board of Directors of the Corporation dated 27.3.2012 which is a subsequent decision after their entry in service of the Corporation and in effect would change their entitlement to the pay-scale by confining them to the pay-scale on which they were working in their parent Corporation before their appointment in the Corporation by way of deputation on contractual basis. This, according to the petitioners, was not only contrary to the terms and conditions of the advertisement under which they were appointed in the services of the Corporation but also in excess of power conferred on the Board of Directors of the Corporation.

9. Before this Court would advert to the main question with regard to the admissibility of the pay-scale of the 6th Pay Revision Committee of the State Government to the employees of the Corporation including the petitioners, it must take into consideration the case of the respondents which, in nutshell, is that what was provided in the advertisement while laying down the requirement of the Corporation for filling up those posts of the Corporation was not the pay-scale to be given to the newly appointed persons of the Corporation but, the eligibility criteria for being appointed in the Corporation on different posts on which a person, if working in any other Board Corporation, must have either in respect of qualification or in respect of pay-scale. The Corporation, in fact, has come out to say that it was never intended to create a permanent cadre of its own and it had only sought to make appointment either on contractual basis or on deputation basis. The former (contractual) being in the case of the retired employees of the other Boards and/or Corporations and the latter (deputation) in

the case of the working employees of the other Board and/or Corporation.

10. In the counter affidavit, it has also been explained that since the case of the petitioners were of appointment by way of deputation on yearly basis, inasmuch as, they all were working in their parent Corporation, they were to be governed strictly in accordance with Rule 282 and 283 of the Bihar Service Code laying down specifically the terms and conditions including payment of salary and allowances to the employees whose services are placed on deputation in any other organization. The respondents have emphasized that the petitioners, therefore, can legitimately claim their salary in the Corporation which they were entitled to in their parent organization + the deputation allowance and if any of the petitioners, on account of some order passed by the Managing Director of the Corporation, had been given benefit of higher pay-scale beyond what he was getting in the parent Corporation, that could not be either taken to be a precedent or create impediment in the exercise of power by the Board of Directors of the Corporation in taking its policy decision of sticking its decision to make payment of salary and emoluments as per the terms of deputation.

11. As with regard to the decision for payment of salary of the petitioners in the revised pay scale as per 6th Pay Revision for the employees of the State Government, it has been stated in the counter affidavit that the Corporation had never taken a decision to adopt much less implement government decision of pay-scale of 6th Pay Revision Commission for any of its employees including the petitioners. The Corporation in this regard has also sought to defend its such decision by taking shelter of the absence of the approval of the State Government in grant of benefit of 6th Pay Revision Committee to the employees of the Corporation.

12. Thus, from the pleadings on record, two things are absolutely clear. Firstly, the Corporation when it had come into existence in the year 2006 and has started functioning, it had sought to fill up its different posts not by making any direct appointment from open market but only by way of making contractual appointment and/or appointment on deputation from amongst the eligible working or retired employees from the other Corporation/Board/other governmental undertaking of the State and Central Government. Secondly, what is still more significant to be noted here is that none of the petitioners are receiving the lesser amount of salary while working in deputation in Corporation than what was being paid to them while they were working in their parent Corporation/Board or other government undertaking.

13. It is here that this Court would like to firstly refer to the terms and conditions of the advertisement dated 18.8.2006 followed by the subsequent advertisement dated 16.11.2006, 16.4.2008 and 23.7.2009. Such advertisement while giving the name of the posts to be filled up in the Corporation had prescribed the qualification as also the pay-scale in which the candidate concerned must be either employed and working or had retired from the erstwhile Corporation. In the advertisement dated 18.8.2006 on which reliance has been placed by the

learned counsel for the petitioners, this Court would find that the offer for appointment on the different posts in the Corporation was meant exclusively for either the working employees of the Department of the State Government or in the Board, Corporation or Authority of the Central Government/State Government, inasmuch as, the same had clearly specified as follows:--

(underlining for emphasis)

14. The underlined portion in the second paragraph of the advertisement read with the terms and conditions of the eligibility will make it clear that what was to be necessary possessed by way of educational qualification with experience of the post was clearly referable to the pay-scale which was being given to them in their parent organization whether it be the service of the State Government or Central Government or its Board, Corporation and other governmental undertaking. This becomes more clear from the underlined portion of last but one paragraph of the advertisement in which the persons retired from service were to be paid only their balance salary after deducting the amount of pension by way of net payment of their salary. This Court, therefore, cannot read into the advertisement dated 18.8.2006 either the concept of the petitioners being appointed in the Corporation on deputation in the pay-scale of the 5th Pay Revision Committee of the State Government as was prevalent on 17.8.2006 or any representation made by the Corporation that such appointment was to be made in a particular pay-scale even on deputation though they were not getting the same pay-scale in their parent organization.

15. Once this part of the deck is clear, this Court will have no difficulty in also finding that the terms and conditions in the advertisement of the Corporation dated 16.11.2006, 16.4.2008 and 23.7.2009 also virtually striving to achieve the same object of filling up the post of Corporation only by way of deputation or on contractual basis from the working and/or retired employees of the Government undertaking having a particular qualification and experience of working in a particular post in the prescribed pay-scale in their parent organization.

16. Thus, this Court does not find any thing at least in the advertisement which can be treated to a estoppel for the Corporation to either deny the petitioners and others appointed in the Corporation on the basis of deputation from their parent organization to enable them to claim something, more or a better service condition beyond what they were entitled and getting in their parent organization. As a matter of fact, most of the organizations to which the petitioners belong has been, as noted above, by then had become defunct and, therefore, the Corporation with the prior approval of the State Government, instead of creating its cadre of permanent employee, had only envisaged to make appointment by way of either deputation or on contract from the working or retired employees of the Government undertaking which, in a way, was found to be beneficial both for the employees of the defunct Board and Corporation as also for the newly established Corporation to get experienced people to manage affairs of the Corporation.

17. The next feature which will also clarify this position with regard to petitioners and their right flowing by way of appointment on deputation to the Corporation of being entitled to the salary and emoluments being the same as in parent organization is found out from the notice of appointment, again published in newspaper wherein the name of the selected persons along with their posts held by them in their parent organization and the place of posting was indicated. Let it be noted that in such notice of appointment which invariably will mean their appointment letter, they were required to submit not only their certificate of educational qualification but also their last pay certificate (LPC) from their employer by making it clear that their salary shall be fixed on the basis of their LPC/Pension Payment Order as would be more clear from perusal of Annexure 2 & 2/A, their notice of appointment, relevant portion whereof reads as follows:--

(underlining for emphasis)

18. Thus, the petitioners, who were never given any separate appointment letter much less were represented by the office of the Corporation that they shall be paid their pay and emoluments on appointment by way of deputation in a particular pay-scale as per the aforesaid notice of appointment will therefore be bound by the same which is more or less in complete conformity with the terms and conditions of the advertisement as noted above.

19. It is true that there were some orders issued from time to time by the Managing Director of the Corporation including one dated 28.3.2007, 18.5.2007, 17.8.2007, 2.1.2008 which talk of the fixation of pay in the service of the Corporation assuring that apart from the admissible pay in their erstwhile organization as paid by their parent employer, they would be also entitled to other allowances being paid to the employees of the State Government from time to time but, then, this order of the Managing Director will neither bind the Board of Directors nor would create a precedent for evolving new terms and condition of their employment.

20. The plain and simple case of the Corporation is and in fact this Court would also find no flaw that in the matter of fixation of pay-scale of the petitioners and other employees appointed in the Corporation by way of deputation that would remain the same as was sought to be incorporated either in the advertisement or in the order of engagement namely their salary drawn in the parent organization. This in fact has also being the sanction of law, inasmuch as, Bihar Service Code also lays down the terms and conditions including payment of salary to an employee on deputation from the parent organization to the borrowed organization wherein he becomes entitled to get the same salary and same emolument which he was getting with his parent employer in addition to the deputation allowance.

21. As a matter of fact, when the services of a retired person of such Board and Corporation were to be also taken over by way of paying them net salary after deducting the amount of pension, nothing would remain for speculation that

neither the Board of Directors of the Corporation nor the Managing Director of the Corporation could have changed the very concept of fixation of pay of a deputed employee in case of his appointment by way of deputation which again is only by way of foreign service wherein the rights of every deputed employee, in the matter of protection of terms and conditions of service, would remain unimpaired because once a foreign employer like in the present case, the Corporation appoints someone from the parent organization by way of contract/ deputation, it does not become the principal employer and has to abide by the terms and conditions of deputation.

22. This also has a clear handicap even for the foreign employer like the Corporation which can avail services only on a contract basis either on deputation or otherwise because in case it does not want to avail such deputation, all that it may do is to return their services to the parent corporation and nothing more. It is a different thing altogether that if the petitioners are sent today back to their respective organization which, as quoted above, have become either financially sick or defunct or even not turned into non-performing and non-existing units, that by itself will lead to their virtual termination of services save and except leaving them to litigate the matter with their erstwhile employer.

23. That would bring this Court to the main issue as to what is deputation? As a matter of fact, exigency before service might require an employee to be sent on deputation in public interest to another department. Deputation is made with the consent of the employee. Here in the present case, when a new Corporation being the extended arm of the Excise Department came into existent and it had required persons for its own functioning, it had sought to employed the petitioners by way of deputation which was never intended to severe their relationship with the parent employee i.e. in the Board, Corporation or Units of the State Government in which they were functioning. It is this aspect of the matter which has been explained by the Apex Court in the case of State of Punjab and Others Vs. Inder Singh and Others, , wherein it has been held as follows:--

"18. The concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the world "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post.---"

24. This Court must immediately, however, clarify that the case of the petitioners is not that they have been permanently absorbed after their initial appointment in the services of the Corporation. As noted above, the Corporation has not created its permanent cadre of employees and is functional only by way of making contractual appointment either from the working employees of the Government and/or its Board and Corporation etc. were from the retired employee. Thus, the appointment by way of deputation having still remained enforced even though their repatriation may not be theoretically possible as it may lead to termination of their services on account of complete cessation/ absence of work and consequential payment of their salary in their parent organization, they however cannot claim that they have been permanently absorbed in the services of the Corporation. No order to this effect in fact has been issued so as to make the case of the petitioners somewhere near to a situation which was found by the Apex Court in the case of Umapati Choudhary Vs. State of Bihar and Another, wherein the appellant Umapati Choudhary, while holding the post of Controller of Examination from Kameshwar Singh Darbhanga Sanskrit University was initially brought on deputation but subsequently was absorbed in the services of the Bihar Sanskrit Shiksha Board before being sought to be removed from service by way of termination of deputation. The Apex Court in that regard had explained the law in the following words:--

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department, or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority.----"

25. Thus, on account of the terms and conditions of the appointment of the petitioners by way of deputation in the Corporation and there being no severance from their parent employer, neither they can claim to be permanently absorbed in the service of the Corporation nor they can claim any better right than what they were getting by way of their terms and conditions of their service with their parent employer. The oft quoted expression of the judgment of the Apex Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, with regard to bargaining power of the employer will also be of not applicable in the present case because such deputation invariably have been made with the consent of the employee and on

the terms and conditions as incorporated in such order of deputation. There would be in fact no legal bar in filling up the post in the Corporation by way of contractual including by way of deputation, inasmuch as, deputationist, so appointed, would still retain lien with the parent department as was held by the Apex Court in the case of P.K. Sandhu (Mrs) Vs. Shiv Raj V. Patil, .

26. Thus, the question of payment of salary and emoluments to the petitioners will be again governed by the terms and conditions of appointment by way of deputation which, as explained above, seeks to protect their right of receiving same salary which they were receiving in their erstwhile employment with their parent. The Board of Director of the Corporation, in fact, has done nothing wrong in abiding by the government decision as contained in memo No. 262 dated 10.8.2006 wherein at the time of creation of the Corporation itself, it was decided that no fresh appointment from open market shall be made on any of the post of the Corporation and all such posts shall be filled up only by way of deputation and/or contract from amongst the retired officer/retired employees/working employees of the Government and/or its Board and Corporation and other State undertaking.

27. Judged in this background, the impugned resolution passed by the Board of Directors of the Corporation can also not be said to be bad, inasmuch as, the Board of Directors in its meeting held on 27.3.2012 was considering the issue relating to implementation of the resolution of the Finance Department contained in its letter dated 30.11.2011, which for the sake of clarity and convenience reads as follows:--

28. As would be evidenced that the Government had issued a general direction to all the heads of the public undertaking as with regard to fixation of the terms and conditions of the service of the deputed employees including their age of retirement and, thus, when the Corporation on 27.3.2012 also had to take a decision, it had resolved to take its own decision in the following terms:--

29. As a matter of fact, this Court would also find no relevance on reliance placed by the learned counsel for the petitioners on on the judgment of the Apex Court in the case of Bhagwan Shukla Vs. Union of India and others, , inasmuch as, that was a case where the pay-scale of a person after being fixed was sought to be reduced. Here in the present case, this court has made a repeated enquiries from the learned counsel for the petitioners and none of them had been able to explain that on account of the impugned decision, the petitioners'' salary will be reduced in any manner than what they were getting either in the Corporation in terms of their appointment by way of deputation. As a matter of fact, the petitioner wants enhancement of their pay-scale by way of bringing them at par with the Government servant by claiming the benefit of 6th Pay Revision Committee. The stand of the respondent Corporation however is quite simple that it has not adopted the pay-scale of the 6th Pay Revision Committee of the State Government for the employees of the Corporation.

30. The writ court, therefore, cannot now issue a mandamus to the Corporation to firstly take a decision to accept and adopt the pay-scale of the Government by way of implementing the 6th Pay Revision Committee for employee of the Corporation and thereafter also extend the same to the petitioners working in the Corporation by way of appointment on deputation. That would be virtually entering into the realm of the matter of policy of the Corporation. It is in this regard that this Court will also have to take into consideration the following stand of the Corporation in the counter affidavit:--

"18. ---- it is stated that this Corporation has engaged various persons to work for it either on deputation basis or on contractual basis. The persons engaged on deputation basis can further be categorized into those coming from Central Govt. service or State Government service and those coming from other Boards/ Corporations of the State Government. After implementation of the Sixth Pay Revision Recommendations by the Central Government and the State Government from respective dates, the Central/State Govt. employees working on deputation in this Corporation automatically started getting their revised pay along with deputation allowance in this Corporation in accordance with Rules 282 and 283 of Bihar Service Code which, in absence of any separate rule of this Corporation, is applicable to this Corporation as well in terms of the provisions of Article 65(5) of the Articles of other employees working on deputation in this Corporation were yet to implement the Sixth Pay Revision Recommendations, they could not get the benefit of the same. Similarly, such benefits could not be extended to persons working on contractual basis.

In an effort to extend similar benefits to other employees, this Corporation, through its Board Resolution No. 22.6 dated 18.5.2010 sought to implement the Sixth Pay Revision Recommendations in respect of remainder employees also. However, the said endeavour of this Corporation could not find favour with the Finance Department which stated that the benefits of the Sixty Pay Revision could only be extended to this Corporation''s own employees and not to employees working on deputation in this Corporation since only Principal Employer can extend such benefits to them. It further stated that the employees working on deputation are eligible to get what they would have if they were working in their parent organization. Since this Corporation had no regular employee of its own, the said resolution was, thus, rendered infructuous. Thereafter, the objections of the Finance Department, the provisions of Rule 282 and 283 of the Bihar Service Code and the said resolution sanctioning implementation of the Sixth Pay Revision Recommendations in respect of other employees were placed before the Board for its consideration and for taking informed decision in the light of the same. The Board, considering the objection of the Finance Department and in view of provisions of Rule 282 and 283 of the Bihar Service Code, felt that even extending the benefit of Fifth Pay Revision Recommendation to such employees, disregarding what they were getting in their parent organization, is anomalous and hence need to be rectified. The Board of Directors of this Corporation has thus resolved to rectify this anomaly and decided to pay such employees in line with what they were eligible to get in their parent organization with deputation allowance in accordance with the Deputation Rules of the State Government which, in absence of any separate rules of this Corporation, is applicable to this Corporation as well in terms of the provisions of Article 65(5) of the Articles of Association of this Company."

31. As noted above, the stand of the Corporation is plain and simple that whatever salary was payable to a deputed employee from his parent employer was going to be protected and, therefore, if someone has come from an organization for example from the Central Government again by way of deputation from some as retired from the service of the State Government or Central Government and has been appointed on contractual basis by way of payment of net salary after deducting the amount of pension, that would not mean that the Corporation has in principle agreed to pay salary in the pay-scale of 6th Pay Revision Committee. The Corporation''s decision remains one and the same that it has to pay the salary of the employees appointed on deputation which was payable to him by his erstwhile employer. That in fact goes completely with the concept of deputation as discussed earlier.

32. Finally, the reliance placed by the learned counsel for the petitioner on a judgment of the Apex Court in the case of Union of India (UOI) Vs. S.N. Maity seems to be also wholly misplaced. That was in a case of premature termination of deputation. The Apex Court had held that the premature termination of deputation was bad in law and, in fact, arbitrary exercise of power and the repatriation to parent employer was also unsustainable. It had however found that the period of five years of deputation had already been over and when, the relief was being sought to be opposed by way of payment of reinstatement/back wages by way of compensation by the parent department, he was directed to be paid entire salary of the post for balance period with interest at the rate of 9% per annum. It was in this regard that the Apex Court had clarified a deputationist normally would be entitled to get the same pay which he was entitled to with his parent employer as was held by the Apex Court in the case of Union of India (UOI) and Others Vs. Shri Bhanwar Lal Mundan, but, then, the facts of the case of S.N. Maity (supra) were found to be distinguishable on facts particularly with regard to the issue of payment of back wages on reinstatement, inasmuch as, the Apex Court in this regard had settled the law in the following terms:--

"25. ---- It is an admitted fact that he was drawing a higher scale while holding the post of CGPDTM, but the question is whether the said pay scale should be maintained in the parent department. Mr. Praveen Swarup, learned counsel appearing for the second respondent has commended us to the decision in Union of India v. Bhanwar Lal Mundan. In the said case, a deputationist was getting a higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent department, on selection to higher post, he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. In that extent, this Court opined that such fixation of pay was fully erroneous and, therefore, the authorities were within their domain to rectify it. Mr. Gonsalves, learned Senior Counsel would submit that here it was as tenure posting and, therefore, he is entitled to get the equivalent pay which he was holding as a tenure post holder. The said distinction, on a first glance, may look attractive, but on a deeper scrutiny, has to pale into insignificance. Assuming he would have completed the entire tenure of five years, he would have definitely come back to his parent department. There is no rule or regulation that he will get the equivalent pay scale in his parent department. The normal rule relating to pay scale has to apply to avoid any kind of piquant and uncalled for situation.----"

(underlining for emphasis)

33. The underlined portion, therefore, will go to show that the settled law is that a person on deputation would be getting same salary unless there has been a prior determination of the terms and conditions of the appointment envisaging protection of higher salary by the foreign employer while borrowing the services of the employee from the parent department. As a matter of fact, whatever was observed in the aforesaid passage of the case of S.N. Maity (supra), will itself go to show that the normal rule in the matter of payment of salary on deputation remains the same with protection of terms and conditions of employee with the parent employer.

34. At the cost of repetition, it has to be stated that neither the advertisement nor the appointment letter of the petitioner had ever envisaged grant of higher pay-scale beyond what they were getting with the parent employer and in fact a few contrary decisions by way of some orders of the Managing Director, which came to be corrected in the impugned order of the Board of Directors, will lead to one and only one conclusion that the petitioners on account of the impugned policy decision have not been put to any prejudice, inasmuch as, their salary and emoluments have not been reduced in any manner in view of the impugned decision.

35. Having held so, this Court would still find one very disturbing feature, namely, that the Corporation, in view of getting services on deputation of the petitioners and others on different posts by applying principles of protecting their salary as was being paid to them by the parent employer, is in a way violating the concept of equal pay for equal work in the sense that for the same post say as for example for the post of Accountant, it has been paying different amount of salary to the different employees including the petitioners on account of their last salary drawn in their parent organization. It is true that the Corporation, in doing so, is only abiding by the terms and conditions of the deputation but, then, the Corporation, being a State within the meaning of Article 12 of the Constitution of India and definitely an arm and adjunct of the State Government as well as also being a model employer, has to pay the same salary for the same work by following the principle of equal pay for equal work.

36. This aspect, though not raised specifically by the petitioners in these writ applications, this court, on perusal of the records, would still find from Annexure-11 being part of a supplementary affidavit in CWJC No. 9760 of 2012 containing comparative statement of pay of the petitioners and others that for the same post of Accountant, petitioner No. 4 Naresh Kumar Mishra is being sought to be paid a sum of Rs. 10,950/- per month since 15.5.2012 in the pay scale of Rs. 1400-2600 by way of his monthly salary whereas one Rekha Kumari working on the same post of Accountant is being paid a sum of Rs. 9553/- per month since 15.5.2012. Similarly, while Ramayan Singh also holding the post of Accountant is being paid a sum of Rs. 15358 of his monthly salary since 15.5.2012 whereas Bipin Kumar again working on that very post of Accountant is being paid Rs. 10499 peer month and Raj Kr. Ghosh another Accountant is being paid a sum of Rs. 12000/- by way of his salary w.e.f. 15.5.2012. This court understands that there could be such anomaly on account of their salary drawn in their parent organization but the question would be that if the Corporation has taken on deputation all five of them on the same post of Accountant and is taking the same work, can it be allowed to pay different pay for the same work? It is here that the concept of equal pay for equal work to the deputationist who were having common prescribed qualification in their advertisement and were supposed to be working in the prescribed pay-scale of Rs. 5500-9000 in revised pay scale and Rs. 1500-2750 is unrevised in their parent organization by way of its eligibility vide Advertisements of Corporation dated 20.8.2006 (Annexure-1), 18.11.2006 (Annexure-2A), 23.4.2008 (Annexure-2B) and 29.7.2009 (Annexure-2C) becomes conspicuously significant and relevant. Now if all the aforesaid five persons working in their parent organization on the post of Accountant were appointed on the post of Accountant in Corporation and are doing the same nature of work in Corporation, can they be paid different amount by way of their monthly salary.

37. The Apex Court in the case of M.P. Singh and Others Vs. Union of India (UOI) and Others, while examining the plea of discrimination between the deputationist and non-deputationist in the matter of grant of higher special pay had gone to hold that nature of duty of deputationist and non-deputationist being the same, denial of special pay to the non-deputationist at par with the deputationist was impermissible and in fact violative of Article 14 and 16 of the Constitution of India. In this regard, it has held as follows:--

"10. From the foregoing discussion it emerges that the Special Pay that was being paid to all the officers in the cadre of Sub-Inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the ''deputationists'' or to the category of the ''non-deputationists''.

That being the position the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification."

38. The position in the present case is still better because here everyone is a deputationist and though for them the qualification and the required experience of being in a particular pay-scale as per terms and conditions was the same and even when they are performing the same nature of duty in the Corporation, they are being subjected to discrimination by way of payment of varying amount of monthly salary w.e.f. 15.5.2012. It may be possible that some deputationist who came later on by way of deputation in Corporation can draw lesser amount of salary but if the date of appointment of the two deputationists in Corporation is the same, both the deputationist, holding the same post and doing the same nature of work, shall be entitled for same payment of salary by invoking the doctrine of equal pay for equal work.

39. As a matter of fact, a similar issue of payment project compensatory allowance to the deputationist and the classification made by the State of Rajasthan to the employees of the State Government/State Electricity Board joining the project of Beas Construction Board at Chandigarh was examined by the Apex Court in the case of State of Rajasthan Vs. Gurcharan Singh Grewal and others, and it was held that there can be no classification in the matter of granting compensatory allowance to the deputationist on the basis of their date of joining in the Beas Project. The Apex Court in this regard had held as follows:--

"10. In the case of the employees who joined the Project after September 14, 1972, they had no option regarding the pay scale. The order granting compensatory allowance was also in force on September 14, 1972. There had been no indication in the proceedings dated February 8, 1973 that the employees who joined the project after September 14, 1972 should be given the option either to have the compensatory allowance or the terminal case benefit. If the employees who joined the Project before September 14, 1972 could exercise their option in the matter of compensatory allowance, there is no reasonable basis for denying that benefit of option to the employees who joined the Project after September 14, 1972. Even if they exercise the option for the compensatory allowance, they could not claim the cash benefits which would only be credited to the State Government and there will not be any additional burden for the State Government. The order denying the option is thus arbitrary and discriminatory treating differently the employees who had joined the Project after September 14, 1972 in the matter of exercising their option for the compensatory allowance or the terminal cash benefit. The payment of the compensatory allowance is not linked with the unified pay scale as argued for the appellant. It has been made clear in the orders reducing the rate of compensatory allowance that the employees would be entitled to receive the compensatory allowance at the reduced rate irrespective of their option to receive their pay in the unified pay scale."

40. Yet again, in the case of Food Corp. of India and Others Vs. Ashis Kumar Ganguly and Others, again involving the payment of advance increment to the deputationist, the decision of the Food Corporation of India to grant one advance increment to the deputationist from the State Government (State Food Department) and denial of the same to the deputationist from the Central Government was held to be bad on the ground that it caused discrimination only on the basis of source of their deputation and thus impermissible. In this regard, the Apex Court had held as follows:--

"17. The deputationists were not the employees of the Corporation. They were still on the State Cadre. They became the employees only on their absorption. The circular letter inviting options stated so in unmistakable terms.

18. The learned Additional Solicitor General drew our attention to the statements made in the rejoinder affidavit to show as to how the Central Government employees were different from that of the State Government employees.

Only because, according to the Corporation, they were treated differently, in our opinion, by itself cannot be a ground not to apply the rules applicable to the employees of the Food Corporation of India on their absorption in the services of the Food Corporation of India only because they have been taken from the different sources. Different treatments meted out to the respondents vis-?-vis the Central Government employees although drawn from separate cadre, for the purpose of grant of benefit to one class only, would, in our opinion, amount to discrimination."

41. Added to it, when the Corporation has adopted the provision of Bihar Service Code, it has to also abide by the provisions of Rule 78 which lays down the stepping up of the pay of an employee in the same post if someone junior to him is getting the higher pay. Such the concept of Rule 78 of the Bihar Service Code is in keeping with the Rule 22C of Fundamental Rules, being the mother of all service rules, itself envisages grant of Personal Pay Protection. In payment of salary to a senior person holding the same post so as to secure him the salary being paid higher amount of salary paid to a junior incumbent on the same post.

42. This court, however, must hasten to add here that for want of specific detail with regard to each of the petitioners and their counter part other employees working in the Corporation on deputation on same post, it cannot decide this question conclusively but, then, it would fail in its duty if it does not direct the Corporation to re-consider this aspect that for the same post and for the same nature of work, the deputationist employees appointed on the same day have to be given the same pay unless there is some justified reason (not the disparity of their pay and salary being drawn in the parent organization) to deny such benefit. In doing so, this Court is mindful of the observation made by the Apex Court in the case of Ashis Kumar Ganguly (supra), wherein, it was held as

follows:--

"A statutory authority or an administrative authority must exercise its jurisdiction one way or the other so as to enable the employees to take recourse to such remedies as are available to them in law, if they are aggrieved thereby. The question which, however, arises for consideration is as to whether having exercised its jurisdiction in favour of a class of employees, a statutory authority can deny a similar relief to another class of employees. In a case of this nature, in our opinion, the writ court was entitled to declare such a stand taken by the statutory authority as discriminatory on arriving at a finding that both the classes are entitled to the benefit of a statutory rule."

(underlining for emphasis)

43. Thus, this Court would not find any error in the impugned resolution passed by the Board of Directors or any justification in the claim of the petitioners for getting pay-scale of the State Government of the 6th Pay Revision Committee but, then, this Court, having found a clear disparity in the payment of salary to the petitioners and other employees of the Corporation working on deputation and doing the same nature of work for the same post, would deem it expedient in the ends of justice to direct the Corporation to consider this aspect and pass an appropriate order after considering the individual case of the petitioners vis-?-vis their counterparts, for securing the same salary for the same post and doing the same nature of work which is being paid to any other counterparts deputationist joining the service of the Corporation on the same day and/or even later on if the subsequent appointee on deputation in Corporation is paid higher monthly amount of salary.

44. It, however, goes without saying that in the matter of subsequent appointees on deputation, they may not be entitled for the same pay as being given to the deputationist working from earlier on account of grant of increment but, then, the basic pay plus increment to which he is entitled must be the same as being given to any counterpart appointed by deputation in counter affidavit.

45. Considering all these aspects of the mater, this Court would give liberty to the petitioners to file their individual representation explaining the disparity in the matter of payment of their salary vis-?-vis their counterpart working on the same post and doing same nature of work, whereafter, an appropriate decision shall be taken by the competent authority of the Corporation within a maximum period of four month from the date of their filing such representation. Such decision if in favour of the petitioners shall be given effect from 15.5.2012 the date on which the Corporation''s decision dated 27.3.2012 was implemented.

46. In the event the Corporation shall reject such claim of the petitioners, it will be under obligation to disclose reasons and also communicate it to the petitioners within the same period of four months, as indicated above.

47. With the aforementioned observation and direction, both the writ applications

are disposed of and the interim order dated 15.5.2012 passed by this Court is, accordingly, vacated.

MJC No. 2901 of 2012

48. This contempt application has been filed by the petitioners of CWJC No. 9760 of 2012 alleging violation of the interim order dated 15.5.2012, whereby and whereunder, the operation of the impugned resolution of the Board of Directors dated 27.3.2012 had been stayed.

49. According to the petitioners after the aforesaid interim order was passed on 15.5.2012, their payment of salary was reduced which would strictly amount to contempt by the opposite parties.

50. The opposite parties have filed their show-cause reply in which it has been clarified that the deputed staff from various Board Corporation to whom salary was being given to his parent organization along with deputed allowance were getting the same salary since 15.5.2012 and, as such, the salary slip of the petitioners were also issued vide Annexure-A series.

51. As a matter of fact, this Court would not find any contempt to have been committed by the opposite parties because when the petitioners cannot claim any higher amount of salary beyond what they were getting in their parent organization prior to their deputation in Corporation, they cannot be heard to say that the opposite parties had violated the interim order of this Court which had only granted a stay of the operation of the resolution of the Board dated 27.3.2012 but not the terms and conditions of their deputation in Corporation as contained in Advertisement and their letter of deputation/joining and posting contained in Annexure-2 series in CWJC No. 9760 of 2012.

52. The question in fact would be that when that resolution dated 27.3.2012 had been suspended on account of the interim order of this Court dated 15.5.2012, whether there was any other terms and conditions which made the petitioners, appointed by way of only deputation in Corporation, entitled to get the higher pay-scale beyond what they were getting in their parent organization be it Land Development Bank or BISCOMAUN or Pandaul Co-operative Spinning Mills Ltd. as well as Bihar State Chemical and Pharmaceutical Corporation? The petitioners would in fact find it difficult to sustain their such claim because in those organization, the petitioners were not even getting their regular payment of salary and, that is why, they opted to become the employees of the Corporation in terms of the advertisement and accepted the terms and conditions of the appointment by way of deputation. Thus, if some order of the Managing Director had given them the benefit of higher pay fixation beyond the terms and conditions of their appointment by way of deputation, its being taken back in accordance with their terms and conditions of deputation would never constitute a contempt.

53. It is, accordingly, directed that if any of the petitioner in CWJC No. 9760 of

2012, being the petitioners in MJC No. 2901 of 2012 have been paid any excess salary beyond their entitlement as per their terms of deputation in Corporation, only on the threat of this contempt petition, such excess amount shall be recoverable from them but only after a decision is taken by the Corporation as directed above in paragraphs Nos. 43 to 46 of this judgment relating to their main writ petition.

54. In any event, this Court has found no merit in the allegation of the petitioners and, therefore, this contempt application, must be and is, accordingly, dismissed.

