
(2004) 01 PAT CK 0118
In the Patna High Court
Case No : L.P.A. No. 14 of 2004

Paras Nath Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Citation : (2004) 2 PLJR 450

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The delay in filing the appeal is condoned.
2. Heard learned Counsel for the Appellant.
3. The present, appeal has been preferred against an order of the writ court dated 18.11.2003 in C.W.J.C. No. 3313 of 2003, whereby the learned writ court in view of the earlier decisions of this Court in C.W.J.C. No. 618 of 1990 affirmed in L.P.A. No. 1984 of 1995 did not grant any relief to the Petitioner-Appellant and held that the replacement scale of the Petitioner-Appellant was Rs. 4500-7000 and not Rs. 5000-8000.
4. From the order impugned it transpires that the main thrust of the argument advanced before the writ court of the Petitioner-Appellant was that one Sushant Kumar Ghosh Mallick who was admittedly junior to the Appellant got the replacement scale of Rs. 5000-8000 and as such, the Petitioner being senior to him was entitled to the aforesaid pay scale. The learned Counsel had also tried to supplement his aforesaid argument with the contention that the aforesaid pay scale was rather granted to the said Sushant Kumar Ghosh Mallick after his superannuation as such, the stand of the State that as he had retired recovery could not be made, was not substantiate and the same should be rejected and the State be directed to grant the Appellant also the relief which has been granted to the aforesaid Sushant Kumar Ghosh Mallick.

5. From the counter affidavit which has been filed in the writ application it would be clear that the scale of the Appellant was Rs. 730-1080 and as he was appointed prior to 1.4.1981. In view of circular of the finance department dated 6.8.2002 as contained in Annexure-7 he was given the scale of Rs. 4500-7000 with effect from 1.1.86 which was the replacement scale of the Store Keeper-cum-Accounts Clerk. The counter affidavit in the writ application clearly stated that one Mukhram Singh and Sushant Kumar Ghosh Mallick were wrongly given the replacement scale of Rs. 5000-8000 and in case of Mukhram Singh, his scale has already been reduced to Rs. 4500-7000 but as Sushant Kumar Ghosh Mallick had superannuated, no recovery has been made.

The aforesaid facts clearly demonstrated that a higher pay scale had wrongly been-given to the aforesaid Sushant Kumar Ghosh Mallick and if any illegality has been committed the same cannot be directed to be perpetuated by issuing a judicial order to pay the Petitioner-Appellant the same pay scale.

6. As the replacement scale of Store Keeper-cum-Accounts Clerk had already been considered by this Court in another case and affirmed by the L.P.A. Bench, this Court has no hesitation in holding that the Appellant's pay scale in the scale of Rs. 4500-7000 has already been considered.

7. Today the Petitioner-Appellant has tried to advance further argument regarding the effect of time bound promotion which was earlier granted to him. These aspects were neither raised nor have been considered by the learned writ court, as such, L.P.A. Bench cannot allow the Petitioner-Appellant to make submission or advance new points, which is not subject matter of the order under consideration.

8. As no error has been shown in the order of the writ court requiring interference in appeal, the appeal fails and is, accordingly, dismissed.