

(2004) 08 PAT CK 0099
In the Patna High Court
Case No : C.W.J.C. No. 3792 of 2002

Prabha Shankar Prasad Sinha

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Citation : (2004) 4 PLJR 353

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : R.K. Sinha, Nilesh Kumar Nirala in 3792 and M/s Ashok Kumar, Rajendra Prasad in 3803, for the Appellant; Mohit Kumar Shah for the Board, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—These two cases arise from similar sets of facts and circumstances and they involve the same question; these were, therefore, heard together and are being disposed of by this common order. Both Prabha Shankar Prasad Sinha (petitioner in CWJC No. 3792 of 2002) and Jawahar Prasad Mehta (petitioner in CWJC No. 3803 of 2002) are retired employees of the Bihar State Electricity Board. From the retiral dues of Sinha Rs.59,244.22 was deducted and a similar deduction of Rs. 35,887.20 was made from the retiral dues of Mehta. The deductions from the retiral dues were made on the ground that the respective amounts were paid to the two employees in excess of their due salary as a result of wrong fixation of their pay. The pay of the two employees when they were granted selection grade was fixed by adding 12% of their basic pay in the lower scale. The same benefit in fixation of pay was allowed to them when they were given regular promotion to a higher post. According to the respondent authorities, the addition of 12% on the basic salary in the lower scale was wrongly allowed to them while fixing their pay pursuant to the grant of selection grade and the excess amount received by them on that basis was recoverable from their retiral dues.

2. The petitioner in CWJC No. 3792 of 2002 worked as Bill Clerk when on 27.5.1975 he was given selection grade scale of pay. His pay in the selection grade was fixed by adding 12% to the basic pay in his existing scale. The benefit was purportedly allowed in terms of paragraph 1 of Board's office order no. 4562, dated 19.11.1974. Later, on 19.11.1996 he was promoted to the higher post of Accounts Assistant. On completion of three years from 27.5.1975 (that is w.e.f. 27.5.1978) his pay in the higher post was once again fixed by giving him the benefit of additional 12% to his basic pay in the lower scale.

3. The petitioner in C.W.J.C. No. 3803 of 2002 was also granted selection grade on 27.5.1975 with the same benefit as the petitioner in the other case in fixation of his pay in the higher grade. He got promotion to the post of Head Clerk on 3.4.1976 and like the petitioner in the other case he too was allowed the benefit of additional 12% to the basic salary for fixation of pay in the higher post w.e.f. 27.5.1978, i.e., on completion of three years from the previous fixation. This was purportedly in terms of paragraph 2 of the office order, dated 19.11.1974.

4. According to the Board, the petitioners were wrongly allowed the double benefit; first when they were granted the selection grade scale and the second time when they were given promotion on regular basis.

5. Here it will be appropriate to take a look at the provisions relating to fixation of pay at the material time. Paragraphs 1 and 2 of the Board's Office Order No. 4562 dated 19.11.1974 purportedly in terms of which the petitioners were allowed the double benefit in fixation of pay are as follows:

1) In all cases, of promotion from a lower post to a higher post, pay shall be fixed by adding 12% (maximum Rs. 150/-) to the basic pay of the lower post.

2) The pay of a Board's employees, who is appointed to a higher post after completion of 3 years' officiating service in the lower post before appointment to a higher post, shall be fixed on the higher post by adding 12% (maximum Rs. 150/-) to his officiating pay in the lower post. They pay of a Board's employee who is appointed to a higher post before completing 3 years service in the post, shall be fixed in the higher post, in accordance with the normal rules of the Bihar Service Code. But on completion of 3 years' service in the lower and higher posts combined, his pay shall be re-fixed on the higher post, by adding 12% (maximum Rs. 150/-) to the pay he would have drawn on the lower post on that date.

6. It may be noted here that the Office order related to cases of promotion from a lower post to a higher post and strictly speaking the grant of selection grade was not covered by it. Yet it came to the notice of the Board that in some cases even on grant of selection grade the benefit of 12% addition to the basic pay in the lower scale was allowed purportedly in terms of that office order. The Board then issued Standing Order No. 515 dated 7.5.1976. Paragraph 5 of which provided as follows:

Where promotional avenues are available, double benefit in fixation of pay shall not be allowed. Deduction from the salary of those workmen who have already been benefitted twice in the matter of pay fixation i.e. once in the Selection Grade and again in promotion shall be made immediately, in twelve equal instalments or at the rate of Rs. 60/- p.m. whichever will effect the recovery earlier.

7. Later on, the benefit of addition of 12% to the basic pay was extended, apart from regular promotion from a lower post to a higher post, also to the grant of promotion by way of removal of stagnation and Standing Order No.125 was issued on 7.5.1983. Paragraph 2 of the Standing Order No. 125 reads as follows:

After careful consideration of the issue, it has now been decided to give advantage of adding 12% to the maximum of Rs. 150/- in fixation of pay on promotion also if the scale of pay of the post to which promotion is given is higher than the scale of pay of the post given earlier by way of removal of stagnation.

8. It is an admitted position that this Standing Order covers cases of grant of selection grade as well but this would not be of any help to the petitioner because the provisions of Standing Order No.125 was expressly made prospective in operation. A clarification in this regard was issued by the Secretary of the Board on 2.8.1985 making it clear that the Board's Standing Order No.125, dated 7.5.1983 had effect from the date of its issuance, that is 7.5.1983.

9. So far as this court is concerned the issue is no longer res Integra. In Md. Siddique Vs. The Bihar State Electricity Board and Others this court held as follows:

3. This court finds substance in the submission of the learned counsel for the Board. At the time of grant of benefit in the year 1977 Board's Standing Order No.125 was not even in existence. Learned counsel for the petitioner has failed to show that the said Standing Order has been given effect from the retrospective date. On the contrary Mr. Datta, learned counsel appearing for the Board, has referred to clarification bearing no.524/EB dated 2.8.1985, contained in Annexure A/2, whereby it was clarified that the Board's Standing Order No. 125 dated 7.5.1983 has effect from the date of its issue, i.e. 7.5.1983 and there is nothing ambiguous in it. Further, request was made to see that fixation of pay made in pursuance of Board's Standing Order No. 125 dated 7.5.1983, if any, is contrary to the clarification and the same should be reviewed/revised suitably under intimation to the Board.

10. That being the position the inescapable conclusion is that the two petitioners were wrongly allowed the benefit of addition of 12% to the basic pay at the time of fixation of their pay on grant of selection grade. Their pay was thus wrongly fixed at a higher scale and on that basis they in fact got an amount in excess of their due salary.

11. Coming now to the question of recovery from the retiral dues, that issue also stands concluded by a bench decision of this court in Bihar State Electricity Board and Others Vs. Man Bahadur and Others .

12. These two cases are thus fully covered by the decisions of this court in cases of Md. Siddique and Man Bahadur. No relief can, therefore, be granted to the petitioners. These two writ petitions are dismissed.