
(2015) 12 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 12289 and 12641 of 2013

Prabhas Chandra Karn and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 12 PAT CK 0039

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Vinod Kanth, Sr. Advocate and Abhinav Srivastava, for the Appellant

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—The two writ applications have raised common question of law arising from similar bundle of facts and since the Court was addressed in both the matters together, they are being disposed of by a common judgment.

2. The communication contained in Annexure-14 dated 7.11.2012, issued under the signature of the Principal Secretary, Finance, is under challenge in the present writ applications. By virtue of this order the persons including these petitioners were extended the benefit of revision in salary as per recommendation of the 6th Pay Revision Commission w.e.f. 1.1.2006, but now after issuance of Annexure-14, not only the pay-scale or salary is being reduced but even order of recovery in two instalments has been made.

3. The alternative relief is to revise the pay-scale of the petitioners notionally w.e.f. 1.1.2006 in the pay-scale of Rs. 7450-11500/- which is the correct corresponding pay-scale for the pre-revised pay-scale and the Grade Pay of Rs. 4600/- w.e.f. 1.1.2006.

4. After the Union of India accepted the recommendation of the 6th Pay Revision Commission and implemented it, the employees of the State of Bihar also raised similar demands and an agreement was reached between the employees' Union

and the State of Bihar to extend the benefit of Central Pay-Scale on similar pattern. A Pay Revision Committee for the State was put in place. Based on its interim report submitted to the State of Bihar and it being duly accepted, Assistants working in the Bihar Secretariat or holders of equivalent posts were given the benefit of Central Pay-Scale w.e.f. 1.1.2006. The replacement scale was worked out by multiplying the existing basic scale by a factor of 1.86, meaning thereby that Rs. 5500 x 1.86 = Rs. 10230 + Grade Pay 4200, which added up to Rs. 14430/-. This became the entitlement of Assistants as per Schedule-I of the Notification.

5. For the new entrants the entry pay was fixed as Rs. 13,500/- as per Schedule-II, and in turn the Assistants of the Patna High Court started getting their salary in the new scale from the month of March, 2009 and new pay band by calculating their salary as on 1.1.2006 by multiplying with the factor of 1.86 as explained above.

6. The Ministry of Finance, Government of India, received large number of references on the anomalies of fixation of some of these pay-scales and vide its letter No. 1/1/2008-1 C dated 13.11.2009 decided that posts which were in pre-revised scale of Rs. 6500-10500 as on 1.1.2006 will be given Grade Pay of Rs. 4600/- instead of Rs. 4200/-. The pay band corresponding to Rs. 7450-11500/- was fixed on Rs. 9300-34800/-.

7. Vide decision dated 21.1.2010, the Government of Bihar accepted the Grade Pay of Rs. 4600/- for the Assistants, presently Assistants of Secretariat and its equivalent post across the board.

8. The problem arose when the Department of Finance, Government of Bihar, started rethinking if not overreaching the recommendation already notified. They started making a distinction between the Assistants appointed on or after 1.1.2006 and those before. The post 1.1.2006 appointees were extended entry pay of Rs. 17140/- and the Grade Pay of Rs. 4600/-. The ground of the entry pay worked out to 40% of the higher slab of Rs. 11500 in the replacement scale of Rs. 7450-11500/-. Therefore, the salary was increased from Rs. 13500/- to Rs. 17140/-. This upgraded benefit of pay-scale was not extended to the Assistants/ Personal Assistants appointed before 1.1.2006. Their salary was fixed on 1.1.2006 by treating the existing basic pay to be Rs. 5500/- and not Rs. 7450/- because of the salary of the Assistants appointed before 1.1.2006 added up to Rs. 14,430/-. This has created an anomalous situation because if the scale was upgraded and benefit was to accrue, it should have been extended across the board and a different class amongst class ought not to have been created by giving higher benefit to Assistants appointed after 1.1.2006 and those appointed pre 1.1.2006.

9. This, according to the petitioners, violates Articles 14 and 16 of the Constitution of India.

10. Learned senior counsel representing the petitioners draws the attention of

the Court to the office memorandum dated 16th November, 2009 issued by the Union of India, which forms the basis for granting Grade Pay of Rs. 4600/- to the Assistants of the Central Secretariat and the same was adopted by the State of Bihar.

11. Court's attention was also drawn to the Pay Committee Recommendation set up by the State of Bihar, which is Annexure-9. A reading of the same, especially at page 63, would indicate that Pay Band-2 corresponding to Grade Pay - 4600, was extended to Assistants on same term as the Central Government assistants and it was on this basis that State of Bihar too issued the notification based on which petitioners have been drawing salary of Rs. 17140 which is now sought to be reduced to Rs. 14430, unilaterally, on the basis of the impugned order, contained in Annexure-14 without any opportunity and even order of recovery has been passed.

12. The State was directed to explain the situation. Their stand is crystallized in para 21 and 22 of the counter affidavit, which is reproduced herein below:

"21. That it is pertinent to mention here that the normal replacement scale of unreserved pay scale of Rs. 5500-9000/- and is P.B.-2 and grade pay 4200/-. The Secretariat Assistant/Personal Assistant cadres have been granted revised Grade Pay of Rs. 4600/- in P.B.-2 for their unrevised pay scale of Rs. 5500-9000/-. This is a specific post oriented revised pay band and grade pay. The reference of pay scale of 7450-11500/- is unwarranted and misleading. For replacement of pre-revised pay scale Rs. 7450-11500/- in P.B.-2 and Grade Pay 4600/- there is a special fitment table No. 21 which is not applicable in case of Secretariat Assistants/P.As./Translators because they were never in Pay Scale of Rs. 7450-11500/- before 01.01.2006. Annexure: 8 of the writ application is bonafide clarification of Ministry of Finance, Department of Expenditure and Implementation Cell, Government of India, Department of Personnel and Training, Government of India in their file had requested the Cell to clarify the manner in which pay of Assistants/P.As. is to be fixed consequent upon the grant of revised pay structure of grade pay of 4600/- in P.B.-2 to them. The Cell issued clarification that no benefit of bunching is admissible in case of revision of pay in revised pay structure in pay band P.B.-2 with grade pay 4600 for pre-revised scale of 5500-9000/-.

22. That it is relevant to mention here that the scale of the cadre of the petitioners were historically lower than the scale of supervisors appointed on the basis of graduate level competitive examination, but it is only after the adopting of Central Pay scales as recommended by Fitment Committee it has become higher, not only at the initial recruitment stage but more so is the promotional scales."

13. Learned senior counsel submits that the pay-scale recommended by the Central Government to the Assistants was recommended even by the Pay Revision Committee of the State of Bihar and the same was adopted. Once the

same was adopted and made applicable across the board, such recommendations cannot be altered by an executive fiat by a notification issued under the signature of the Principal Secretary, Finance. If any change is required to be effected, it can only be done by such Committee, as it falls within their domain. If the State of Bihar had any misgivings on the recommendation, the issue should have been brought to the notice of the Committee for reconsideration. After the notification on the basis of Pay Committee's recommendation, it cannot be done in the manner it has been done.

14. In the alternative, it is also argued that all these issues should have been brought to the notice of the Pay Revision Committee but if no objection was raised at that juncture and the Committee's recommendation was accepted and notified, these petitioners have also been brought in the Grade Pay of Rs. 4600/-, then they will draw advantage thereof in terms of pay-scale and two different pay-scales cannot be created for the same nature of work and responsibility merely on the basis of the date of appointment pre 1.1.2006 or post 1.1.2006.

15. In addition to that, it is also urged that a unilateral decision of such kind, having civil consequences, cannot be taken and there ought to have been at least an opportunity or notice to the affected persons.

16. Besides, a recent Supreme Court decision rendered in the case of State of Punjab Vs. Rafiq Masih, , has very categorically held that no recovery can be also effected from employees belonging to Class III or IV.

17. If all this is taken into consideration, the decision contained in Annexure-14 becomes vulnerable and is set aside.

18. The Court after considering the material and the submissions comes to a considered opinion that the decision notified in Annexure-14 cannot be sustained for the reason that the special body like a Pay Revision Committee's recommendations cannot be lightly interfered with or replaced by a notification issued by an executive in such a cursory and casual manner. It was because of such a recommendation that all these persons started drawing the replacement scale from the year 2009 unhindered till Annexure-14 came to be issued unilaterally.

19. Not only this, if the State's stand is accepted, an anomalous situation is created by giving two kinds of pay-scales to the same kind of employees merely on the basis of their date of appointment, which has no nexus with the object sought to be achieved while granting benefit of pay revision.

20. In the totality, therefore, both the writ applications succeed. The impugned order, contained in Annexure-14, stands quashed.

21. Petitioners will draw the pay-scale which they were getting in terms of the recommendations of the Pay Revision Committee without any let or hindrance. No recovery shall also be made and if already made, will be ordered to be refunded.