
(2005) 04 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 856 of 2000

Raj Kishore Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Citation : (2005) 3 PLJR 137

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Madan Prasad Singh-2, for the Appellant; J.C. Singh, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to grant to the petitioner the first time-bound promotion taking into account the date of entry in the service and for grant of regular pay scale from the said date also. Shorn of unnecessary details, facts giving rise to the present application are that by order dated 30th of September, 1973 (Annexure-3), petitioner was appointed as a Science Teacher on a fixed honorarium of Rs. 200/- p.m. Said appointment has been made under the policy of the State to maintain the students and teachers ratio. In pursuance of the said order, petitioner joined on 4.10.1973. After completion of one year of service, he was given the regular scale of pay w.e.f. 4.10.1974. By order as contained in memo dated 18.10.1986 (Annexure-12) petitioner was granted the first time-bound promotion w.e.f. 1.4.1984 with further stipulation that the monetary benefits flowing from that shall be paid from 1.4.1985. Petitioner filed representation claiming that the period of ten years ought to have been calculated from 4.1.1973 and accordingly, he ought to have been granted the first time-bound promotion on completion of ten years w.e.f. 4.10.1983. However, when such prayer was not granted, petitioner has preferred this writ application. Further plea of the petitioner is that as he was appointed on fixed

honorarium but following the procedure meant for regular appointment, he shall be entitled for regular scale of pay right from the date of his appointment.

2. Counter affidavit has been filed on behalf of respondent No. 3 in which the plea of the respondents is that as the petitioner was appointed on a fixed honorarium of Rs. 200/- p.m., and thereafter he was given regular scale of pay w.e.f. 4.10.1974, it cannot be said that he was stagnating in the same scale of pay for ten years from 4.10.1973 and as such, petitioner was rightly granted time-bound promotion on completion of ten years which was reckoned from the date he was given the regular scale of pay. Their further plea is that petitioner was appointed on a fixed honorarium to maintain the students, teachers ratio, he is not entitled for regular scale of pay from the date of appointment.

3. Mr. Madan Prasad Singh, appearing on behalf of the petitioner, submits that as the petitioner was appointed initially on honorarium after following the same procedure meant for regular appointment, he is entitled for grant of regular scale of pay right from the date of his joining i.e. 4.10.1973 on fixed honorarium. In support of his submission, he has placed reliance on an unreported decision of this Court dated 1.5.1995 passed in C.W.J.C. No. 3633 of 1994 (Yogendra Raut vs. The State of Bihar & Ors.) and my attention has been drawn to the following passage from the said judgment.

"Initial appointment having been made according to the prescribed procedure, I see no reason why the teachers should be denied the benefit of continued officiation in shape of seniority, pay etc. In that view of the matter the stand of the respondents to treat the petitioner as appointed from 9.1.1973 and to deny him the benefits of the revised scale application from 1.10.1975 cannot be said to be in accordance with law."

4. G.P. No. 1, however, appearing on behalf of the respondents submits that as the petitioner was appointed under a scheme on a fixed honorarium basis, he cannot claim regular scale of pay right from the date of his joining. He points out that the decision of this Court in the case of Yogendra Raut (supra) was rendered in a different context.

5. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Singh and the decision relied on is clearly distinguishable. Undisputedly, petitioner was appointed under a scheme framed by the State Government for maintaining the students and teachers ratio. Further, he was appointed on fixed honorarium. This appointment was made as back as in the year 1973 which he accepted for long years and chosen to file this writ application on 24.1.2000. As the petitioner was appointed under a scheme of the State which provided for payment of honorarium only, the prayer made by the petitioner is not fit to be granted.

6. There is yet another impediment in the way of the petitioner. The order of appointment clearly indicates that he shall be paid honorarium of Rs. 200/- p.m. This order of appointment is dated 30th September, 1973. As said earlier,

petitioner has chosen to file this application on 24.1.2000. Hence, this relief is absolutely stale and is not fit to be granted by this court at such a distance of time.

7. Mr. Singh then contends that in any view of the matter, the service rendered by the petitioner right from the date of his joining on 4.10.1973 on a fixed honorarium basis is fit to be counted for grant of time-bound promotion. His submission is that the petitioner was appointed following the procedure of regular appointment and as such, the said period cannot be ignored.

8. G.P. I, however, contends that the petitioner was given higher scale of pay w.e.f. 4.10.1974 and as such, he was not stagnating in the same scale of pay since the date of his joining. Hence, in view of Clause 11(vii) of the Resolution of the State Government in the department of Finance dated 30th of December, 1981, petitioner's service prior to 4.10.1974 for the purpose of grant of time-bound promotion is not fit to be counted.

9. In answer thereto, Mr. Singh contends that Clause 11 (vii) of the aforesaid Resolution has been modified by resolution dated 16th of July, 1985 and hence, Clause 11 (vii) of the resolution shall not come in the way of the petitioner. This submission of Mr. Singh has also no force.

10. Clause 11 (vii) of the resolution of the State Government dated 30th of December, 1981 providing for grant of time bound promotion, inter alia, provides that the benefit of time bound system should be extended to those who are stagnating in the same scale of pay to which they were appointed or its corresponding revised pay scale. Clause 11 (vii) of the said resolution reads as follows;

"11. With regard to time bound promotion, the Fourth Pay Revision Committee have made the following recommendations:--

(vii) Since the aforesaid scheme is meant as an anti-stagnation measure, it should be applicable in case of only such employees who have not been able to get the first or the second promotion, as the case may be. In other words, the benefit of the time-bound system should be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale. The benefit should not be made applicable to such employees who, after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even upgradation. This should require issue of specific orders in case of every employee which should obviously be done only after a careful examination of his service records."

(Underlining mine)

11. Petitioner was appointed on a fixed honorarium and in pursuance thereof, he joined on 4.10.1973. Thereafter he was given a regular scale of pay. Hence, for the purpose of time-bound promotion, it cannot be said that the petitioner was

stagnating in the same scale of pay from 4.10.1973. The resolution of the State Government dated 16th of July, 1985, relied on by Mr. Singh pertains to amalgamation of the junior and senior scale and not grant of regular pay scale. Hence, in that view of the matter, the resolution dated 16th of July, 1985 shall not enure to the benefit of the petitioner. Petitioner had stagnated in one scale of pay from 4.10.1974 and as such, the respondents have rightly taken the said date relevant for the purpose of time-bound promotion. I do not find any error in the same.

12. It is made clear that the date 4.10.1974 is relevant only for the purpose of counting the period for time-bound promotion and shall have no bearing on other rights of the petitioner. In the result, I do not find any merit in this application and it is dismissed accordingly but without any order as to cost.