(2006) 11 PAT CK 0148

In the Patna High Court

Case No : CWJC No. 6154 of 2006

Ram Pukar Ray and Another — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Citation : (2006) 4 PLJR 555

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : A.K. Mallik and Rajeev Ranjan, for the Appellant; Shashi Bhushan Kumar and J.P. Kishore, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. A.K. Mallik, learned counsel for the petitioner and learned Standing Counsel No. 16 for the State. The petitioners seek quashing of the Government memorandum contained in memo No. 7128 dated 30.12.2005 (Annexure-1) and the Government Resolution contained in memo No. 1096(8it) dated 22.2.2006 (Annexure-2) by which the cadre of Koshagar Lipik (Clerk) has been amalgamated in the Clerical cadre of Collectorate and provision has been made for a single cadre and for transferability between the clerical cadre in the Collectorate.

2. The case of the petitioners is that the petitioner No. 1 was appointed as a Clerk by order contained in memo No. 60(Bit) dated 4.1.1997 issued under the signature of the Finance Commissioner, Government of Bihar in the pay scale of Rs. 1200-1800 and accordingly he joined his post on 7.1.1997 in the Directorate of Treasuries, Bihar and subsequently by memo No. 736 dated 9.7.1997 issued by the Directorate of Treasuries, he was posted in the District Treasury, Supaul where he has joined and is continuing on the post of Koshagar Lipik in basic grade post. The petitioner No. 2 was also appointed as Koshagar Lipik on the same post and in the same pay scale by order No. 33 dated. 12.12.1994 and joined on the post on 20.12.1994 in the Directorate of Treasuries and

subsequently by memo No. 12 dated 13.1.1995 issued by the Directorate of Treasuries, he was posted as an Accounts Clerk in the District Treasury, Supaul which he joined and is continuing on the said post.

3. By the Finance Department resolution No. 593 dated 21.7.1993 the Directorate of Treasuries & Accounts has been disbanded and the services of non-gazetted employees of the Directorate were placed under the administrative control of the District Magistrate/Deputy Commissioner. Aggrieved by the same one Ramesh Kumar Singh, General Secretary of the Bihar Rajya Koshagar Karmachari Sangh and others moved this court in CWJC No. 7703 of 1993 which was disposed of on 17.1.1994 in terms of the statements made in the counter affidavit filed on behalf of the Finance Commissioner, Additional Finance Commissioner, Director of Treasuries & Accounts and the Joint Secretary, Finance Department stating that the service condition of the petitioner shall not be affected in any manner nor their nature of work or their salary shall be affected and they shall continue to get in future what they were getting earlier and further by virtue of the said resolution of the Directorate the promotional avenue of the petitioner shall also not be affected.

4. Subsequently, by the resolution contained in memo No. 47 dated 25.1.1999 of the Finance Department the Directorate of Treasuries was finally dissolved and it was again reiterated that the service conditions of the employees of the Directorate of Treasury shall not be changed, i.e., they shall not be deprived of salary, promotion, seniority etc. It was further provided that the old employees of the Treasury shall be transferred only in the other Treasuries and Sub-Treasuries. All disciplinary and other administrative control over the employees of the Treasuries was vested in the District Magistrate/Deputy Commissioner by the said resolution. Subsequently, by Government letter dated 28.9.2000, the cadre strength of the employees of the Treasury was laid down and by a subsequent corrigendum 18.11.2000 it was clarified that the strength of sanctioned posts of Treasury Clerk shall be read as that of Treasury Accountant in such cases where such persons were getting a different pay scale from the clerks of the Treasuries from before. Ultimately, by Government resolution contained in memo No. 1096 dated 22.2.2006 it was directed that the employees of the Treasuries will not have a separate cadre and the clerical cadre of the Treasuries shall be amalgamated with the clerical cadre of the Collectorate and the Class IV employees of the Treasuries shall be amalgamated with the Class IV employees of the Collectorate. It was further provided that as a result of such amalgamation there shall be a single cadre of Clerks in the Treasury and the Collectorate and the said post of clerk shall be inter-transferable and there shall also be a single seniority list. Similar provision was made for Class IV employees.

5. The petitioners are aggrieved by the said amalgamation of the cadres of the Treasury and the Collectorate. It is stated that the said resolution dated 22.2.2006, as contained in Annexure-2 is illegal in view of the order of this Court dated 17.1.1994 passed in CWJC No. 7703 of 1993 because by the said order the

service conditions of the Treasury Cadre has been directed to remain intact. It is further submitted by the learned counsel that the said resolution is contrary to the order dated 4.11.2000 issued by the Finance Department pursuant to the Government resolution dated 25.1.1999. It is pointed out by the petitioners'' counsel that petitioner No. 1 had earlier been directed to hold charge of the post of Treasury Accountant by order dated 30.7.2003 (Annexure-12) on the retirement of the person who was holding the post but subsequently one Rajan Kumar Singh has been posted on the said post vide order dated 27.4.2006 (Annexure-11). It is stated that said Ranjan Kumar Singh is a clerk in the Supaul Collectorate and he should not have been given the post of Treasury Accountant in preference to the petitioner No. 1 since the petitioner No. 1 belongs to the Treasury Cadre and he has right to hold the post of Treasury Accountant in preference to any clerk of the Collectorate. Learned counsel has also relied upon a circular dated 29.11.1994 of the State Government in which it has been laid down that the post of clerks in the Treasury is different from that of clerks of the Collectorate and for the said reasons it is the petitioner No. 1 who should have been posted as Accountant.

6. Learned counsel for the State, on the other hand, relies upon the various averments made in the counter affidavit in which it is stated that the State Government has come out with a decision to the effect that the Treasury Clerk will have no separate cadre rather they would be treated as member of Collectorate cadre which ultimately got concurrence of the Cabinet on 27.9.1994. The said decision was taken to have a proper control by the District Magistrate on the functioning of Treasury staff since the District Magistrate is overall Incharge of the functioning of the Treasury. This step was in the direction of administrative streamlining of the Treasury. Pursuant to the same in the year 1999, a decision was taken to amalgamate Treasury Clerks and ministerial staff of the Collectorate cadre but it was provided therein that the old employees of the Treasury would be transferred from Treasury to Sub-Treasury or in the Treasury of another District. It was further provided by Resolution No. 47 dated 25.1.1999 that the Treasury staff would be treated to be in the cadre of district Collectorate under the control of District Magistrate, but there would not be any alteration or change in the service condition of the employees of the Treasury Directorate till the disposal of the writ application pending in this court. It is further stated in the counter affidavit that from perusal of the Government Circular No. 7063 dated'' 28.9.2000 (Annexure-6). It is manifest that there would not be any separate cadre for Treasury Clerk rather they would be treated as part and parcel of Collectorate cadre except those who have been appointed on or before 25.1.1999. On the basis of the same, it is stated that the petitioners having been appointed before 25.1.1999, therefore their service condition has not been changed either by the circular dated 28.9.2000 or the impugned Resolution No. 1096 dated 22.2.2006. It is stated that the said resolution has been issued taking into consideration the earlier cabinet decision dated 25.1.1999 as well as the order passed by this court in CWJC No. 7703 of 1993.

7. It is further submitted by learned counsel that in view of the clear stipulation made in the said resolution, the petitioners cannot raise any grievance regarding amalgamation of the cadre of Class III and Class IV employees of the Treasury with that of the Collectorate since those appointed prior to 25.1.1999 like the petitioners have been kept out of the said amalgamation and the service condition of the petitioners are not affected by the said resolution. It is submitted that it is within the jurisdiction of the State Government to make such reorganization in the interest of functioning of the Treasuries. It is pointed out by the learned counsel for the State that the cadre strength in the Treasury in the clerical cadre in the year 1979 was 1245. Subsequently, on account of large number of vacancies in the year 1997 approximately 200 persons were deputed from the various Boards and Corporations. It is further stated that since the year 1979 to the year 1999 no appointment had been made on regular basis except a few appointments on compassionate ground, as a result of the same there is acute shortage of staff in the Treasuries and accordingly the said decision of amalgamation has been taken so that other persons functioning in the Collectorate may be deployed in the Treasuries for their more efficient functioning. It is stated that said Ranjan Kumar Singh is the seniormost clerk in the office of the Supaul Treasury and his date of joining in the service is 15.11.1985 and thus he has completed 20 years of service and he is also in the selection grade pay scale of clerk of Rs. 5000-8000/- whereas the petitioner No. 1 joined service only on 7.1.1997 having only a length of 9 years of service and still in the initial pay scale of 4000-6000/-. It is further stated in para 10 of the counter affidavit that on account of the retirement of Treasury Accountant Shri Brahmdeo Prasad, the petitioner No. 1 had been directed to take charge of the post of Accountant by order dated 30.7.2003 and he functioned on the said post till 27.4.2006. Learned counsel contends that the petitioner No. 1 had no right to continue on the said higher post of Treasury Accountant and no wrong has been committed in appointing said Ranjan Kumar Singh on account of his seniority as well as higher pay scale enjoyed by him. It is submitted by the learned counsel that the resolution contained in Annexure-2 is fully justified and the actions of the respondents taken on 27.4.2006 is pursuant to the said resolution.

8. On a consideration of the rival contentions of the parties I do not find any force in the contention of the learned counsel for the petitioners. So far as the right to create and abolish the posts and to organize or re-organize the cadres for efficient service under the State is concerned that is within the domain of the State Government. The only thing to be seen in such matters is that there is no arbitrariness in the said exercise and further the vested rights of any employee from before is not taken away by the said re-organization. In view of the clear stand taken in the counter affidavit as also the provisions contained in the various resolutions of the State Government from time to time, it is evident that the service conditions of the petitioners have not been affected by such action of the Government in dissolving the Treasury cadre and thereafter amalgamating the cadre of the Treasury with that of the cadre of the District Collectorate. So far

as the reliance upon the order dated 17.1.1994 of this Court is concerned, by the said order the service conditions, salary and promotional avenues of the petitioner of that case had been protected. Although the said order does not in terms apply to the case of the present petitioners who were not even in service at that point of time, but applying the said principles the clear stand of the State Government is that in the case of the petitioners also the salary, service conditions and promotional avenues shall not be affected by the said resolution. The effect of said stand clearly is that the petitioners would have a right to be posted only within the Treasuries of the State and not in the other posts under the control of the Collectorate Cadre since they could not be treated as having amalgamated in the general clerical cadre. Apart from that the petitioners cannot claim any superior right over other employees and claim exclusively to be posted as Accountant of the Treasury without having received the necessary promotions in the same. It is not the stand of the petitioners that any promotion due to them has been denied to them. If the petitioner No. 1 had earlier been given charge of the higher post of Treasury Accountant that does not entitle him to continue on the said post irrespective of the fact that many other employees having been in Government service much prior to the petitioners are also eligible for holding the said post in view of the resolution of the Government dated 22.2.2006.

9. In view of the fact that this Court does not find the said resolution in any way transgressing the earlier order of this Court dated 17.1.1994 and no other valid ground having been submitted by the learned counsel for the petitioners, there is no occasion to quash the same. Consequently, the other action of the respondents in posting said Ranjan Kumar Singh on the post of Treasury Accountant can also not be considered as invalid or illegal. The writ petition is accordingly, dismissed but without any order as to costs.

