
(2009) 09 PAT CK 0037
In the Patna High Court
Case No : CWJC No. 10992 of 2009

Ram Yatan Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Citation : (2009) 09 PAT CK 0037

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard Mr. Shyama Prasad Mukherjee, Senior Advocate for the petitioners and the counsel for the State.

2. Petitioners are serving as Head Clerk in the office of Joint Director, Agriculture, Tirhut Division, Muzaffarpur. They are aggrieved by the office order No. 11 bearing Memo No. 70 dated 21st February, 2009 and office order No. 9 bearing Memo No. 132 dated 02.04.2009, Annexures 2 and 2/1, whereunder their grant of first and second Assured Career Progression allowed to them in the scale of Rs. 5000-8000/- and Rs. 5500-9000/- under office order No. 4 bearing Memo No. 116 dated 25th January, 2007, Annexure-4 and office order No. 6 bearing Memo No. 118 dated 25th January, 2007, Annexure-4/1 has been cancelled with direction that they are entitled to grant of first and second Assured Career Progression in the scale of Rs. 4500-7,000/- and Rs. 5,000-8000/- with effect from 09.08.1999 and 23.06.2006 and other dates and the excess amount paid in terms of Annexures 4 and 4/1 is sought to be recovered in the light of the directions of the Director, Agriculture, Bihar, Patna bearing Letter No. 240 dated 27th January, 2009 issued in the light of the advice rendered by the Finance Department of the State Government whereunder it is said that the Head Clerk serving in the field office is not entitled to the higher scale of Rs. 5,000-8,000/- and Rs. 5500-9,000/- and in the light of the said instruction the impugned orders have been issued with effect from the date indicated in Column No. 1 and 2 of the two orders.

3. Mr. Mukherjee submitted that the representation filed against Annexures-2

and 2/1 which has been duly forwarded by the Joint Director, Agriculture be considered by the Director, Agriculture in the light of the instructions of the State Government contained in Letter No. 2615 dated 25.02.1983, Annexure-8 and Letter No. 12377 dated 13.08.1984, Annexure-9. It is further submitted that in any case the recovery should not be made from the petitioners as the higher pay-scale was allowed to them by the authorities without any fraud or misrepresentation on the part of the petitioners and in support of such plea Sri Mukherjee has relied on the judgment of Hon''ble Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others,

4. Counsel for the State has opposed the prayer. He stated that reference of the departmental letters dated 25th February, 1983 and 13th August, 1984, Annexures 8 and 9 are wholly misconceived as petitioners have been allowed higher scale in the light of the resolution of the State Government pursuant to the recommendations of the Fitment Committee which has been accepted by the Government under Resolution No. 660 dated 08.02.1999 whereunder the Head Clerks serving in the Secretariat and attached offices have been allowed the higher scale of Rs. 5,000-8,000/- and Head Clerks serving in the regional offices have been allowed the lower scale of Rs. 4500-7,000/- and in view of the contents of the resolution of the Government dated 08.02.1999 the reliance placed by the Joint Director in support of the representation of the petitioners over the letter dated 25.02.1983, Annexure-8 and 13.08.1984, Annexure-9 is absolutely misconceived.

5. I see substance in the argument of the counsel for the State, in the light of the report of the Fitment Committee it was within the discretion of the Government to allow different scales to the Head Clerks serving in two different offices i.e. in the Secretariat/attached offices and field/regional office. The Head Clerks serving in the field/regional office under resolution of the Government dated 08.02.1999 have been placed under lower scale than the Head Clerks serving in the Secretariat and attached offices. In my opinion, therefore, petitioners serving in the Held/regional office cannot claim parity in the matter of grant of scale with Head Clerk serving in the Secretariat and attached offices. Reliance placed by Sri Mukherjee on the judgment of Sahib Ram (Supra) also appears to be misplaced in view of the subsequent Full Bench judgment of this Court in the case of Ram Binod Singh and Ors. v. The Bihar State Electricity Board and Ors. reported in 2007 (3) BBCJ 467, whereunder this Court having considered the case of Sahib Ram (Supra) and other judgments of the Hon''ble Supreme Court has held that grant of higher scale to the employees under some mistaken impression can always be corrected and the recoveries be made even if the employee had not played fraud /misrepresentation in getting the higher scale.

6. In the circumstances, I do not see any illegality in the impugned orders dated 21.02.2009 and 02.04.2009, Annexures 2 and 2/1 as the two orders have been issued in the light of the resolution of the State Government dated 8.2.1999 granting different scales to those serving in the Secretariat/attached offices and

the field/regional office. The petitioners serving in the regional office, are not entitled to higher scale of Rs. 5000-8,000/- and Rs. 5500-9,000/- and have been rightly granted the scale of Rs. 4500-7,000/- and Rs. 5000-8,000/- under the two impugned orders, Annexures- 2 and 2/1.

7. This writ application is, accordingly, dismissed.