
(2010) 06 PAT CK 0023
In the Patna High Court
Case No : CWJC No. 11658 of 2006

Satya Narayan Prasad Yadav	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Citation : (2011) 1 PLJR 398

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the parties.

2. Petitioner is a retired Accounts Clerk. The reason for his approaching the High Court is the reduction in his pay scale to that of the post of Junior Accounts Clerk by virtue of the office order dated 18.7.2006. 18.7.2006 order is contained in Annexure-1. Prior to that yet another order dated 21.4.2006 contained in Annexure-2 indicating similar thing was also issued to the Petitioner. The effect of the two decisions is that the Petitioner ends up at a lower pay scale of Junior Accounts Clerk as also lesser pension and other retiral dues due to said two orders.

3. learned Counsel for the Petitioner terms the action of the Respondents to be illegal, de hors the factual and legally settled position in this regard, if not in breach of two High Court decisions which have been rendered in identical situation. These are cases of Sarju Prasad Bhagat v. The State of Bihar and Ors. 1997 (1) All PLR 154 as well as a subsequent decision rendered in the case of Bhikhranjan Yadav Vs. The State of Bihar, .

4. The short fact which emerges from the pleadings in the writ application as well as reading of the two decisions is that the posts of Junior Accounts Clerk and Senior Accounts Clerk were merged sometime in the year 1980. They were provided with the same pay scale since 1.5.1980 due to such merger. Even the

nomenclature of the post was changed to Accounts Officer. When the recommendation of the 4th Pay Revision Committee was made yet another bifurcation of the post was recommended and some persons came to be reverted to the lower post of Junior Accounts Clerk. This was challenged in the case of Sarju Prasad Bhagat. Learned Single Judge taking into consideration the rival contentions categorically recorded that since there was no consequential order of de-merger of the posts till the year, 1990, the question of reversion of such persons who had already been given the pay scale and posts earlier cannot be allowed.

5. Another litigation on similar issue was raised subsequently when the cabinet took a decision accepting the recommendation of the 4th Pay Revision Committee for de-merger. The fall out of the said decision also affected one Vishnu Kant Mishra. His case was adjudicated by this Court and the decision is duly reported in 2006 PLJR, the detailed citation has already been taken note in the earlier part of the order.

6. Submission of learned Counsel for the Petitioner therefore is that in the light of the ratio laid down by the two decisions in the abovenoted cases, the Petitioner cannot now on the verge of retirement be relegated to the lower post or pay scale. There is substantial evidence that he was appointed on the post of Accounts Clerk on 28.7.1981 and therefore in his case also the fact and issue are identical and duly covered by two decisions of Sarju Prasad Bhagat (supra) and Vishnu Kant Mishra (supra).

7. The stand of the State however is that the Petitioner was appointed on the post of Junior Accounts Clerk after 1.4.1981. The service book bore such a position and taking the view from the observation of learned Single Judge in the case of Sarju Prasad Bhagat, the protection, if any, can be granted to only such persons who were appointed prior to 1.4.1981. That is the reason why the Respondent authority despite giving the benefit to the Petitioner had ordered for recovery of excess payment drawn by the Petitioner when his service records were looked into on the eve of superannuation.

8. Relying on the service book which has been annexed as Annexure-A to the counter affidavit learned Counsel representing the Petitioner cries foul. He submits that effort has been made to tamper with the service book by adding a word "Ka" before the words "Lekha Lipik" to show that the Petitioner was appointed on the post of Junior Accounts Clerk. His contention is that the pay scale given or indicated at page-9 of Annexure-A correspondence to Accounts Clerk and that part could not be interpolated or altered by mischief maker. This fact has been corroborated on perusal of endorsement made at running page 3 of the service book which is page 10 of the counter affidavit. There is a clear endorsement that the Petitioner had been appointed on the post of Lekha Lipik (Accounts Clerk). The so-called distinction even made by the State is not borne out from the records and the stand taken in the counter affidavit and the submission on the same is obviously a mischief or handy work of somebody in

the office who may not be favourable towards the Petitioner for many a reasons.

9. Having gone through the pleading, rival submissions as well as corresponding documents, including the service book, the Court has no hesitation in recording that the stand taken by the Respondents in their counter affidavit alleging that the Petitioner was appointed on the post of Junior Accounts Clerk after 1.4.1981 and that the appointment carried rider about the pay scale being provisional, subject to fixation in future is a deliberate effort made by Respondents to mislead this Court on the issue. The Petitioner's case is squarely covered by the two decisions rendered in the cases of Sarju Prasad Bhagat and Vishnu Kumar Mishra. In view of the same both Annexures-1 and 2 cannot be sustained. The Petitioner has made out a case for interference with the two impugned orders.

10. In view of above both Annexure-1 dated 18.7.2006 and Annexure-2 dated 21.4.2006 stands quashed. The consequence thereafter as well as the advantage accruing from the said interference by the Court will accrue to the Petitioner forthwith since the Petitioner has now superannuated which will include payment of difference of pay scale as well as fixation of his retiral dues in the light of the present order.

11. Before parting however the Court would like to direct the Executive Engineer, Waterways Division, Ghosi, Jehanabad, the present incumbent, to enquire into the matter as to how interpolation was made in the service book of the Petitioner and by whom. The outcome of such enquiry will be reported to this Court within a period of three months from the date of production or communication of a copy of this order in a sealed cover.

12. This writ application stands allowed with the above observation/direction.