
(2007) 07 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 11879 of 2004

Satyendra Kumar and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Citation : (2007) 4 PLJR 78

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Petitioners have filed this application for issuance of a direction to the respondents to make payment of their salary in the pay scale of Rs. 4,000-6,000/- from the date of their appointment. Petitioners have been appointed on the post of Jansewak/V.L.\N. in accordance with the provisions of the Bihar Village Level Worker and Village Extension Officers (Recruitment and Conditions of Service) Rules, 1987. As per the Rule, the District Level Selection Committee was authorised to select candidates for being appointed to the post of VEW/VLW in the pay scale of Rs. 580-770/-. Such selected candidates had to undergo for two years extensive training before being posted/appointed.

2. The Employment Exchange of Begusarai published advertisement No. 29 of 1987 for appointment of VLW/VEW inviting applications from eligible candidates. Petitioners also applied and were selected by the Selection Committee. Total number of selected candidates were 124. Petitioners, after their selection, were sent for training on 21.7.1995 and after completing two years training gave their joining in the office of the District Magistrate, Begusarai on 27.10. 1997. The posting of the petitioners were kept in abeyance almost for two years. The District Magistrate, Begusarai had some confusion regarding posting/appointment of selected candidates by the District Level Appointment Committee or by the Divisional Level Establishment Committee. The reason for such confusion was the letter No. 4586 dated 1.6.1999 issued by the Department of Personnel and Administrative Reforms whereby for appointment on Class III

posts Divisional Level Selection Committee was authorised. Since the posts of VLW/VEW were Class ill posts, but for appointment of VLW/VEW District Level Selection Committee was empowered, the District Magistrate on account of such contradiction had confusion regarding appointment/posting of the selected trained candidates. Selected trained VLW/VEW in response to the query of the District Magistrate, Begusarai, the Additional Secretary, Department of Personnel and Human Resources Department vide its letter No. 7943 dated 15.9.1999 informed that the selection of the petitioners was prior to the issuance of Circular No. 4580 dated 10.6.1999 as such it will have no application in the case of the petitioners. For such selected candidates their appointment/posting will be made according to old rules by the District Level Selection Committee under the Chairmanship of District Magistrate. Thereafter, the letter of posting/appointment of the petitioners were made by order contained in Memo No. 1022 dated 5.11.1999. The District Establishment Committee recommended for their appointment in the pay scale of Rs. 1200-1800/-.

3. Petitioners grievance is that on account of being appointed in the pay scale of Rs. 1200-1800/- they are entitled for the revised scale of Rs. 4000-6000/- instead of 3200-4900/-. Their selection process was complete in the year 1987 and they gave joining in the office of the District Magistrate in 1997. They kept on waiting for issuance of appointment letters for two years. Their appointment was under the old rules in the pay scale of Rs 1200-1800/- of which replacement and revised scale is 4000-6000/-. In this circumstances their appointment cannot be treated as a new recruitment and in view of Finance Department Resolution No. 660 dated 8.2.1999 they should not be held entitled for receiving salary in the pay scale of Rs. 3200-4900/-. This pay scale is for new recruits in future, but so far the process of appointment of the petitioners is concerned, it started long time back in the year 1995 and their letter of appointment/posting was issued in the month of November, 1999 i.e. subsequent to the issuance of Resolution No. 660 dated 8.2.1999 of the Finance Department. Clause 10 of this resolution has application in case of future recruitment and not in those cases where process of appointment started prior to issuance of this resolution. The revised scale fixed by the Bihar Gazette Extra, dated 13.2.1999 for VLW has no application in the case of the petitioners as they were appointed in the pay scale of Rs. 1200-1800/- and the revised scale for that is Rs. 4000-6000/-.

4. Counter affidavit of respondent No. 4 has controverted this stand of the petitioners. It has been stated that the petitioners were appointed by order dated 5.11.1999 as such paragraph 10 of the resolution of the Finance Department is fully applicable in the case of the petitioners. Petitioners being new recruits are entitled for their salary in the scale of Rs 3200-4900/-.

5. The question for consideration in the present case is whether lowering the scale of pay for Jansewak appointed after 30.2.1999 i.e. the date of issuance of the resolution of the Finance Department is in violation of the well accepted principles of equal pay for equal work. Secondly, whether the petitioner's

appointment should be treated as future appointment and they should be treated as new recruits entitled for scale of Rs. 3200-4900/-.

6. From the facts of the case it is clear that the process for petitioners appointment started in the year 1987 when the Employment Exchange of Begusarai published advertisement No. 29 of 1987 for appointment of VLW/VEW. At that time under the old rules the District Level Establishment Committee was authorised under the Chairmanship of the District Magistrate to select/appoint and post persons of Class III post. In pursuance of this rule petitioners were selected and sent for two years training and on completion of their training gave joining in the office of the District Magistrate. In case at that very time i.e. in the year 1987 the District Level Establishment Committee would have recommended for petitioners posting/appointment, the date of petitioners appointment could have been much earlier to the date of issuance of Resolution No. 660 dated 8.2.1999 of the Department of Personnel. By this resolution the Finance Department directed that appointment on Class III posts will be made by the Divisional Level Establishment Committee under the Chairmanship of Divisional Commissioner. By this very resolution for all future appointment on the post of VLW/ VEW pay scale of Rs. 3200-4900/- was fixed. In case of petitioners appointment the Department of Personnel and Administrative Reforms had made it clear that petitioners appointment will be guided by the old rules and their appointments will be made by the District Level Establishment Committee under the Chairmanship of the District Magistrate. Recommendation of the District Level Establishment Committee for appointment of the petitioners was made in the pay scale of Rs. 1200-1800/- the replacement and revised scale of which is Rs. 4000-6000/-.

7. In this circumstances, I do not find any reason for holding that the appointment of the petitioners can be treated as future recruitment in terms of the Resolution No. 660 dated 8.2.1999 or they are entitled for payment of salary in the scale of Rs. 3200-4900/- in view of Bihar Gazette Extra, dated 13.2.1999. Petitioners appointment was not made in the scale of Rs. 3200-4000/- rather their appointment was made in the pay scale of Rs. 1200-1800/- and they are entitled for revised replacement scale i.e. 4000-6000/-.

8. As an alternative argument counsel for the petitioners has also stated that the payment of salary to the petitioner in the pay scale of Rs. 3200-4900/- is violative of equal pay for equal work. The candidates who were also selected alongwith the petitioners in whose cases appointment letter was issued prior to the date of issuance of appointment letter in favour of the petitioners they are being paid their salary in the pay scale of Rs. 4000-6000/-. Deprivation of similar scale to the petitioners for no cogent or specific reason then the date of issuance of appointment letter in favour of the petitioner on a later date is clear violation of the principle decided by the Apex Court i.e. equal pay for equal work. I find that this is also a good reason for holding that the petitioners are entitled for similar scale as it has been allowed to other candidates who were selected with

the petitioner. For all these reasons, I find that the petitioners have been able to make out their case for issuance of direction to the respondent No. 5 the Secretary-cum-Commissioner, Finance Department, Secretariat, Patna as well as respondent Nos. 1, 2, 3 and 4 to start making payment to the petitioners salary in the scale of Rs.4000-6000/- and to make payment of arrears of salary of this scale from the date of their appointment. The payments should be made from the date of their appointment. The respondents must complete the exercise within two months from the date of receipt/production of a copy of this order.