

(2012) 10 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11192 of 2007

Satyendra Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) LabIC 1688

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Akhilesh Dutta Verma and Laxmi Narayan Das, for the Appellant;
P.N. Shahi, AAG. and Dharendra Kumar, AC to AAG., for the Respondent

Judgement

Navaniti Prasad Singh, J.—The petitioner has filed this writ petition for a direction to the State to pay him salary on the same scale as in case of his colleagues, namely, Subhash Chandra Jha and Ranjan Sinha. State has filed a counter-affidavit and there is a rejoinder thereto. When this case was earlier taken up, this Court was satisfied of prima facie a hostile discrimination and adjourned the matter to enable the State itself to rectify the position. Virtually, the stand of the State in the counter-affidavit was that the colleagues of the petitioner had come to this Court and got an order from this Court. Petitioner had not got any such order from this Court and, as such, he could be dealt differently. This Court pointed out that in terms of paragraph 4.C of the Bihar State Litigation Policy, 2011, this could not be done apart from the merit as well. Today, when the matter was again taken up, learned State Counsel prays, at the instance of the Director (Administration)-cum-Deputy Secretary of Education Department, further one month's time. When questioned as to for what purpose, learned State Counsel fairly stated that no purpose has been indicated.

2. In my view, the writ petition has been unnecessarily pending since the year, 2007. It is after much persuasion, after five years, an exhaustive counter-affidavit has been filed on 30.08.2012. After rejoinder was filed now, again and

again time is being sought for by the State. In my view, it is wholly unfair on the part of the State to take the matters so lightly and seek adjournment without any reason. I, therefore, have heard the parties at length and disposing of the matter on the merits of the case.

3. Petitioner and Ranjan Sinha, apart from others, were duly selected by a duly constituted Selection Committee for selection of Producer at the State Institute of Educational Technology (SIET). The said Institute is a registered Society under the Societies Registration Act and is fully financed by Ministry of Human Resources, Government of India but was managed by the State of Bihar. The Secretary of the Secondary, Primary and Adult Education Department of the State of Bihar is the ex-officio Chairman of the said Society. Most of the other members are Government officials either of the State Government or of the Central Government. It appears that the petitioner and his like were appointed on central pay-scales. There being revision in the central pay-scales, which revision was not being passed on to the petitioner and his like including Ranjan Sinha who was also a Producer and, as noted above, recruited on the same day, Ranjan Sinha and Subhash Chandra Jha approached this Court in CWJC No. 12268 of 2001. After hearing the matter, this Court allowed the writ petition by judgment and order dated 26.07.2005 (Annexure 1). This Court clearly noticed that those writ petitioners were entitled to replacement scale of Rs. 8,000 - 13,500/- in pursuance to the recommendations of the 5th Pay Revision Committee with regard to the Central Government, as approved by the Fitment Committee. The stand of the State was that SIET was an autonomous body and the Executive Committee of the Society had decided to grant revised scale of Rs. 6,500 - 10,500/- to the petitioner. This Court in those writ proceedings, disapproved the decision of the Governing Body and held that there was no justification to deprive those petitioners of the replacement pay-scale of Rs. 8,000 - 13,500/-. It appears that State, being aggrieved by the decision of the learned single Judge in the aforesaid writ petition, preferred an intra Court appeal being Letters Patent Appeal No. 125 of 2006 which, after hearing the parties, was dismissed by judgment and order dated 18.04.2006 (Annexure 2). The Division Bench affirmed the order of the learned single Judge. It appears that as is prevalent in the State, orders were not being implemented. This led to contempt applications being filed by petitioner's colleagues who had earlier approached the Court. In the meantime, State took a decision to absorb the employees of SIET in regular Government Departments. Petitioner was sent to Rashtrabhasha Parishad. Ranjan Sinha was appointed as Sales Officer in Bihar Rashtrabhasha Parishad. Petitioner was absorbed as Librarian, Bihar Rashtrabhasha Parishad. It appears as the judgment of this Court in favour of Ranjan Sinha and Subhash Chandra Jha was not being implemented, this led to filing of contempt applications. Ultimately, State issued notification on 10th April, 2007 (Annexure 6) in the Department of Human Resources Development whereby the pay-scale of Ranjan Sinha and Subhash Chandra Jha was fixed at Rs. 8,000 - 13,500/-. It may be noted that so far as petitioner is concerned, at

that time, he was still in SIET and had not been given the benefit of the judgment and he had already filed this writ petition for similar treatment. It is subsequently on or about 30th January, 2008 that the petitioner was absorbed and adjusted as Librarian in the Bihar Rashtrabhasha Parishad but on a lower pay-scale of Rs. 6,500 - 10,500/-. It is not disputed that both the petitioner and Ranjan Sinha or for that matter, Subhash Chandra Jha are of the same seniority and have been absorbed in the same level in Bihar Rashtrabhasha Parishad. The grievance of the petitioner is that he cannot be discriminated in any manner.

4. In the counter-affidavit, there is yet another pertinent fact. The Governing Body of SIET, in its meeting dated 15.03.2007 (Annexure 7 to the supplementary affidavit) unanimously resolved to give the same pay-scale to the petitioner as in the case of persons covered by the decision of this Court which would be Ranjan Sinha and Subhash Chandra Jha. It may also be noted that all the members of the Governing Body are Government Officials and the Chairman was none other than the Secretary-cum-Commissioner, Human Resources Development Department, Government of Bihar, Patna. Unfortunately, nothing moved the Government.

5. In the counter-affidavit, the stand taken by the State is that SIET is an autonomous body. It is bound by its own decisions. I can only observe that such a stand was earlier taken in the case of Ranjan Sinha and rejected by this Court. Moreover, even if assuming the stand is correct then, as noted above, we have Annexure 7, the unanimous decision of the Governing Body granting the pay-scale to the petitioner similar to that of Ranjan Sinha. If that be so then in view of the resolution of the Governing Body itself, petitioner was entitled to receive the pay-scale of Rs. 8,000 - 13,500/- right from the time it was revised. However, a further stand is taken in the counter-affidavit. It is stated that Ranjan Sinha had come to this Court and got an order from this Court which was not the case in the case of the petitioner. Before petitioner could obtain such an order from this Court, petitioner had been absorbed in State Government's service at the lower pay-scale.

6. In my view, State forgets that firstly, there is something known as Article 14 still existing in the Constitution. State cannot treat similar persons dissimilarly. That would be antithesis of Article 14. State cannot say that even though a person is similarly situated but as he has not got an order from the Court, he should not be treated similarly. Such a stand is destructive of the basic principle of law. Another thing State forgets is long before absorption of petitioner in the State Government's service, the writ petition had already been filed. Order in the case of Ranjan Sinha had already been passed by this Court. Thus, deliberately the State ignored the rights of the petitioner.

7. Here, I may also note another aspect of the matter. State of Bihar has formulated the Bihar State Litigation Policy, 2011 which has been notified in Bihar Gazette (Extra Ordinary) on 06.04.2011. The policy resolution is dated 31.03.2011. Clause 4.C deals with covered matters and is quoted hereunder:--

4.C. Covered Matters

4.C(1) A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim of the representationist/applicant employee/citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the Department itself without compelling the litigant to come to the Court. In this manner, the Government Departments would be acting as efficient litigants.

8. In my view, the State Litigation Policy is a policy evolved by the State and is binding on all officials of the State including the State itself. When this policy clearly envisages that all similar matters have to be similarly treated and litigations should not be introduced then I wonder on what basis the counter-affidavit was filed ignoring this policy. There is absolutely no distinction between the petitioner and the said Ranjan Sinha or Subhash Chandra Jha.

9. Thus, in view of Article 14, which still exists in the Constitution, I have no option left but to hold that the petitioner, Ranjan Sinha and Subhash Chandra Jha, who are identically situated, cannot be discriminated and the discrimination being made in payment of their salary is wholly hostile discrimination and grossly arbitrary.

10. Thus, I direct the Director (Administration)-cum-Joint Secretary, Education Department, Government of Bihar to immediately revise the pay-scale of the petitioner from the date the central pay-scale was revised which is said to be 01.04.1997 and ensure that the petitioner is paid the difference of salary within a period of three months from today.

11. If the same is not complied with within the said period then State would be obliged to make the payment along with simple interest at the rate of 6% per annum from the time it is due to the time it is paid which amount of interest shall be later realizable from the person who is found to be responsible for the delay. With these observations and directions, the writ petition stands disposed of.