(2006) 08 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (S) No. 742 of 2004

Satyendra Kumar Dubey — APPELLANT

Vs

The State of Jharkhand, The Commissioner and Secretary, Department of Finance, State of Jharkhand, The Deputy Commissioner and The Treasury Officer — RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:
Constitution of India, 1950 — Article 14, 309

Citation : (2007) 1 BLJR 270 : (2007) 1 JCR 92

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : A.K. Mishra and S.S. Choudhary, for the Appellant; P. Modi, G.P.-I, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner is seeking quashment of notification contained in Memo No. 5407 Fin. Dated 3.9.2002 (Annexure-5) issued by Deputy Secretary, State of Jharkhand whereby decision has been taken to grant pay scale of Rs. 5000-8000/- to the Accountants working in the Treasury Office, who are appointed before 1979. However, Accountants of the Treasury appointed on compassionate ground after 1979 will be placed in the pay scale of Rs. 4000-6000/- and will not be entitled t6 pay scale of Rs. 5000-8000/- w.e.f. 1.1.1996.

2. Petitioner was appointed on compassionate ground as Clerk on 24.4.1982 in the pay scale of Rs. 580-860. This pay scale was revised w.e.f. 1.1.1986 to Rs. 1200-1800 and thereafter to Rs. 1400-2600. It is further averred in the petition that the State has framed Rules under Article 309 of the Constitution of India for the employees working in the Treasury. These Rules were circulated vide notification No. 898 dated 31.12.1990. Post of Clerk under these Rules is to be filled up by direct recruitment as also by promotion. The post of Clerk was re-

designated as Accountant vide memo No. 8026 dated 18.11.2000. Earlier there was a Directorate of Treasuries and all the Treasuries were functioning under the Directorate, However, after 1993 the administrative control of the Treasuries was brought under the control of Deputy Commissioner. Finance Department vide memo No. 47 dated 15.1.1999 clarified that there shall be no change of the service conditions of the employees earlier working in the Directorate of Treasuries. It is further stated that earlier the Government had reduced the pay scale from Rs. 1400-2600/- and the action of the Government was challenged in C.W.J.C. No. 3063 of 1992. This writ petition was decided and Accountants of Directorate of Treasuries were allowed the pay scale of Rs. 1400-2600/- revised to Rs. 5000-8000/- and accordingly 324 persons who filed the writ petition were given this grade i.e. Rs. 5000-8000/- w.e.f. 1.1.1996. Petitioner is accordingly aggrieved of the impugned notification denying him the grade Rs. 5000-8000 on the ground that he being appointed on compassionate ground after 1979, is not entitled to the pay scale mean of accountants.

3. In the counter-affidavit filed by respondent nos. 2 & 3, it is stated that action of the State is justified. It is mentioned that after the recommendation of Central pay scale to the State Government employees w.e.f. 1.1.1996, the Government of Bihar constituted a Fitment Committee under the Chairmanship of Hon''ble Justice S. Ali (Retired). The Fitment Committee recommended revised pay scale of Rs. 4000-6000/-w.e.f. 1.1.1996 to the Accountants in the Treasury. The Treasury Accountants raised objection to the recommendation and the State Government constituted another Committee called Fitment Appellate Committee under the Chairmanship of a sitting Judge of Patna High Court, Hon''ble Mr. Justice Aftab Alam. Fitment Appellate Committee recommended the pay scale of Rs. 5000-8000/- for 265 odd people, who were Collectorate staff and who had opted for the Treasury cadre in 1979. Their cases were said to be on different footing from those on deputation/absorption from Board /Corporations / Other Organizations or future recruitments. It is accordingly stated that it is only on the basis of recommendation of the Fitment Appellate Committee this grade was given. It is stated that petitioner being appointed after 1979 is not entitled to pay scale of Rs. 5000-8000/-. It is further stated that pay scale has also been granted on the basis of judgment of the Patna High C6urt passed in C.W.J.C. No. 3063 of 1992.

4. Petitioner has claimed pay scale of Rs. 5000-8000/- on the ground of discrimination and on the principle of equal pay for equal work. It is not in dispute that the petitioner as also such of the Accountants in the Treasury who were appointed after 1979 all constitute one category and class irrespective of their source of appointment. They are discharging same kind of duties and post occupied by them being under same designation are inter-transferable. Except the different source of appointment there is no other segregation in the cadre of service. There must be some valid ground for different treatment to persons belongs to the same class/category. Differential treatment must have some nexus with the object sought to be achieved except that there are some

observations by the Fitment Appellate Committee. Respondents have not placed on record any material or valid reason to show why the petitioner or similarly situated persons i.e. the persons appointed on compassionate ground and those absorbed on being transferred from the Corporation and performing same duties should be treated differently and allowed a lower pay scale than those appointed before 1979. Constitution permits reasonable classification if it is established that there is a valid basis for creating such classification. However, Article 14 itself prohibits class discrimination. Equals can not be treated-equally and vice-versa. Petitioner was appointed in 1982 on compassionate ground. There is no allegation that he did not possess the requisite qualification or is not discharging same duties as the Accountants appointed before 1979. As a matter of fact, there is no such pleading on behalf of the respondents at all. Petitioner has relied upon a judgment of the Patna High Court passed in C.W.J.C. No. 3063 of 1992. Relevant observations are recorded in para-11 which reads:

11. It is well settled that the persons belonging in a class have to be treated equally in the matter of payment. The principle of equal pay for equal work is a settled principle and, as such, the petitioners should be paid at par with the employees who are performing same duties on regular basis. This Court in the case of Rudra Narain Khan v. The State of Bihar and Ors. CWJC 2149/91 has held that since both the sets of persons were discharging the same duty they were entitled to equal pay. It was also held that the fixation of pay on the basis of cut off date was not rational.

5. The Court also considered the recommendation of Fitment. Appellate Committee at para- 13 & 14 and allowed the pay scale of Rs. 5000-8000/- to the Accountants working in Treasuries.

6. In view of the above, I hold that the impugned notification classifying the petitioner on the basis of source of recruitment with those who were recruited from different sources and similarly those who are recruited/appointed. on being transferred from corporations but ultimately comprising the same category of service cannot be treated differently in the matter of pay scale merely because their source and method of recruitment is different. Once the employees merge into one single cadre irrespective of source of recruitment and perform the same or similar duties, they cannot be treated differently and with hostility nor any one or some of them can be denied equal pay scale. Such an action is arbitrary and violative of Article 14 besides the doctrine of equal pay for equal work. Impugned notification is hereby quashed to the extent it provides different pay scale to the Accountants of Treasuries who are appointed on compassionate ground after 1979. Respondents are also directed by a writ in the nature of mandamus to allow the pay scale of Rs. 5000-8000/- to the petitioner w.e.f. 14.1997 as has been allowed to the Accountants appointed prior to 1979. No order as to costs.