

(1967) 12 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 1128 of 1966

S.M. Naqavi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1968) 16 BLJR 266

Hon'ble Judges : R.L. Narasimham, C.J;B.N. Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—The petitioner entered service under the Government of Bihar in 1936 as Deputy Magistrate and Deputy Collector, and was appointed substantively in the I.A.S. in the quota of promotees from 1957. He retired from service on the 1st March, 1966. He alleged that from the 11th February, 1957, to the 30th October, 1960, he worked as Deputy Secretary to the Government of Bihar in the Revenue Department and also held the post of Director of Land Acquisition, Bihar, in addition to duties as Deputy Secretary. The post of Deputy Secretary carries special pay of Rs. 150/- per month, and, similarly, the post of Director of Land Acquisition carries special pay of Rs. 150 per month. The petitioner alleged that, inasmuch as he was holding both the posts during the said period, he was entitled to the special pay of both the posts amounting to Rs. 300 per month, though he conceded that due to a convention established in 1947, the maximum special pay for both the posts combined could not exceed Rs. 250/- per month. The Government of Bihar, however, granted him special pay of Rs. 150/- per month for the post of Deputy Secretary only, and declined his request to grant any special pay for the additional post of Director of Land Acquisition held by him. His repeated representations failed, and he has come to this Court for the issue of an appropriate writ under Articles. 226 and 227 of the Constitution.

2. The petitioner has relied solely on Rule 103 of the Bihar Service Code, extracts from which may be quoted below:

103. The pay of a Government servant appointed by the State Government to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time shall be regulated as follows:

(a) the highest pay to which he would be entitled if his appointment to one of the posts stood alone may be drawn on account of his tenure of that post;

(b) for each other post he may draw such reasonable pay ; in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the State Government may fix; and

(c) * * * *

Note :- 1. The expression "independent", used in this rule means posts which are independent of one another, i.e., posts the incumbent of one of which is not expected to do the duties of any other.

The note to the aforesaid rule is itself sufficient to show that, unless the petitioner holds two "independent" posts, he cannot claim the special pay attached to both those posts. The word "independent" has been explained in the aforesaid Note 1 as meaning that the incumbent of one of the posts is not expected to do the duties of any other. Thus, the petitioner has to satisfy this Court that the post of Director of Land Acquisition was independent of the post of Deputy Director in the Revenue Department, and that the Director of Land Acquisition was not expected to do the duties of any other posts. The petitioner has, however, signally failed to establish this fact, On the other hand, as Annexure B shows, when the post of Director of Land Acquisition was created on the 18th January, 1946, no officer was put in exclusive charge of that post; but Rai Bahadur S.P. Sinha, Deputy Magistrate and Deputy Collector, was asked to hold that post in addition to his duties of Superintendent, Agricultural statistics, Bihar. From the counter affidavit filed on behalf of the respondents, it further appears that, on subsequent occasions also, the post of Director of Land Acquisition was never held exclusively by any officer, but that it was always held by an officer who was already holding another post in the Secretariat. If that Officer was of the rank of Secretary or Additional Secretary, he was given the special pay of Rs. 250 payable for that post; but no special pay was granted for holding additional charge of the post of Director, Land Acquisition. Similarly, when a Deputy Secretary to the Government held additional charge of the post of Director, Land Acquisition, he was given the special pay of Rs. 150 for the post of Deputy Secretary, but no special pay for the other post. The counter affidavit shows that several Deputy Secretaries, such as Shri I.P. Macdonall, I.C.S., Shri S. Sahny and Shri V. Narayan, I.A.S., did not get any additional special pay.

3. The petitioner alleged that the other officers, Shri R.B. Lal, Shri R.C. Sinha and Shri S.N. Pandey, who held two posts, were granted special pay for both the

posts; but, from the counter affidavit, it appears that their case is not identical with that of the petitioner. Shri R.N. Pandey, Predecessor of Shri S.N. Pandey was granted an extra fee of Rs. 100 per month for doing part-time work as Regional Provident Fund Commissioner in addition to his duties as Labour Commissioner, and that extra fee was paid by the Government of India. Similarly, Shri S.N. Pandey was given that extra fee. If a Government servant employed by the State of Bihar does extra work for the Government of India and he is given an extra fee by the Government of India for such additional charge, that cannot be taken as a precedent for claiming special pay for holding two posts under the Government of Bihar unless it can be further shown that the two posts were really independent. Similarly, as regards Shri R.C Sinha, the counter affidavit shows that he was given extra remuneration for working as Chairman, Patna Improvement Trust, which is not a post under the State Government. Shri R.B. Lal's case also appears to be distinguishable. While working as Director of Agricultural Statistics in 1959 he was also appointed to hold charge of the post of Director of Central Bureau of Economics and Statistics, when a sudden vacancy arose due to one Dr. D. N. Lal taking up another assignment. For this dual charge, Shri R.B. Lal was given additional pay of Rs. 100 per month because the two posts were quite independent, and had been held independently and in whole-time charge by two officers before Shri R.B. Lal. Subsequently, however, when the posts of Director of Agricultural Statistics and the Central Bureau of Economics Statistics were finally merged in September, 1960, and Shri R.B. Lal was appointed to the combined post, he was given only a special pay of Rs. 150 per month for the combined post.

4. As the statements in the counter affidavit have not been challenged, I must hold that the petitioner has failed to prove that the two posts were really independent of each other or also that he was discriminated against when compared to other officers who were placed in identical circumstances. There is thus no ground for interference,

5. The application is dismissed with costs; hearing fee Rs. 100|-.

B.N. Jha, J.

6. I agree.