

(2012) 02 PAT CK 0005

In the Patna High Court

Case No : CWJC No"s. 3516 and 12373 of 2011

Sriman Narayan Singh and Another

APPELLANT

Vs

The State of Bihar and Others
 Abhay Kumar Vs The
State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 39(d)

Citation : (2012) 3 PLJR 365

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Sharda Nand Mishra, Dhananjay Gupta, Deepak Kumar in 3516, M/s Manoj Kr. Ambasta and Subodh Kumar in 12373, for the Appellant; Gyan Shankar in 3516 and Mr. Abhay Shankar Singh in 12373, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard Learned Counsel for the petitioners and the State in both the writ applications. The primary facts being similar in nature and the questions of law arising being common, the two writ applications have been taken up for consideration and disposal together.

2. The petitioners in both the writ applications were appointed as Assistants on compassionate grounds in the pay scale of Rs. 4,000-6,000/-. The date of their appointments are 22.1.2001, 9.2.2001 and 14.2.2001 respectively. They are aggrieved by the orders dated 2.3.2001 and 12.6.2001 reducing their pay scale to Rs. 3,050-4,590/-.

3. Learned Counsel for the petitioner in C.W.J.C. No. 12373 of 2011 submitted that the District Compassionate Appointment Committee recommended his candidature for appointment on 17.5.2000/18.12.2000. The right to be appointed thus accrued and fructified on 18.12.2000 before the de-merger of the post of Assistant into upper and lower divisions on 20.12.2000. The issuance of an appointment letter thereafter was a Ministerial Act. It is the respondents who

delayed matters leading to the issuance of a formal appointment letter on 22.1.2001. The petitioner therefore cannot be deprived of the pay scale originally given on the plea that he came to be appointed after the de-merger of the post. Reliance has been placed on Jaipal and Others Vs. State of Haryana and Others, and a Division Bench order reported in 2011(4) PLJR 92 (Krishna Kumar @ Krishana Kumar vs. State of Bihar) .

4. Relying on Jaipal (supra) it was urged that different sources of recruitment was not relevant after appointment to discriminate in pay scale, applying the principles of equal pay for equal work. Those who may have been considered as Assistants through an advertisement of 1998 but appointed after de-merger and the petitioners form one class. The Advertisement had mentioned the aforesaid scale but they were sought to be given the Lower scale of Rs. 3,050-4,590/- which the Court did not uphold. The petitioners were entitled to retain the pay scale of Rs. 4,000-6,000/-. The latter judgment was relied upon for the proposition that if the appointment was delayed and the demerger intervened, the petitioner cannot be deprived of the pay scale of Rs. 4,000-6,000/-.

5. In C.W.J.C. No. 3516 of 2011 it was submitted that the recommendation for appointment was made on 9.12.1999. It was wrongly denied for alleged lack of vacancy. The petitioners pursued matters in C.W.J.C. No. 10864 of 2000. On 18.12.2000 the Court directed that in cases of compassionate appointment, circulars provided for shifting the point of reservation to the next post if found necessary to accommodate a compassionate appointee. The ground urged by the respondents was found not sustainable. The delay in appointment after the date of de-merger is again attributable to the respondents. Others considered alongwith him for compassionate appointment got the benefit. Delay in their appointment attributable to the respondents cannot be sufficient justification to defend what is otherwise hostile discrimination. It is lastly submitted that the department circular dated 5.10.1991 at Clause-8 provides that compassionate appointments on a Grade-III posts are to be made in the scale of Rs. 1,200-1,800/-. The replacement of the scale of the same is Rs. 4,000-6,000/-.

6. Counsel for the State submitted that a recommendation does not amount to appointment. There is no vested right to claim appointment on basis of a recommendation. The crucial date shall be the date of the appointment letter. The judgments sought to be relied upon have no application on facts to the present case. Last but not the least there is considerable delay on part of the petitioners in challenging events of 2001, in a writ application filed in the year 2011.

7. A submission has been made on behalf of the petitioners from Annexure-5 to C.W.J.C. No. 12373/11 that the higher pay scale has been granted to persons absorbed till 11.3.2003 from the Primary Agriculture Credit Societies after de-merger. But there are no pleadings in support of the same. It is a matter of common practice that when parties answer the pleadings of another, they deal with the statements that may have been made in the plaint, counter affidavit or

the rejoinder. They do not scrutinize each Annexure and answer them one by one. It shall therefore have to be the subject of a separate consideration.

8. The petitioners were recommended for compassionate appointment prior to demerger on 20.12.2000. A person seeking compassionate appointment does not have a vested right to be either considered or appointed. Even after consideration and recommendation, they still cannot claim a vested right to appointment. A recommendation is merely a suggestion which may or may not be accepted but rejection can only be for cogent and germane reasons, it cannot be arbitrary or fanciful. Therefore, what is relevant is the date of appointment. In both the writ applications it is not the case of the petitioners that after recommendation, the appointment was denied mala fide with ulterior motive in an attempt to benefit another. The fact that the appointment may have been delayed by procedures shall not tantamount to a wrongful denial.

9. It is therefore apparent that the petitioners were appointed after the demerger on 20.12.2000. If on that date the posts were divided into Upper Division and Lower Division and the pay scales fixed respectively at Rs. 4,000-6,000/- and Rs. 3,050-4,590/-, a person appointed in the Lower Division was only entitled to the latter scale and not the former. If contrary to the decision a person appointed in the Lower Division came to be granted the pay scale of an Upper Division which is sought to be rectified subsequently, the Court finds no error in it. The petitioners having been issued appointment letter after the date of de-merger are entitled to the latter scale only.

10. In the case of Jaipal (supra), the question for parity in pay scale was with regard to persons appointed as Instructors through a regular process of selection, with the minimum qualifications being prescribed. Parity in pay scale came to be granted on the consideration that both came in through a selection process through a committee possessing the minimum qualifications prescribed. It did not deal with compassionate appointments.

11. A person appointed on compassionate grounds can hardly be said to have been appointed after a process of competitive selection. Those who may be appointed under an Advertisement and undergone a process of selection shall form a different class. Merely because the petitioners may have been recommended by the District Compassionate Appointment Committee it can hardly be said that they underwent a selection process. The only requirements were fulfilling the minimum criteria of being Matric pass (for Class-III) and the factual finding of being destitute in penury and the dire need for compassionate appointment for survival. The Court therefore finds it difficult to arrive at the finding that the petitioners were appointees at par with those appointed under a regular advertisement after competitive selection fulfilling the basic requirements of eligibility under the Advertisement which undoubtedly was higher than Matric pass.

12. If an Advertisement was published in 1998 mentioning a pay scale of Rs.

4,000-6,000/- and appointment came to be made below that scale, any orders of the Court even after the date of de-merger to grant pay scale in accordance with the Advertisement is an entirely different matter not applicable to the petitioners at all.

13. In the case of Krishna Kumar (supra) the distinguishing fact to be noticed is that the letter of appointment was provided on 23.8.2000 before de-merger, the claim was that joining was wrongly refused and came to be accepted on 29.12.2000 after de-merger. The case is again completely distinguishable on its own facts.

14. The reliance by the petitioners on Clause-8 of the Circular dated 5.10.1991 also does not appeal to the Court. It does not mandate grant of the scale of Rs. 1,200-1,800/- to a person appointed on compassionate ground in Grade-III. It only permits appointment in Grade-III up to the pay scale of Rs. 1,200-1,800/- meaning thereby that a person in Grade-III can be appointed below that pay scale but certainly not in excess of the same.

15. Matters of pay scale are primarily for the respondent to decide. There is no challenge to the policy for de-merger. The principle of equal pay for equal work has been held not to be abstract doctrine applicable without any co-relation to the facts of each situation. Educational qualifications, the source of recruitment, the nature of duties performed etc. are all relevant matters individually and/or collectively to decide a claim for parity in pay scale. It is not for the Court to lightly interfere with pay scale matters especially when the pay scale is based on policy decisions, which not have been challenged.

16. Difference in pay scale based on the method of recruitment was applied in State of Haryana and Others Vs. Jasmer Singh and Others, holding:--

10....They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous.....

17. The differentiation in pay scale based on source of recruitment was again applied in Government of West Bengal Vs. Tarun K. Roy and Others, :--

14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied.

18. In State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., it was held that the source of recruitment inter alia was valid justification for difference in pay scale:--

19. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even

though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay, for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.....

19. The present judicial view of restraint in interference with pay scale matters is noticed in S.C. Chandra and Others Vs. State of Jharkhand and Others, holding as follows:--

26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

27.....Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

20. Having said so, the Court must notice the contention that persons appointed as Lower Division on 11.3.2011 (after the date of de-merger) by way of absorption from the Primary Agriculture Credit Societies have been given the pay scale of Rs. 4,000-6,000/- based on certain orders of this Court and of the Supreme Court. As observed earlier, the pleadings are lacking and even the representation in this regard appears vague. There are no names and no details of any Court orders with the case number etc. The necessary foundational facts are lacking with regard to the nature of the original appointment, qualifications, terms of absorption, pay protection, nature of duties etc. It is not possible for the Court to hold that the petitioners are entitled to parity in treatment simply on account of the fact that their appointment as Lower Division was also made after de-merger. That debate is therefore left open for the petitioners to pursue before the respondents.

21. In conclusion, the Court holds that the petitioners being appointees on the post of Lower Division after the date of de-merger, there is no error in the decision granting them the pay scale of 3,050-4,590/- calling for interference. The writ applications are dismissed.