

(2006) 10 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14243 of 2004

Sunil Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 10 PAT CK 0029

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : R.N. Mukhopadhyay, for the Appellant; J.C. to. G.A. 5, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. R.N. Mukhopadhyay, learned Counsel appearing for the petitioners and learned J.C. to Govt. Advocate No. 5.

2. The petitioners seek a direction upon the respondent authorities to provide them the revised pay scale of Rs. 5500-9000/- with effect from 1.4.1997 as has been provided to similarly situated class-III employees, who were appointed pursuant to a Common Combined Competitive Examination of the Graduate Standard Examination, particularly taking into account that the juniors to these petitioners are being provided the said pay scale of Rs. 5500-9000/-. The petitioners represent various class-III employees working in different Departments of the State. The petitioners and others have been recruited on the basis of a Common Competitive Examination and thereafter appointments were made from 7.8.1988 onwards to the year 1990. Subsequently another 3rd Graduate Level Recruitment Examination was held from which further appointments were made in the year 1996 till the year 2000. It is stated that on the basis of the said examination as many as 16 Graduate Supervisor posts were filled up which are as follows:

Sl No.

Post

Department

1.

Junior Statistical Supervisor

Planning & Development

2.

Assistant Consolidation officer

Revenue & Land Reforms

3.

Circle Inspector

Revenue & Land Reforms

4.

Supply Inspector

Food & Civil Supplies

5.

Labour Inspector

Labour, Employment & Training.

6.

Gram Panchayat Supervisor

Rural Development

7.

Assistant Savings Officer

National Savings

8.

Cooperative Extension

Cooperation

9.

Revenue Circle Officer

Water Resources

10.

Block Welfare officer

Welfare

11.

Senior Audit Officer

Cooperation

12.

Senior Statistical Assistant

Cooperation

13.

Statistical Assistant

Labour/Agriculture

14.

Investigator

Labour

15.

Senior Auditor Grade-II

Finance

16.

Graduate Assistant

Urban Development

3. After the 5th Pay Revision Committee, 10 of the aforesaid posts were granted the pay scale of Rs. 1600-2780/- while six other posts were allowed only the pay scale of Rs. 1500-2750/- Some of the persons, who were allowed the lower pay scale of Rs. 1500-2750/-, challenged such discrimination in this Court by filing C.W.J.C.No. 8419 of 1992; Nagendra Sahani and Ors. v. The State of Bihar and Ors.; with a prayer that the respondent State should be directed to grant them the pay scale of Rs. 1600-2780/- as allowed to the other 10 Graduate Level Supervisor posts By order dated 22.9.1993. A Division Bench of this Court allowed the said writ application holding that the persons, who were working on the aforesaid 16 types of posts are entitled to the pay scale of Rs. 1600-2780/- with effect from 1.1.1986 and they will be entitled to the monetary benefits in that scale with effect from 1.3.1989 as per the policy decision of the State Government regarding the 5th Pay Revision Committee. It was further directed

that several other persons, whose cases are similarly situated but they had not moved the court, are not required to move the court but they shall also be granted the same pay scale with monetary benefits within the time limit prescribed by the court. While holding so, this Court took into account the fact that the appointments against the said 16 posts had been made on the basis of the same Combined Competitive Test by the Bihar Public Service Commission and further that the persons had been allotted various services on random basis and not on the basis of their merit position in the said Competitive Examination or after obtaining any choice or option from them. Subsequently, another recruitment process to the Graduate Level Supervisor posts took place following the 3rd Graduate Level Examination held by the B.P.S.C. Pursuant to the same, candidates were similarly appointed on random basis without any reference to their merit position in the select list.

4. The State Government constituted a Fitment Committee by Resolution dated 2.1.1998 and on the basis of the policy decision provided the same pay scales, service conditions and other facilities as are available to the Central Government Employees. The recommendations of the Fitment Committee were notified by Resolution dated 8.2.1999 of the State Government with effect from 1.1.1996 but the monetary benefits would be provided from 1.4.1997. In terms of the said decision dated 8.2.1999, 14 categories, out of the aforesaid 16 different class III, posts were given the pay scale of Rs. 5000-8000. The Cooperative Extension Officers were given the pay scale of Rs. 4500-7000/-, while the Labour Inspector/ Labour Welfare Officer (now redesignated as Labour Enforcement Officer) were granted the higher pay scale of Rs. 5500-9000/-. Since many of the persons who had not been given cadre of the Labour Inspector/ Labour Welfare Officer, but absorbed in the other services, although they had higher rank in the merit list than those who were appointed against the post of Labour Inspector/ Labour Enforcement Officer, such anomaly with regard to pay scale and other service conditions caused deep unrest, discontentment and resentment among the employees and ultimately, the State Government agreed to constitute a Fitment Appellate Committee under the Chairmanship of a serving Judge of this Court, to consider any anomaly, error or mistake in the recommendation made by the Fitment Committee or the State Government. The Fitment Appellate Committee was constituted by memo dated 15.1.2000.

5. The Fitment Appellate Committee in its report dealt in details with the anomaly arising out of the case of the petitioners, in paragraph Nos. 2.5 to 2.19 of its report. The Fitment Appellate Committee took note of the decision of this Court in the case of Nagendra Sahani (supra) and was firmly of the view that the Central equivalence alone is insufficient to justify the grant of different pay scales to different supervisory level posts and that it would not be good ground for throwing out the decision of Nagendra Sahani case. It found that all the material facts and circumstances remained the same as in Nagendra Sahani case. All the supervisory posts required the same minimum qualifications and recruitments to those posts, which continued to be made on the basis of common selection test

held by the Commission. It further found that appointments were made to different posts on the basis of common selection test of 1988 and subsequently the 3rd Graduate Level Recruitment Examination and candidates from different lists therein were appointed to different posts at random without being asked any option and as a result a candidate much higher in the select list today finds himself on a post with a lower pay scale while some other candidates far below him in the select list may be on the other posts with higher scales. On the said facts and circumstances, the Fitment Appellate Committee was of the view that the action of the State Government granting different scales for these posts would amount to the Government playing dice with the selected candidates. The Fitment Appellate Committee rightly came to the conclusion that the simple fact that appointments to all those posts were made from a common select list, regardless of their merit position and without giving them the right to exercise option would make it impermissible to fix different scales of pay for all these posts and any such course would be violative of Articles 14 and 16 of the Constitution, which cannot be defended on the spacious plea of Central equivalence. The Fitment Appellate Committee was accordingly of the view that all the persons hitherto appointed against different Graduate Level Supervisory posts cannot be discriminated against in the matter of pay scale and all of them must be allowed the same revised pay scale.

6. On a consideration of the aforesaid facts and circumstances and principles of law, the Fitment Appellate Committee was of the view that the post of the Labour Enforcement Officer should be brought down to the slightly lower pay scale of Rs. 5000-8000/- and any other post that has been granted a lower post should be upgraded at the same time and it is the only fair, just and equitable solution for the anomaly. The Fitment Appellate Committee was conscious of the fact and also took into view the observation of this Court in the case of Nagendra Sahani wherein the following observations had been made :

It is true that the State Government could have made out a case that its decision is not arbitrary or discriminatory. It could have also come out with a case making reasonable classification in relation to the aforesaid 16 types of posts, but no such attempt has been made on behalf of the State as would appear from the counter affidavit.

7. Considering the same and the general principle of service jurisprudence, the Fitment Appellate Committee rightly observed that it had not examined whether or not the posts in question are of similar nature and carry the same kind of responsibilities and further made it clear that still it would be open to the State Government to make a reappraisal of all the posts in question and if reappraisal report is justified to fix different pay scales for different posts. But such a revision of pay scales would only be prospective and would only apply to the fresh recruits to those posts. It was further observed that in case different pay scales are to be sanctioned for the different posts, the Government will have also to change the process of recruitment to be made on the basis of different

examinations or on merit -cum- choice basis if made on the basis of a common examination. The report of the Fitment Appellate Committee in this regard, however, has not been accepted by the State Government and the State Government insists upon giving higher pay scales to the Labour Inspector/ Labour Enforcement Officer on the basis of the principle of central equivalence adopted by it during the 6th Pay Revision.

8. Learned Counsel for the petitioner informs that in the meantime, the senior Auditor Grade-II has also been granted the higher pay scale of Rs. 5500-9000/-.

9. On a consideration of the aforesaid facts and circumstances and the decision of this Court rendered in the case of Nagendra Sahani (supra) this Court by order dated 14.9.2006 had directed the State Government to come up with a clear statement as to whether it intends to continue to grant a higher pay scale to any other category of officers like Labour Inspector/ Labour Welfare Officer and Senior Auditor Grade-II to the detriment of other employees like the petitioners, who were recruited during the same selection process and many of them had, in fact, much higher ranks in the merit list as compared to those who were fortuitously appointed on the said two posts.

10. A third supplementary counter affidavit has been filed by the State in which it is reiterated that the State Government had formulated a policy decision of providing Central equivalence in the matter of pay scales and service conditions to its employees during the 6th Pay Revision and accordingly, it has treated the post of Labour Enforcement Officer or Senior Auditor Grade-II differently from the petitioners on the said ground of Central equivalence. It is further reiterated that the State Government is unable to allow the petitioners or any other category of officers the pay scale like Labour Enforcement Officer and Senior Auditor Grade-II on the basis of previous inter se parity due to having been appointed in the same selection process.

11. It is further submitted in the said counter affidavit that the claim of parity on the basis of same selection process through which the petitioners and others were appointed is not tenable in view of the fact that even in civil services different pay scales are provided to different posts, though the selection is made through one and the same process.

12. Learned Counsel for the petitioners has submitted that their case stands mainly on the same footing as was presented on behalf of the petitioners before the Fitment Appellate Committee. To bring home the anomaly, in the grant of higher pay scale to lower level candidates in the merit list, learned Counsel has brought to my notice the chart showing the names of these petitioners vis-a-vis juniors, as contained in Annexure-8 to the writ petition. From the said Chart it appears that the merit position of the petitioners ranges from 258 to 1263 whereas the merit position of those appointed as Labour Inspector/Labour Enforcement Officer ranges from 1001 to 7038. Only petitioner No. 3 having a merit position at 1263 is lower than one of such Labour Enforcement Officer

having merit position of 1001 (A) whereas most of other persons appointed in the Labour Department have much lower rank and much lower marks. On the basis of such gross anomaly and injustice resulting to the petitioners, learned Counsel submits that there is no fault on their part but purely on the basis of the whims of the State respondents, the petitioners are made to suffer a lower pay scale. It is again emphasized by the learned Counsel for the petitioners that the petitioners were not given any choice or option and at random they were placed in the various Departments by the State Government without taking into consideration their position in the over all merit list and, thus, the grant of lower pay scale to them vis-a-vis the Labour Enforcement Officers, who were apparently very much lower in the merit list, is totally unjustified.

13. Learned Counsel also submitted that the decision of this Court in the case of Nagendra Sahani (supra) will govern the present matter also and the benefits granted to them by the court cannot be taken away by raising the bogey of central equivalence. If at all the Central Government wants to re-classify the post, the same cannot be done in the manner that affects the pay scales of those, who were appointed during the same competitive examination and placed in different services without option or choice in the matter.

14. Learned Counsel for the State argues on the basis of the counter affidavit that the stand of the State Government is justified since even in the case of Nagendra Sahani (supra) it was observed by this Court that the State Government would be entitled to justify the classification on the basis of reasonable grounds and the same has been done by providing Central equivalence to all the posts. If in the process of providing central equivalence certain persons have been given the higher pay scale the same is justified on a reasonable ground and cannot be considered arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India. It is further submitted by the learned Counsel for the State that during the same recruitment process even in the civil services appointments are made to different posts carrying on different pay scales.

15. On a consideration of the rival submissions, various facts and circumstances as already discussed, in detail, in the report of the Fitment Appellate Committee. I am of the view that the stand of the State cannot be considered justified so far as the cases of the petitioners and similarly situated persons are concerned. Such stand is not justifiable on the ground of central equivalence or on the basis of the fact that from the civil services examination recruitments are made to different categories of post. So far as civil services examination is concerned, although the examination is common but the allocation to the different posts and services are made on the basis of merit cum choice principle. Evidently, the same was not adopted while allocating the different services and posts to the petitioners and others, who have been granted the higher pay scale than the petitioners.

16. Moreover, the rights of the petitioners to receive the same pay scale as

granted to any other person recruited through the same recruitment process having once been decided by this Court in Nagendra Sahani's case in the course of application of the 5th Pay Revision Committee Report, the State cannot be permitted to reopen the said issue during subsequent pay revisions merely on the plea of granting central equivalence; the said policy may be applied prospectively in the case of recruitment made after the 6th Pay Revision, but cannot be used to whittle down the right of the petitioners and others to receive the same pay scale as all contemporary appointees in view of the directions of this Court in Nagendra Sahani's case (supra).

17. In the aforesaid circumstances and after considering the fact that the State Government is not prepared to reduce the pay scale of the Labour Inspector/Labour Enforcement Officer and Senior Auditor Grade-II to the same pay scale as the petitioners as was recommended by the Fitment Appellate Committee, this Court has no option but to direct the State respondents to grant the same higher pay scale of Rs. 5500-9000/- to all the similarly situated persons as the Labour Inspector/Labour Enforcement Officer and the Senior Auditor Grade-II, who were recruited during the course of common combined competitive examination. As directed in Nagendra Sahani's case, the benefit of this order shall accrue to all persons similarly situated as the petitioners.

18. In the result, this writ application is allowed with the aforesaid directions.