

(2001) 07 PAT CK 0129
In the Patna High Court
Case No : C.W.J.C. No. 3964 of 2001

Syed Abdul Qadir and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0129

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Dr. S.N. Jha, Mr. Vinod Kumar Kanth and others respective learned Counsel of the respective cases for the Petitioners and Mr. Ashok Kumar Choudhary, learned Government Pleader No. 8 for the State.

2. These writ applications arise out of common order, as contained in memo No. 7946 dated 16.11.2000, passed by the Secretary, Department of Finance, Government of Bihar, Patna, and common questions of law and facts are involved therein, therefore, these writ applications have been heard together and are being disposed by this common order.

3. Petitioners of these writ applications are assistant teachers of different High Schools and they are aggrieved by the order, as contained in memo No. 7946 dated 16.11.2000, passed by the Secretary, Finance Department, Government of Bihar, whereby and where under directions have been issued to the Headmasters of the schools in question to recover the excess amount paid to the respective teachers from their salary and necessary endorsements were directed to be made in the service book of the teachers concerned, as pay fixation of the Petitioners and likewise teachers of Middle Schools and Elementary Schools under Rule 22(c) of the Fundamental Rules, pursuant to Finance Department Resolution No. 6022 dated 18th December, 1989, was illegal.

4. Two-fold prayers have been made at the bar. Firstly that the pay fixation already made pursuant to Finance Department Resolution No. 6022 dated 18.12.1989, whereby and where under additional increment was given to the

respective teachers and their pay scale was refined, cannot be withdrawn, as a valuable right accrued to them with effect from 1.1.1986, and, secondly, the authorities have no jurisdiction to make the recovery with retrospective effect and they have also no authority to reduce the pay scales of the teachers, which was made available to them by Finance Department Resolution No. 6022 dated 18.12.1989.

5. It appears that vide Resolution No. 6022 dated 18.12.1989, Department of Finance, Government of Bihar, accorded sanction for payment of Central Pay Scales to the teachers of the Nationalised schools with effect from 1.1.1986 and the same was to be governed by Clause 13 of the Resolution dated 18.12.1989, whereby and whereunder pay was to be fixed on promotion to the teachers of the Central Schools. It further appears from resolution No. 7946 dated 16.11.2000 that pursuant to the resolution of the Central Government (Personnel and Training Department) dated 30.8.1989 and 28.11.1990, fixation of pay on promotion was to be governed under Fundamental Rule 22(1)(a)(i) and 22(a)(ii) instead of Fundamental Rule 22(c). It further appears that Rule 22(1)(a)(ii) of the Fundamental Rules applies in the cases of the Petitioners, as on promotion they will not discharge responsibilities of greater importance nor there will be any change in their accountability. It also appears that Fundamental Rule is the Rule of the Central Government and changes, if any, in the Rules can be made by the Central Government. The Central Government has replaced Fundamental Rule 22(c) by Fundamental Rules 22(1)(a)(i) and 22(1)(a)(ii). Thus, it appears that Fundamental Rule 22(c) was not in existence at the time of issuance of Resolution No. 6022 dated 18.12.1989, and, therefore, fixation of pay on promotion under Rule 22(c) of the Fundamental Rules was not available to the teachers of the Nationalised schools as per the resolution aforesaid.

6. It has been urged by learned Counsel appearing on behalf of the Petitioners that the State Government was quite in oblivion of the changes made in the Fundamental Rules by the Central Government replacing Fundamental Rule 22(c) by Fundamental Rules 22(1)(a)(i) and 22(1)(a)(ii) and pay of the teachers was fixed on promotion with effect from 1.1.1986 and till issuance of the resolution dated 16.11.2000, and therefore, they were not at fault in getting the fixed scale and a valuable right had accrued to them, which cannot be withdrawn in the manner it is being sought for. It is further submitted that in any view of the matter, the benefits extended to the assistant teachers of the Nationalised schools cannot be taken away with retrospective effect.

7. On the contrary, it is submitted by learned Counsel appearing on behalf of the State, that scale of pay and condition of service, as existing under the Central Government, were made effective in case of the Nationalised school with effect from 1.1.1986 as per resolution No. 6022 dated 18.12.1989 aforesaid. The fixation of pay of the teachers of the Nationalised schools is governed by Clause 13(vii) of the resolution aforesaid and since Fundamental Rule 22(c) has been replaced by the Central Government by Fundamental Rules 22(1)(a)(i) and 22(1)

(a)(ii), the payment made to the teachers of the State Government was a bonafide mistake, and, therefore, the Petitioners and like teachers do not have any legal right to retain the same and the same is recoverable.

8. From the submission made at the bar and from the materials placed on the record, it appears to me that fixation pay on promotion to the teachers of the Nationalised Schools of the State Government was made effective with effect from 1.1.1986 and the same was to be governed by Clause 13(vii) of the aforesaid resolution dated 18.12.1989, which reads as under:

13(vii) The existing procedure of fixation of pay on promotion will cease to be applicable to teachers in the Revised pay-scales with effect from 1st January, 1986. In their case the pay fixation on promotion shall be governed by Rule 22(c) of Fundamental Rules and instructions issued by the Central Government for their teachers from time to time. The fixation of pay on promotion referred to in Sub-paragraph (ii), (iii), (iv) and (v) shall also be governed by those provisions.

9. From Sub-clause (vii) of Clause 13 of the Resolution, it would be evident that the existing procedure of fixation of pay on promotion ceased to be applicable to teachers in the Revised pay scales with effect from 1.1.1986 and their case for fixation of pay on promotion was to be governed by Rule 22(c) of the Fundamental Rules and instructions issued by the Central Government to the teachers from time to time.

10. In the foregoing paragraphs, it has been noticed that Rule 22(c) of the Fundamental Rules has been replaced by Rules 22(1)(a)(i) and 22(1)(a)(ii) of the Fundamental Rules, and, therefore, the pay fixation on promotion of the Petitioners and likewise assistant teachers was to be governed by the amended provisions of the Fundamental Rules as aforesaid, and since the State Government has also adopted the Central pattern of pay, it has made a provision in Clause 13(vii) of the resolution, referred to above, that fixation of pay shall be done as per the instructions of the Central Government, issued from time to time in respect of their schools. The changes made by the Central Government in its Rules with respect to the mode of fixation of pay of the teachers, therefore, were applicable to the assistant teachers of the State Government in the like manner.

11. From the facts enumerated above, thus, it is field that by operation of Rules 22(1)(a)(i) and 22(1)(a)(ii) of the Fundamental Rules, which replaced Rule 22(c) of the Fundamental Rules, the assistant teachers of the Nationalised school? under the State of Bihar were not entitle to fixation of pay on promotion with affect from 1.1.1986.

12. So far recovery part is concerned, it appears that the Petitioners and other assistant teachers of the Nationalised schools got the benefit of fixation of pay on promotion as per the resolution dated 18.12.1989 of the State Government with effect from 1.1.1986 and it appears to be a bonafide mistake of the State Government, as it was not aware of the changes made by the Central

Government in the provisions of the Fundamental Rule 22(c), which was replaced by Rules 22(1)(a)(i) and 22(1)(a)(ii) of the Fundamental Rules. At the same time, it appears that incessant payments on account of fixation of pay was made to the Petitioners and likewise teachers without representation or misrepresentation of facts, and, therefore, the order impugned, as contained in memo No. 7946 dated 16.11.2000 cannot be given effect to with retrospective effect, as the purported action of the State to recover the excess amount paid to them cannot be said to be in consonance with equity, good conscience and justice. In this connection, reference may be made to the case of Sahib Ram Vs. State of Haryana and Others, and in the case of Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.

13. It is, therefore, held that the resolution dated 16.11.2000 aforesaid will apply prospectively, so far it relates to the Petitioners and likewise assistant teachers of the Nationalised schools of the State of Bihar.

14. In the result, these applications are allowed in part and that part of the order, as contained in memo No. 7946 dated 16.11.2000, whereby and whereunder direction has been issued to recover the excess amount paid to the Petitioners and likewise assistant teachers of the Nationalised schools of the State of Bihar with retrospective effect is, hereby, quashed. Consequential orders issued pursuant to memo No. 7946 dated 16.11.2000 also accordingly stand quashed. No order as to costs.

15. This order shall govern all the pending cases before this Court on this point.