

(2005) 07 PAT CK 0027
In the Patna High Court
Case No : LPA No. 228 of 2005

The Bihar State Planning and Development Service
Association and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Citation : (2005) 4 PLJR 39

Hon'ble Judges : J.N. Bhatt, C.J;Nagendra Rai, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh, Prabhat Ranjan Singh, Jyoti Ranjan Jha in 228 and Mr. Rajendra Prasad Singh in 229, for the Appellant; Amar Nath Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the appeals under Clause 10 of the Letters Patent have been filed against the order dated 8.2.2005 passed by the learned Single Judge in CWJC No. 11801 of 2001 and CWJC No. 11920 of 1999 [reported in Dr. Arvind Kumar and Another Vs. The State of Bihar and Others,] dismissing the said writ applications filed by the writ petitioners-appellants challenging the order dated 30.8.1999 passed by the Commis-sioner-cum-Secretary, Finance Department, Govt. of Bihar, Patna (Annexure-9 to both the writ applications) whereby prayer of the District Planning Officers for grant of replacement pay scale of Rs. 3000-4500 has been rejected. Admitted fact is that the appellants of LPA No. 229 of 2005 and appellants No. 2 and 3 of LPA No. 228 of 2005 and other District Planning Officers were appointed in the year 1983 in the pay scale of Rs. 1350-2000/-. Later on, the said basic pay-scale was revised as Rs. 2400-4150/- and the 5th Pay Revision Committee did not change their pay scale whereas the members of Bihar Administrative Services were given the replacement pay scale of Rs. 3000-4500/-. The Association of the District Planning Officers who is appellants No. 1 in LPA No. 228 of 2005 made a representation to the State Government.

According to the case of the appellants, though they filed a representation, the matter was neither placed before the Pay Anomaly Removal Committee nor before the Fitment Appellate Committee. Thereafter, the District Planning Officers including some of the appellants filed a writ application being CWJC No. 167 of 1994(R)-before the Ranchi Bench of the Patna High Court for fixation of their pay scale in the revised pay scale of Rs. 3000-4500/- and this court by order dated 5th November, 1998 held that as the District Planning Officers were appointed in the pay scale of Rs. 1350-2000/- which was certainly higher than the basic grade scale of other services, their pay is to be revised in a way that it is not down graded and it should be at par with equivalent pay groups/services and the direction was issued to file a representation before the Fitment-cum-Pay Revision Committee through the Secretary, Department of Planning and Development, Government of Bihar, Patna and the Committee will consider and dispose of the representation after giving an opportunity of hearing within the time specified therein. The said judgment has been Annexed as Annexure-5 to both the writ applications. Subsequently, the matter was considered by the Government and the impugned order (Annexure-9 to both the writ applications) has been passed as stated above.

2. Learned Single Judge however dismissed both the writ applications filed by the appellants finding that they are not entitled to the pay scale of the Bihar Administrative Officers and the grounds given by the State Government in rejecting their representation are sound and valid.

3. The assertion of the State Government on the other hand is that fixation of pay scale is a policy decision and the power of the court to judicial review to such policy decision is limited and in this case the cases of the appellants were considered by the Pay Anomaly Removal Committee and thereafter by the Fitment Appellate Committee and they found that they fall in different services and their services cannot be compared with the services of the Bihar Administrative Service and other services and again their matter has been considered by the State Government in pursuance of the direction issued by this Court and the same has been rejected. Thus, no case for interference with the impugned order is made out in the case.

4. Learned counsel appearing for the appellants submitted that the assertion of the State that their cases were considered by the Pay Anomaly Removal Committee and the Fitment Appellate Committee is not correct as their matter was never placed and having found the same, this court in the aforesaid writ application being CWJC No. 167 of 1994(R) directed for consideration of the matter and the authorities have not taken into consideration the relevant factors and has discriminated in the matter of grant of revised pay scale resulting into loss of the scales to the appellants.

5. Learned counsel appearing for the State on the other hand reiterated the point which has been taken from the very beginning, that the matter had been considered by the expert body and again the matter was considered by the

authority in the light of the direction issued by this Court and after having taken into consideration the relevant factors, the claim of the appellants has been rejected.

6. The claim of the appellants that the matter was not considered by the expert body does not appear to be correct. Annexure-A to the counter affidavit in LPA No. 229 of 2005 is the extract of the report of the Pay Anomaly Removal Committee and Annexure-B to the counter affidavit is the extract of the report of the Fitment Appellate Committee. From perusal of the same it appears that the case of the District Planning Officers has been considered in depth and thereafter the same has been negated. It is apt to quote the conclusion of the Fitment Appellate Committee which was headed by a Sitting Hon"ble Judge of this Court in this regard.

"The argument of the association that their pay scales should be the same as that of other services is not a valid one. It is clear that Fitment Committee has gone by equivalence with Central Government posts and recommended accordingly. Moreover, the revised scale for other posts also are not below the replacement scales. There is no reason why the scale applicable to State Services should be applied in the case of this cadre, as well as they are clearly not comparable. In any case, they are not a State Service and the Fitment Committee has in cases of several other cadres like this, in accordance with its terms of reference, determined Central equivalence and recommended revised scales. There has been no discrepancy in this procedure. No change is, therefore, recommended."

7. In any view of the matter, even if it is assumed for the sake of argument that their cases were not placed, even then that will not make any difference as the matter was again considered by the State Government in pursuance of a direction issued by this court and their claim has been negated.

8. The fixation of pay scale is the function of the Executive and unless the policy decision taken by the Executive is actuated by malafide, arbitrariness, irrationality, perversity, unfairness or unreasonableness, the court will not interfere. The fixation of pay depends upon several factors which a expert body, like the Pay Revision Committee and others, consider. The court cannot be a substitute for the same. Learned counsel appearing for the appellants have not been able to show that any of these circumstances necessitating interference by this court is present in this case, that is to say, that the order is malafide, arbitrary etc. Only because a different view could be taken by this court, cannot be a ground to interfere with the decision taken by the Government on the advice of the expert body. The learned Single Judge has gone into the matter in detail and we fully agree with the view taken by the learned Single Judge. The appellants have failed to make out a case for interference in the appellate jurisdiction. In the result, both the appeals are dismissed without costs.