
(2011) 01 PAT CK 0145
In the Patna High Court
Case No : CWJC No. 10265 of 2003

Upendra Narayan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Citation : (2011) 59 BLJR 1852 : (2011) 2 PLJR 281

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Pramod Kr. Sinha, Rakesh Kr. Sinha, Madhukar Narayan Sinha and Arvind Kr. Sharma, for the Appellant; S.C.-3, for the Respondent

Judgement

Navaniti Pd. Singh, J.—The Petitioners, except Petitioner No 7, are in service under the State Government. Petitioner No. 7 was also initially in State Government service but, on reorganization, has been allotted Jharkhand cadre. By an interlocutory application, he has brought on record that the reliefs, sought for by him in the writ application, have now been granted to him by the State of Jharkhand and, as such, his name be deleted from the writ petition. The interlocutory application is allowed. Name of Petitioner No. 7 is deleted from array of Petitioners.

2. Petitioners are Graduate Enumerators in the Industries Department of Government of Bihar. Their grievance is with regard to non-implementation of the recommendations of the Fitment Appellate Committee Report of which Justice Aftab Alam (as His Lordship then was) was the Chairman in regard to the Graduate Enumerators. State, in its counter affidavit, has taken a stand that the recommendations of the Fitment Appellate Committee are only recommendatory in nature and not binding and, as such, it is open to the State not to implement them as recommended. State has chosen to act upon subsequent decision of the Economic Advisory Committee as approved by the Cabinet. By supplementary affidavit, Petitioners have brought on record that the dispute now virtually stands resolved by virtue of the State Government decision dated 17.10.2008 by which

pay scale, as sought for by the writ Petitioners, have been granted virtually acceding to the Petitioners' grievance but the same has been made applicable and implementable with effect from 17.10.2008 instead of 1.4.1997. In my view, the plea of the Petitioners is correct and has to be accepted. The pay scale which have been granted to the Petitioners by the Government decision dated 17.10.2008 (Annexure-7 to the supplementary affidavit) being Rs. 5,000/- to Rs. 8,000/- has to be granted with effect from 1.4.1997, the reasons are as follows.

3. It appears that the State Government constituted the Fitment Committee by its resolution dated 2.1.1998. The Fitment Committee was set up for giving effect to the agreement which the State Government had entered into with Employees' Association/Federation and wherein it had expressed its agreement in principle to provide central pay scale and service conditions to employees of the State Government. The Fitment Committee having submitted its final report in September 1998, the State Government implemented the recommendations vide notification dated 8.2.1999. It appears before implementing the recommendations of the Fitment Committee, various distortions were pointed out but the Government did not redress those. There was mass scale agitation and, accordingly, Government agreed to constitute a Committee under the Chairmanship of a serving Judge of the High Court to consider any error or mistakes in the recommendation made by the Fitment Committee or the State Government's decision on those recommendations as may be pointed out by the employees. The State Government further agreed that the recommendation of this Committee would be binding and its recommendations would be implemented by the State Government with effect from 1.1.1996 but material benefit would be allowed only with effect from 1.4.1997. In accordance with these decisions and agreements, this one Member Fitment Appellate Committee headed by Justice Aftab Alam (as His Lordship then was) was notified by the State Government. Petitioners' case would be that this Appellate Committee clearly noticed the dispute with regard to Supervisor Level Post and held that all Supervisor Level Post should be in the pay scale of Rs. 5,000/- to Rs. 8,000/-. This is to be found in paragraph 2.18 of the recommendations of the Fitment Appellate Committee. The Fitment Appellate Committee then considered the case specifically of the Graduate Enumerators. This is to be found in paragraphs 34.6 to 34.8 of the report of the Fitment Appellate Committee. The Fitment Appellate Committee clearly opined that the pay scale of Graduate Enumerators which, as per recommendation of the Fitment Committee, was Rs. 3,200/- to Rs. 4,900/- should be made Rs. 5,000/- to Rs. 8,000/- and their cadre should be merged with the cadre of Statistical Assistant. Thus, it would be seen that the Fitment Appellate Committee clearly recommended that the pay scale of the Graduate Enumerators had to be increased to Rs. 5,000/- to Rs. 8,000/- and the cadres merged. Unfortunately, upon the recommendation being submitted, while Government acted in accordance with the recommendations in some other aspects, so far as Graduate Enumerators are concerned, the Government slept. That forced the Petitioners to move this Court in the present writ petition. Once

that was done, the Government referred the matter to the Economic Advisory Committee. The Economic Advisory Committee then advised the Government that rather than merging the cadres, the cadre of Graduate Enumerator be declared a dying cadre and as there was to be no merger, the Graduate Enumerators would get the pay scale as recommended by the Fitment Committee ignoring the recommendations of the Fitment Appellate Committee. This was accepted by the Cabinet. Before any decision could be given by this Court, the Government had a relook. Now by Annexure-7 to the supplementary affidavit, they have agreed to give the Graduate Enumerators the pay scale of Rs. 5,000/- to Rs. 8,000/- as recommended by the Fitment Appellate Committee but it has been made effective from 17.10.2008 and not 1.4.1997. The question is, is it open to the Government to differ the recommendation of the Fitment Appellate Committee by over ten years. In my view, the answer is No. From the facts noted above, it would be seen that the Government itself had chosen and had entered into agreement with the Employees' Association/Federation to refer the dispute to the Fitment Appellate Committee. It had undertaken to abide by the decision of the Fitment Appellate Committee making it binding on the Government. It had further agreed that the recommendations would be effective from 1.1.1996 with material benefit to be allowed with effect from 1.4.1997. These facts are to be found in the very opening preface of the report of the Fitment Appellate Committee of whose Chairman was Justice Aftab Alam (as His Lordship then was). Once the Government, by its own conduct, agreed to bind itself upon the decision the employees withdrew the strike and peace was restored, it cannot now backtrack as it is bound by principles of estoppels by conduct. This view of mine is consistent with the view taken by Division Bench of this Court on this aspect of the matter specifically in the case of State of Bihar and Ors. v. Sanjay Kumar and Ors. LPA No. 859 of 2007 and analogous cases disposed of on 20th April, 2010.

4. Thus, this Court finds that the Graduate Enumerators are entitled to the pay scale of Rs. 5,000/- to Rs. 8,000/- which pay scale in fact has been granted by Annexure-7 but Annexure-7, inasmuch as it restricts its applicability with effect from 17.10.2008, cannot be sustained. It is to be materially effective from 1.4.1997.

5. I would also like to observe that once the Fitment Appellate Committee has given its report, it was not open to the Government to delay its implementation or refer the matter to Economic Advisory Committee to sit in judgment in appeal over the Fitment Appellate Committee. So far as Government is concerned, it had bound itself to the recommendations as made. Thus, reference to the Economic Advisory Committee or such other Committee to relook into the matter of the recommendations as made by the Fitment Appellate Committee was wholly inappropriate.

6. In the result, the writ application is allowed. Annexure-7 being the communication of the Deputy Secretary, Department of Industries, Government

of Bihar dated 17.10.2008 to the Accountant General is modified to the extent that the pay scale of Rs. 5,000/- to Rs. 8,000/-, as granted to the Graduate Enumerators, would be materially effective from 1.4.1997 and not from the date of issuance of the Government order in that regard. All parties to act accordingly.

7. It is now expected that the arrears would, accordingly, be payable on this revision within three months of production of a copy of this order before the Secretary, Department of Industries failing which Petitioners would be entitled to interest at the rate of 6% per annum from the date amounts were due to the date payment is made.