
(2008) 02 PAT CK 0012
In the Patna High Court
Case No : C. Rev. No. 247 of 2005

Vidya Vinod Pathak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Citation : (2008) 2 PLJR 641

Hon'ble Judges : Rajesh Balia, C.J;Barin Ghosh, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and Manish Kumar, for the Appellant; Ray Shivaji Nath and Prashant Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

1. Having heard learned counsel for the parties we do not find any merit in this review petition. The petitioner seeks to get the review of the order dated 21.10.2005 by which L.P.A. No. 1133 of 2005 has been dismissed affirming the judgment of the learned Single Judge dated 9.5.2005 passed in C.W.J.C. No. 1994 of 2000.

2. The application has arisen in the following circumstances:-

Petitioner, when he was appointed as a teacher in District Nalanda on 25.12.1973, his pay was fixed at Rs. 220-315. He had passed graduation with (Honours) but was not a trained teacher by that time. The appointment has been made against the vacancy of a trained graduate teacher. By order dated 17.8.1988 his pay scale was sought to be refixed with effect from 1.4.1974 at Rs. 190/- and correspondingly with effect from 1.10.1975 at Rs. 296/- instead of Rs. 387/- and with effect from 24th March, 1982 at Rs. 850/- instead of Rs. 940/-. This order was challenged in C.W.J.C. No. 7808 of 1988 which came to be allowed vide order dated 10.1.1997 holding that the petitioner has been appointed with the approval of the Sub-Divisional Officer in the pay scale at Rs. 220/- whose qualification was B.Sc.(Hons.), and it cannot be downgraded.

3. Prior to the filing of this writ petition bearing C.W.J.C. No. 7808 of 1988 the petitioner had filed C.W.J.C. No. 2281 of 1976 against the order of recovery of the salary when his pay was stopped on the alleged ground that his pay had been wrongly fixed at Rs. 220/- in the pay scale commencing from 2001 which petition was allowed by order dated 20.2.1980 holding that his appointment was valid and his pay could not be reduced.

4. The writ petition bearing C.W.J.C. No. 7808 of 1988 was allowed with a direction to fix the petitioner's pay in the pay scale of Rs. 220-315/-.

5. Significantly by that time the petitioner having become trained on 24th March, 1982 was allowed trained graduate pay scale at Rs. 815/- and revised pay scale at Rs. 940/-. In pursuance of the aforesaid direction the pay fixation order with effect from 1.4.1974 was issued on 28th July, 1997 restoring the earlier fixation with effect from 1.4.1974 in the pay scale of Rs. 220-315/-, with effect from 1.10.1975 in pay scale of Rs. 387-600/- and with effect from 1.4.1981 in the pay scale of Rs. 850-1360/- and after he became the trained graduate he has fixed in the pay scale of Rs. 850-1360/-, in which pay scale he has already been fixed prior to filing of the writ petition.

6. The petitioner challenged the fixation as a trained graduate teacher in the pay scale of Rs. 850-1360/-, firstly by approaching this Court by filing contempt petition. The contempt petition was rejected on the ground that this order gives fresh cause of action and if he has any grievance relating to wrong fixation he can independently challenge the same but by not initiating a contempt.

7. The fresh writ petition filed by the petitioner in pursuance thereof was rejected by the learned Single Judge by the order referred to above. The court found no separated pay scale prescribed by the State which can be granted to the petitioner because he has passed graduation with Honours. The said order has been affirmed by the Division Bench in the Letters Patent Appeal.

8. The petitioner contends drawing our attention to the existing distinction between trained graduate on the one hand and trained graduate (honours) alongwith the post graduate on the other hand which distinction has been mentioned in the pay scales revised in 1973.

9. However, no separate pay scale in the revised pay scales in 1991 could be pointed out by the learned counsel which could be referable to the class to which the petitioner wants to claim as distinct class.

10. In this circumstance learned counsel for the petitioner tried to urge that amongst three pay scales prescribed for the teachers, the petitioner's pay scale was a post graduate trained to which class he has been originally appointed and therefore, he should be treated as teacher in selection grade. However, there is no factual foundation that the petitioner appellant belongs to the class of selection scale. The only rule to which reference is made by the learned counsel was that the appointment to the post of teachers in selection grade is made by

way of promotion. No foundation about this has also been raised in the pleadings as to on which date the petitioner was promoted to the selection grade on the basis of which he wanted higher pay scale.

11. Moreover the contention about the wrong pay fixation of his pay in the pay scale of Rs. 850-1360/- could have been raised in the earlier writ petition. But we find no mention of any such ground for claiming this pay scale in the order passed in the writ petition bearing C.W.J.C. No. 7808 of 1988. Fixation of the petitioner in graduate trained pay scale is referred to in the order passed in earlier writ petition which was before it and yet no attempt was made to challenge the same. Prima facie it appears to be that the petitioner is estopped from raising this plea on the principle of constructive res judicata.

12. Apart from all the above discussions based on rules there is no factual foundation for raising other grounds, which are now urged before us. The pleas based on facts outside pleadings do not fall within the purview of the review petition. The review petition is dismissed.