
(2006) 01 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 15512 of 2001

Vishnu Kant Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Citation : (2006) 1 PLJR 644

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Rajni Kant Jha, for the Appellant;

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved by the office order of the Executive Engineer, West Kosi Canal Division,. Jhanjharpur, contained in letter No. 465 dated 30th March, 2001 (Annexure 1) whereby and whereunder his scale of pay has been reduced from retrospective effect and the alleged excess amount has been sought to be recovered. In short, the relevant facts are that initially there were two separate cadres for Junior Accounts Clerk and Senior Accounts Clerk, which was merged with effect from 1.5.1980, vide notification dated 18.2.1981. The petitioner, thus, was appointed as Accounts Clerk in the Water Resources Department on 1.1.1984 and later vide office order dated 6.1.1993 (Annexure 2) he was given the replacement scale of Rs. 730-15-820-1080/- in place of Rs. 535-765/-for holding the post of Accounts Clerk and the financial benefit has been given to him in the said scale with effect from 1.1.1984 with the condition that if any adverse order of the Government is received, excess payment, if any, made shall be recovered from him from monthly salary. The Cabinet vide its decision dated 27.7.1999, communicated vide letter No. 6389 dated 28.9.1999 of the Finance Department, contained in Annexure 9, decided to again demerge the cadre of Accounts Clerk and in sub-paragraph (3) of paragraph 3 of the said letter it has been made clear that those employees, who are already in service, shall continue to remain on the higher

post and there would not be any question of their adjustment on the revived post or the newly created post in the lower grade.

2. Learned counsel for the petitioner has submitted that initially the scale of Junior Accounts Clerk was Rs. 220-315/- and of Senior Accounts Clerk was Rs. 260-408/-, which on merger with effect from 1.5.1980 brought into single scale of Rs. 260-408/-. In this regard he referred to Anulagnak-1 of Annexure 9. According to the Fourth Pay Revision Committee, scale of Rs. 730-1080/- came as replacement for Rs. 260-408/-. Thus, there is no infirmity in the order granting scale of Rs. 730-1080/- to the petitioner. Learned counsel submitted that by the impugned order, the authority has, in fact, given the petitioner lower scale prescribed for the Junior Accounts Clerk, which on the face of it is bad as admittedly he was appointed as Accounts Clerk after merger and not as Junior Accounts Clerk.

3. Learned counsel submitted that in a similar matter the Division Bench, vide Annexure 15 to the reply affidavit, after noticing the decision of this Court in the case of Sarju Prasad Bhagat vs. The State of Bihar and Ors., reported in 1997(1) All PLR 154, in which similarly situated person challenged the said similar order and it was held that as no order for demerger had been passed by the State Government, the writ petitioner of that case cannot be treated to have been reverted to the lower post of Junior Accounts Clerk, held that the case of the petitioner Lal Mohan Srivastava and Ors., vs. The State of Bihar and Ors., (C.W.J.C. No. 7119 of 1991) is squarely covered by the aforesaid decision of this Court and as such the said petitioners are entitled to similar relief. Accordingly, the Division Bench directed the respondents not to treat the petitioners of the said case as Junior Accounts Clerk with effect from 1.4.1981 in the absence of any order of demerger and further directed to treat them as Accounts Clerks even after 1.4.1981 and also restrained them from initiating any proceeding for recovery of any amount which the petitioners of the said case had received as a result of merger nor to deny any promotion to them, which they are entitled as a result of the said merger with effect from 1.4.1981. In support of this, he has placed reliance on other decisions also, which are contained in Annexures 14 to 17.

4. A counter affidavit has been filed on behalf of the State. Learned counsel for the State, however, submitted that there is no infirmity in the impugned order as the petitioner had joined on the post of Accounts Clerk on 1.1.1984 in the pay scale of Rs. 535-765/-, which is the scale prescribed by the 4th Pay Revision Committee. However, he has not disputed that the post of Junior Accounts Clerk and Senior Accounts Clerk was merged before the appointment of this petitioner. He has also not been able to show that on merger of the post of Junior Accounts Clerk and Senior Accounts Clerk both were not given a common scale of Rs. 260-408, replacement scale of which after 4th Pay Revision Committee was prescribed as Rs. 730-1080/-. However he fairly accepted that the present case is squarely covered by the decisions of this Court given in C.W.J.C. No. 10048 of

2002, contained in Annexure 16, and L.P.A. No. 563 of 2003, contained in Annexure 17.

5. The Division Bench judgment given in Lal Mohan Srivastava (*supra*) is dated 15th February, 1999, yet the impugned order ignoring the principle decided by the Division Bench has been issued on 30th March, 2001. I am unable to appreciate the manner of functioning of the Department. It seems that the Department has no respect for the decision of this Court and they keep on insisting to act by ignoring the law settled. Moreover, bare perusal of the facts would show that the petitioner had been appointed as Accounts Clerk after merger for which common scale prescribed was Rs. 260-408/-, the replacement scale of which after 4th Pay Revision Committee was prescribed as Rs. 730-1080/-, which was given to him long back on 6.1.1993, vide office order, contained in Annexure 2, i.e. much before demerger and creation of post of the Accounts Clerk in the lower grade.

6. Thus, I fail to appreciate as to how the State authorities have reduced his scale, which was prescribed for Junior Accounts Clerk after demerger when, in fact, he was appointed as Accounts Clerk and not as Junior Accounts Clerk. This shows gross callousness on the part of the State authorities dragging this petitioner to litigation despite the law being settled much earlier. This Court, thus, finds it to be a fit case for awarding cost of Rs. 5,000/- (five thousand), which shall be paid by the State to the petitioner within two weeks and shall be recovered from the erring authority. The writ application is, thus, allowed with the aforementioned cost of Rs. 5,000/- (five thousand). The impugned order, contained in Annexure 1, is quashed with similar direction as was given by the Division Bench in the case of Lal Mohan Srivastava and Ors., vs. The State of Bihar and Ors., (C.W.J.C. No. 7119 of 1991), contained in Annexure 15.