IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7163 of 2008

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1. Bihar Rajya Jail Chaturthvargiya Kamgar Union, Patna through its General Secretary, Shri Ram Nandan Yadav, son of late Phuchcho Prasad Yadav, resident of village – Mahdeva, Police Station - Bariarpur, District – Munger.
2. Bhola Thakur, son of late Salut Thakur, resident of village – Khajpura, P S – Gardanibagh, Distirct – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home (Jail) Department, Government of Bihar, Main Secretariat, Patna.
2. Inspector General (Prison), Home (Jail) Department, Main Secretariat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHIVENDRA KISHORE, Sr. Advocate

For the Respondent/s: Mr. Ashok Kumar Choudhary, AAG 13

Ms. Reema Kumar, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 18 -09-2015

The present writ application has not only been filed in individual capacity but also in representative capacity as would be evident from the description of petitioner No.1 in the cause title. The relief is for quashing Anneuxre-1 dated 7th May, 2007, issued under the signature of the Inspector General (Prison), Government of Bihar.

2. From a reading of Anneuxre-1 as well as the writ application it is evident that petitioners had earlier moved the High Court on several occasions and the background of issuance of Annexure-1 is that the petitioners have made a demand for payment of dearness allowance over and above the minimum time scale, which has been given to them by virtue of judicial orders issued in the past.

Members of the association are said to be working as menials and posted in different jails of the State. They were made to work as daily wagers and have continued in that capacity for a long time. Disputes were raised to regularize them which did not fructify in their favour. They managed to get initially payment of daily wage rate including revision which followed from time to time but ultimately by virtue of an order dated 21.8.1995 passed in CWJC No. 3909 of 1995, contained in Annexure-6 to the writ application, they were extended the benefit of payment of minimum of the scale of pay on the post and the duties which the petitioners were performing. Since all of them were Class-IV employees, they started deriving benefit of the minimum scale of pay of Class-IV post. Direction was issued for payment of arrears etc.

3. Petitioners thereafter raised the issue that since they have already been given benefit of pay-scale then like the other employees of the State, they should also be entitled to dearness allowance over and above the pay-scale which is being paid by the State. The matter travelled to the Inspector General (Prison), who after due consultation with the department of Law and Finance passed the impugned order, contained in Annexure-1. The order categorically states that payment to the petitioners is being made on the basis of the direction of the High Court in the previous writ and such employees who are working

as daily wagers are not entitled to any benefit of dearness allowance as has been held by the Hon`ble Apex Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others, (2006) 4 SCC** 1. They draw strength from the observation of the Hon`ble Supreme Court made in para 55 of the said decision. Para 55 of the decision is quoted herein below for ready reference:

> "55. **In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been**

engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. …………" (emphasis mine)

4. Learned senior counsel representing the petitioners by virtue of some decisions tried to impress upon the Court that wage includes dearness allowance. Some of the decisions are **Hindustan Lever Limited Vs. B N Dongre and others, AIR 1995 SC 817 (Para-11)** and **Airfreight Ltd. Vs. State of Karnataka and others, AIR 1999 SC 2459 (Para -22).**

5. The Court has gone through these decisions where no doubt the Hon`ble Apex Court in the facts of those cases has rendered opinion that wage also includes dearness allowance but on reading of the said decisions, this Court does not get a clear answer to the question whether dearness allowance is or has to be an integral part and right of an employee. In the present case, the members of the association, who are working as daily wagers, have been given the minimum scale of pay by virtue of a judicial order. They are not permanent and substantive employees of the State. In the opinion of this Court, since they are not regular employees, therefore, they cannot derive all the elements and the benefits which a permanent government servant draws from the provisions of the rules or circulars governing them.

6. Because of the judicial order they have got a foothold and a right to beget the minimum scale of pay relating to such posts as remuneration for the work being done by them but that by itself cannot bring them within the ambit where perks and privilege including dearness allowance can be extended as a matter of right more so after what the Constitution Bench has opined in **Uma Devi** (supra).

7. This Court is not inclined or required to go into the issue as to how long these petitioners can continue in this state or condition

because that is another area of dispute and needs a separate adjudication.

8. At present, we are concerned with the correctness or otherwise of Anneuxre-1. If the decision of the Hon`ble Apex Court, especially para 55, is taken into consideration, which has formed the basis for rejecting the claim of the petitioners, the impugned order dated 7th May, 2007 cannot be said to be irrational or arbitrary. The Court, therefore, is unwilling to interfere or quash Annexure-1 which is under challenge.

9. Writ application is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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