IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7115 of 2014

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Bihar State Financial Corporation Karmchari Federation, Bihar State Financial Corporation, Fraser Road, Patna through its General Secretary, Shyam Shekhar Lal

.... Petitioner/s

Versus

1. Bihar State Financial Corporation, Fraser Road, Patna
2. Chairman, Bihar State Financial Corporation null Fraser Road, Patna
3. Managing Director, Bihar State Financial Corporation Fraser Road, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.9097 of 2012

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Bihar State Financial Corporation Karmchari Federation, Bihar State Financial Corporation, Fraser Road, Patna Through Its General Secretary, Shyam Shekhar Lal

.... Petitioner/s

Versus

1. Bihar State Financial Corporation, Fraser Road, Patna Through Its Chairman-Cum-Managing Director
2. Chairman-Cum-Managing Director, Bihar State Financial Corporation, Fraser Road, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.2529 of 2009

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1.Upendra Lal Karn son of late Pancheshwar Lal Das, resident of 308, Urvashi Apartment New C.G. Nagar, P.O. Lohianagar, Patna-20.
2.Anjani Kumar Sinha, s/o late Rameshwari Prasad, Resident of 101, Indradhanush Apartment, Saidpur, Nala Road, Patna-6.
3.Mrs. Deepa Prasad, w/o Sri Hemant Kumar Lal, Resident of Lal Kothi, Congress Maidan Road, P.S. Kadamkuan, Patna-3.
4.Gunanand Lal Das, son of Late Dhanush Dhari Das, Resident of Kotilyanagar, P.O. L.B.S. Nagar, Patna-23.
5.Phulan Prasad Verma, s/o Late Raghubir Sharan Verma, Resident of Gandhi Path, North S.K. Puri, Patna-1.
6.Krishna Ram s/o Late Deolal Ram, Resident of Gosaintola, Patliputra, Patna-13.

.... Petitioner/s

Versus

The State of Bihar through its Principal Secretary, Industries, Govt. of Bihar, Patna.
2.The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
3.Board of Directors, Bihar State Financial Corporation, , Fraser Road,

Patna through its Chairman.
4.Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

6 11-02-2015 Heard learned counsel for the parties in all these three writ applications, wherein, following prayer has been made:-

> *"In C.W.J.C No. 7115 of 2014*
>
> *That this is an application for issuance of writ in the nature of writ of mandamus or any other appropriate writ/writs, order/orders, direction/directions commanding the respondents to implement the revision in the pay scale of the employees of the Bihar State Financial Corporation consequent upon and mutatis-mutandis with the 6th Pay Revision implemented by the State of Bihar with effect from 1.1.2006 vide Resolution dated 21.1.2010 and for making actual payments in the revised scale with effect from 1.4.2007 in consonance with the said Resolution of the State Government.*
>
> *In C.W.J.C No.9097 of 2012*
>
> *That this is an application for issuance of writ in the nature of writ of mandamus or any other appropriate writ/writs, order/orders, direction/directions commanding the respondents to implement the revision in the pay scale of the employees of the Bihar State Financial Corporation consequent upon 5th Pay Revision implemented by the State of Bihar with effect from 1.1.1996 instead of 1.10.2008 as notified by the respondent Bihar State Financial Corporation vide memo no. 1300 dated 21.10.2008, (b) make payment in the revised scale from 1.4.1997 consequent upon revision in pay scale with effect from 1.1.1996 and to fix the pay of employees merging 50% of D.A. as it stood on 1.1.2005 and 20% of interim relief declared from time to time declared since 1.1.1996 and to allow Dearness Allowance as declared by the State Government from time to time and thus revising pay scale of the employees in consonance with the decision of Central/State Government with effect from 1.1.1996.*
>
> *In C.W.J.C No. 2529 of 2009*
>
> *That this is an application for issuance of writ in the nature of certiorari or any other appropriate writ/writs, order/orders, direction/directions-*
>
> *(1) quashing order dated 21.10.2008 issued vide memo no. 1300 to the extent of-*

(a) the order contemplates implementation of revised scale with effect from 1st October, 2008 instead of 1.1.1996 thus depriving employee's payment of arrears.

(b) the revision of scales of pay will apply to employees of Corporation who are in service on 1.10.2008 thus debarring the employees the benefits of pay revision who superannuated before 1.10.2008.

(c) merger of 50% D.A. as it stood on 1.1.2005 with basic pay is sought to be disallowed in the revised scale and instead of allowing further D.A. from 1.1.2005 in new scale the D.A. is sought to be granted from 1.10.2008.

(2) for issuance of direction-

(i) to the respondents to implement the revised scale with effect from 1.1.1996 and make payment of arrears as also to fix the pay by merging 50% of D.A. as it stood on 1.1.2005 and 20% of interim relief declared from time to time since 1.1.1996 and to allow D.A. as declared from time to time by the State Government w.e.f 1.1.2005 in the revised scale.

(ii) to further revise the scale in consonance with the decision of Central/State Government w.e.f. 1.1.2006."

Though the prayer in all these writ applications filed at different point of time may have different expression and explanation but at the end of the day learned counsels for petitioners agreed that only two issues are involved in these three writ applications, namely:-

(i) Whether Bihar State Financial Corporation is not duty bound to also extend the benefit of pay revision as per the recommendation of Sixth Pay Revision Committee accepted by the State Government for its own employees.

(ii) From which date the recommendation of the pay scale and allowances of the State Government and the fifth pay revision

Committee shall be made applicable for the employees of the Bihar State Financial Corporation (B.S.F.C.).

Mr. Manik Ved Sen, learned counsel for the petitioner in this regard has firstly, relied on Regulations 8, 49, 81 and 83. He has secondly relied on a decision of the Board of Directors dated 14.09.1970, describing it to be a policy decision of B.S.F.C.

In order to appreciate such submissions of Mr. Manik Ven Sen it would be absolutely necessary to firstly find out as to what was placed before the Board of Directors in the memorandum in Item No. 2261 dated 28.08.1970, and what was ultimately actually resolved by the Board of Directors in its meeting on 14.09.1970. The memorandum before the Board of Directors in fact dated 28.08.1970, had read as follows:-

> *"ITEM NO. 2261*
> *MEMORANDUM* *Placed before the Board on 14.09.1970*
> *Re: Acceptance of pay scales and other accompanying emoluments to the employees of the Bihar State Financial Corporation in the lines of State Government's. orders issued from time to time.*
> *********
> *The Board of Directors in its meeting held on the 29th June, 1970, Vide Item No. 2207, while considering the question of treating a portion of "Cost of Living Allowance" as "Dearness Pay" as announced by the State Government in their Memo No. 3/A1/201/70-45F dated the 6th January, 1970, resolved as under:-*
> *"RESOLVED further that a proposal be placed before the next meeting of the Board of Directors for a general approval that the Corporation should follow the pay scales and other accompanying emoluments and benefits for its employees as per State Government's order issued from time to time."*
> *It may be mentioned that the Corporation is already following the pay scales and other accompanying benefits like Dearness Allowance and House Rent Allowances to its employees as allowed by the State Government to their*

> *employees from time to time. But, hitherto, we have been obtaining the approval of the Board whenever any revision either in the scale of pay or cost of Living Allowance or House Rent Allowance was announced by the State Government to their employees. The result of this has been that delay takes place in implementing the decisions taken by the State Government to the employee so the Bihar State Financial Corporation.*
>
> *The Board is, therefore, requested to kindly give a general approval to the effect that this Corporation shall follow the pay scales, cost of Living Allowance and House Rent Allowance mutatis mutandis to its employees as per State Government's orders which may be issued from time to time.*
>
> *The following resolution my be passed:-*
>
> *"RESOLVED that the Corporation shall follow the Pay Scales, Cost of living allowance and House Rent Allowances to its employees mutatis, Mutandis as per the State Government's orders from time to time."*

The decision of the Board of Directors on the same date i.e. 14.09.1970, reads as follows:-

> *"Re. Acceptance of pay scales and other accompanying emoluments to be employees of the Bihar State Financial Corporation in the lines of State Govt.. orders issued from time to time.*
>
> *"RESOLVED that the Corporation shall follow the Pay Scales, Cost of living allowance and House Rent Allowances to its employees mutatis, Mutandis as per the State Government's orders from time to time <u>under intimation to the Board</u>."*
>
> (underlining for emphasis)

The underlined portion 'under intimation to the Board' was in fact pointer to the decision of the Board that though the pay scales, cost of living allowance, and House Rent Allowance to the employees of the Bihar State Financial Corporation shall be the as per the order of the State Government issued from time to time but its intimation will have to be given to the Board. The whole approach of the intimation given to the Board was to allow the power to continue its exercise of power under Regulation 49, which is the source of power to the Board of Directors for fixing the pay, allowances, the salary including pay allowances and leave pay.

In that view of the matter, if the B.S.F.C. in its hey days on account of its healthy financial conditions had followed to pay salary to its employees as per the Government decision of giving benefit of pay scale and allowances for the Government employees, it does not mean that such a decision of extending the Government pay scale to the employees of B.S.F.C. was to continue till eternity. The B.S.F.C. for good and valid reasons, could have definitely changed or annuled its earlier decision. That ultimately infact had happened in the year 2008 when the B.S.F.C. took a conscious decision not to implement the government recommendation of the pay scales of sixth Pay Revision Committee for its own employees. It is also well settled that there could be no judicial review as with regard to paying capacity of the employer, inasmuch as, grant or revision of pay scale or other financial benefits to an employee will always depend on the paying capacity of the employer.

Bihar State Financial Corporation is an autonomous body corporate created under State Financial Corporation Act and therefore, it has to develop its own resources for paying the salary and emoluments of its employees. It cannot be forced to accept and make payment of salary for its employees in the pay scales of the State Government. It is this aspect of the matter, which has been gone into in the resolution of the Bihar State Financial Corporation dated 29.9.2008 which reads as follows:-

> *"Minutes of the 2nd meeting (2008-2009) of the Board of Directors of the Corporation held on 29.09.2008,*
>
> 14168 Re: *Revision in the Pay Scale and other service conditions for the employees of the Corporation in line with the decision taken by the Govt. of Bihar for the State Govt. Employees.*
>
> *After detailed discussion on the agenda item placed before it the Board resolved as under:*
>
> *"RESOLVED that there would be review of the working of all the officers and employees of the Corporation who have attained age of 55 years, and those who are not found useful should be considered for compulsory retirement.*
>
> *RESOLVED further that pay scales of the employee, in the revised scale (as given in Annexure-IV, of the memorandum placed vide item no. 14060) should be implemented with effect from 01.10.2008. Further merger of 50% D.A. with basic pay was not to be allowed.*
>
> *RESOLVED further that Payment in the revised scale would accrue from 01.10.2008.*
>
> *RESOLVED further that Payment of HRA and CCA as per the revised scale will arise from 01.10.2008.*
>
> *RESOLVED further that for the employees, accumulation of unavailed ordinary leave will be allowed to accumulate up to 300 days w.e.f 01.10.2008."*

This decision on 29.09.2008, therefore, has the capacity to now change the earlier decision of the year 1970 because for good and valid reasons the Corporation ultimately had decided to extend the benefit of 6th Pay Revision Committee w.e.f 01.10.2010. Such reasons of financial constraint has also not remained confined only in the case of Bihar State Financial Corporation, inasmuch as, from resolution of the Bureau of Public Enterprises dated 24.08.2001 as contained in Annexure-A to the counter affidavit filed by the B.S.F.C. it would emerge that financial condition of almost all Corporations in Bihar was not only bad but alarming and the State Government had also completely disowned its liability from making any payment of fund to those Corporations for payment of salary and enhanced salary in the revised pay scale.

The issue as to whether the B.S.F.C. is still in a very sound financial condition can definitely be not gone into by this Court unless this issue is firstly raised by the petitioners before the authorities of the B.S.F.C. in order to enable their employer and pay master to consider and decide the aspects being raised by the petitioners in this writ application namely, cash position and inflow in the respective accounts of B.S.F.C..

In that view of the matter, while this court would find it difficult to hold the decision of the B.S,.F.C, dated 29.09.2008 to be bad giving effect to the benefit of the recommendation of the 6th Pay Revisions Committee for the Government employees also to the employees of the B.S.F.C. w.e.f. 01.10.2008, nothing said in this order however will come in the way of the petitioners to lay their claim before the authorities of the B.S.F.C. that the plea of financial stringency of B.S.F.C. is nothing but a bogey because it has got sufficient cash balance from which the liability of the pay revision can be easily met.

If such a representation is filed by the petitioners, the same will be decided by the Board of Directors of B.S.F.C. on its own merit but it is made clear that even if the pay scale of the employees of B.S.F.C. are not revised from 1996 onwards on the ground of financial stringency, the B.S.F.C. cannot disown the periodical rise by way of amount of Dearness allowance (D.A). In other words if any portion of the D.A., as sanctioned by the State Government for its own employees in this period of 1996 to 2008 has not been given to the employees of the B.S.F.C., its actual financial benefit must be extended to the petitioners and other similarly situated working employees of the B.S.F.C.

As with regard to the grievance of the petitioners of not extending the benefit of 6th Pay Revision Committee, this Court must make it clear that the Board of Directors of B.S.F.C. is the best Authority to decide as to whether its financial position can permit it to extend the benefit of recommendation of 6th Pay Revision Committee w.e.f. 1.1.1996. The Board is an autonomous organization which has its own defined source of revenue from which it has to pay the salary to the working employees. The Board which has not made any appointment in the last 20 years, has not been able to follow certain other government decision for extending financial benefits to the own employees on account of financial crunch and stringency and has not even allowed merger of D.A., and similar other financial benefits cannot be compelled by this Court to pay the enhanced amount of salary in the revised pay scale of the State Government.

All these aspects infact will require very careful consideration by the Board of Directors which must take a conscious decision as with regard to extending benefit of the 6th Pay Revision Committee report meant for the employees of State Government also to the employees of B.S.F.C.

With the aforementioned observation and direction, these writ applications are disposed of.

(Mihir Kumar Jha, J)

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