

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1361 of 2014

IN

Civil Writ Jurisdiction Case No. 10482 of 2013

- =====
1. The State of Bihar through the Chief Secretary, Patna.
 2. The Secretary, Planning and Development Govt. of Bihar, Patna.

.... Appellant/s

Versus

1. Brajeshwar Sahay Son of Late Chaturbhuj Sahay, Resident of House No.-B/140, Police Colony, Anishabad, P.S.-Gardanibagh, District-Patna.
2. The Accountant, General Bihar.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mrs. Kumari Amrita, G.P.10

For the Respondent No.1 : Mr. Mithlesh Kumar Sharma

For Accountant General: Mr. Ranjan Kumar

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 24-06-2015

An order, dated 14.03.2014, passed by the learned single Judge, in CWJC No. 10482 of 2013, is under appeal, in the present appeal under Clause 10 of the Letters Patent of the Patna High Court, whereby learned single Judge has quashed an office order No. 1255, dated 01.06.2004, issued by the Chief Secretary of Bihar and has directed the appellants, the State of Bihar, to fix the petitioner's pension on the basis of last pay drawn by him with all consequential benefits.

2. The writ petitioner-Respondent no.1 herein was appointed, in the year 1972, as a Cartographer in the Planning and Development Department, Government of Bihar, and superannuated on 31.07.2003.

3. Briefly stated, the facts of the case, as asserted in the writ application, are that the pay scale of the cartographer posted in Planning and Development Department was upgraded to pay scale of Section Officer, but it was reduced by 5th Pay Revision Committee recommendation, with effect from 01.01.1986, leading to institution of a large number of cases including a case instituted by the petitioner being CWJC No. 11319 of 1996. It appears from the records that in the said CWJC No. 11319 of 1996, the petitioner had claimed that he was entitled for the same scale, which Cartographers in the Department of Agriculture, Government of Bihar, were entitled to. By an interim order passed in the said CWJC No. 11319 of 1996, the Chief Secretary of Bihar was directed to take a final decision with regard to pay scale to be given to the petitioner and file an affidavit in this regard. The Chief Secretary of Bihar, in the light of the said interim order passed by this Court in CWJC No. 11319 of 1996, passed an order on 26.9.1998. From the order of the Chief Secretary, it appears that the pay scale of Cartographer, in the Department of Agriculture, had been Rs. 3000-4500/- with effect



from 1.1.1986. The Chief Secretary was of the opinion, as recorded in his order, dated 26.9.1998, that the petitioner, holding the post of Cartographer in the Planning and Development Department, was not entitled for the same pay scale as admissible to the Cartographer in the Department of Agriculture. The Chief Secretary, however, held the petitioner to be entitled to the scale of Rs. 2000-3500/- on the basis of implementation of 5th Pay Revision Committee's Report with effect from 1.1.1996. Subsequent to the decision of the Chief Secretary, the Planning and Development Department, Government of Bihar, vide memo No. 3135, dated 07.12.1998, issued to the Accountant General of Bihar, communicated the decision of the State Government for upgradation of the scale of the petitioner from Rs. 1640-2900/- to Rs. 2000-3500/-. Paragraph 5 of the said memo, dated 07.12.1998, made it clear that this scale was being granted to the petitioner in order to regularize the pay drawn by him during his service period and for the purpose of fixation of his pension after his superannuation. This order also mentioned that after superannuation of the petitioner, the post of the Cartographer, which the petitioner held, will, again, be placed in the scale of Rs. 1640-2900/-. This is to be kept in mind that this fixation of scale was under 5th Pay Revision Committee's recommendation. The decision of the State Government was brought on record by way of an affidavit by the

State Government.

4. Certain facts, which were required to be essentially stated in the writ application, appeared to have been suppressed by the petitioner. In his writ application filed on 14.5.2013, the petitioner made following statements in paragraph 12 of the writ application:-

“12. That despite the categorical decision by the Government of Bihar vide annexure-6 to this petition the petitioner’s pension was arbitrarily fixed at the reduced scale of Rs. 1640-2900 after retirement for redressal of which a modification petition was filed to already pending CWJC No. 11319 of 1996 by which petitioner’s pay scale was enhanced to Rs. 2000-3500/-.”

5. In paragraph 14, he has stated that when he attained the age of superannuation and superannuated with effect from 31.7.2003, he was in the pay scale of Rs. 6500-10,500/-. However, it appears that he had filed a contempt petition being MJC No. 37 of 2004 alleging disobedience of this Court’s order. This fact has not been stated in the writ application. He has not stated that in the meanwhile, the State Government had decided to grant central pay scale to the employees of the State of Bihar with effect from 1.1.1996 after acceptance of fitment Committee report notified on



18.02.1998. The Chief Secretary of Bihar, by an order, dated 01.06.2004, dealing with the case of the petitioner, in the light of recommendation of the Fitment Committee, constituted for the fixation of pay scale of the employees of State Government of Bihar in terms of Central Pay scale, held that the petitioner would be entitled for the scale of Rs. 5500-9000/- admissible for the post of Cartographer in the Planning and Development Department in terms of Fitment Committee Report. The said Central Pay scale was introduced for the State government employees with effect from 1.1.1996 for implementation of which, a Fitment Committee was constituted. On 07.12.1998, when the Chief Secretary of Bihar had passed earlier order granting the petitioner's scale of Rs. 2000-3500/-, recommendation of the Fitment Committee were not notified and the same were notified on 18.2.1999. The Fitment Committee recommended two scales for Cartographer i.e. Rs. 5000-8000/- and Rs. 5500- 9000/-. By the said order, dated 1.6.2004, the Chief Secretary of Bihar found the petitioner entitled to be scale of Rs. 5500-9000/-. When the order, dated 1.6.2004, was passed, the petitioner's writ application, being CWJC No. 11319 of 1996, was pending.

6. There is statement made in the supplementary counter affidavit filed on behalf of the respondents on 6.12.2013. In



paragraph 10 of the said supplementary counter affidavit, it has been stated that in reply to the contempt petition filed by the petitioner alleging violation of the order passed in CWJC No. 11319 of 1996, the Department had produced before this Court said office order, dated 1.6.2004, passed by the Chief Secretary, State of Bihar, whereby the petitioner's pay scale was fixed as Rs. 5500-9000/-. The petitioner, in the writ application, neither disclosed the fact as regards the filing of the contempt petition or as regards the fact that the said order, dated 1.6.2004, passed by the Chief Secretary, Bihar was brought on record along with the show cause reply filed by the Department. There is no denial by the petitioner to this averment made in his reply to the supplementary counter affidavit. He has simply stated, in paragraph 8 of his second rejoinder to the supplementary affidavit, that by virtue of this Court's order in CWJC No. 11319 of 1996, the petitioner was granted pay scale as admissible to Section Officer as a special case, which was approved by the State Government and, thereafter, he remained in the said scale, till the date of his retirement; but after his retirement, his pay was wrongly fixed in the scale of Rs. 1640-6900/-, which ought to have been fixed at Rs. 10500/-. This shows that the petitioner had knowledge about the said order, dated 1.6.2004, when CWJC No. 11319 of 1996 was disposed of by an order, dated 16.11.2010, and



thus, also, on the date of filing of writ application being CWJC No. 10482 of 2013. He did not challenge the said order, dated 1.6.2004, by seeking amendment in CWJC No. 11319 of 1996 nor did he raise this issue in the writ application in hand i.e. CWJC No. 10482 of 2013. The petitioner, as a matter of fact, attempted to suppress this fact, which has been brought on record by way of counter affidavit.

7. Learned counsel, appearing on behalf of the appellants- State of Bihar, has submitted that the pay scale of the post of Cartographer in the Planning and Development Department, Government of Bihar, was revised in the 4th Pay revision and accordingly, pay scale of Rs. 818- 1310/- was granted to the petitioner with effect from 1.4.1981. The pay scale was subsequently revised in 5th Pay Revision and scale of Rs. 1640-1900/- was granted. Aggrieved by the aforesaid order, the petitioner had approached the Anomaly Committee, which had rejected the claim, whereafter, the petitioner filed CWJC No. 11319 of 1996 and in compliance of an interim order, dated 07.01.1998, of this Court, representation of the petitioner was considered by the Chief Secretary of Bihar and treating the case of the petitioner as a special case, scale of Rs. 2000-3500/- was allowed to him. On his superannuation, the pension of the petitioner was fixed on the basis of last pay drawn; but in course of verification, it was found that the



petitioner was entitled for the pay scale of Rs. 5500-9000/-, with effect from 1.1.1996, in view of the introduction of Central Pay to the employees of the State Government. Learned counsel has submitted that in order to implement the 5th Central Pay Commission recommendation for the employees of the State of Bihar with effect from 1.1.1996, a Pay Revision Committee was set up by the State Government following an agreement with the State Government employees' Union and it was decided that the scales, equivalent in the Central Government, be recommended for the State Government employees. The Fitment Committee, accordingly, was constituted, headed by a retired Judge of this Court (Mr.Justice Sarwar Ali) for the purpose of "fitting" Central Scale to the post in the State Government. He has submitted that there was no concept of "replacement scale" for implementation of Central Pay Commission with effect from 1.1.1996 rather scales available to the Central Government employees were required to be fit into the pay scales of the State government employees. The said exercise was done by the High Level Fitment Committee, which submitted its report on 8.2.1999, after the earlier order, dated 7.12.1998, was passed by the Chief Secretary. He has submitted that as per Fitment report of the Fitment Committee, indisputably, the petitioner was entitled for pay scale of Rs. 5500-9000/-. He has also submitted that a Fitment



Appellate Committee was also constituted, headed by a sitting Judge of the High Court, Justice Aftab Alam, to consider representations against the recommendation of the Fitment Committee. Learned State counsel has emphasized that the purpose of the Fitment Committee or the Fitment Appellate Committee was not to grant replacement scale, or of the scale previous for a post; rather, to fit the scale in the scales suggested by Central 5th Pay Commission recommendation in the Central Government employees. He has submitted that the petitioner has not been able to make out a case that the pay scale as fixed by the Fitment Committee or the Fitment Appellate Committee is not correct. He has, therefore, submitted that the learned single Judge committed an error of law by quashing the order, dated 01.06.2004, with a direction to fix the petitioner's pension on the basis of last pay drawn by him with all consequential benefits.

8. Mr. Mithilesh Kumar Sharma, learned counsel appearing on behalf of the Respondent No.1, on the other hand, has submitted that in the case of the petitioner, special pay of Rs. 2000-3500/- was granted by the Chief Secretary, Government of Bihar, which was subsequently accepted by the Government of Bihar, treating the case of the petitioner to be special one and accordingly, a letter was written to the Accountant General, Bihar, for issuance of

pay slip to the petitioner in the pay scale of Rs. 2000-3500/-. Therefore, he was accordingly getting the scale of Rs. 6500- 10500/- on the date of his retirement i.e. 31.7.2003.

9. Defending the order passed by the learned single Judge, Mr. Sharma has submitted that the petitioner's case was singled out and had this fact brought to the notice of the Fitment Appellate Committee, the matter would have been different and the petitioner would have been allowed to get the scale, which he had been receiving on the date of his superannuation.

10. Learned single judge has allowed the writ application observing at page 11 as follows:-

“ There is nothing on record to show that the case of the petitioner was placed before the Fitment committee as special case and it is obvious from the aforesaid fact that the Fitment committee considered the pay scale of cartographer of Planning and Development Department, Government of Bihar equivalent to the post of Cartographer of Central Government but admittedly, the petitioner was getting upgraded pay scale as special case and if the aforesaid fact had been brought to the notice of Fitment committee, the matter would have been different. No doubt, the grievance of the petitioner has been considered by the expert bodies such as Pay Revision Committee and Pay Anomaly Committee but in the aforesaid special circumstance, in my view, the Chief

Secretary, Government of Bihar had got no authority to reduce the pay scale of petitioner in the light of recommendation of Fitment committee, i.e., too without taking prior approval of the State Government.”

11. In our opinion, the above reasoning, assigned by the learned Single Judge, is erroneous. It was open to the petitioner to have raised his grievance before the Fitment Appellate Committee, if he had any, against fixation of pay scale for the post of Cartographer in the Planning and Development Department, Government of Bihar. There is nothing on record that he had ever filed such representation. The earlier order of the Chief Secretary was passed on 7.12.1998 sanctioning the pay scale of the petitioner as Rs. 2000 to 3500/-. The position changed after the report of the Fitment Committee was notified granting pay scale of Rs. 5500-9000/- for the post of Cartographer in Planning and Development Department. The Fitment Appellate Committee was constituted to deal with the grievance of any Government employee against the said decision of the Fitment Committee. Whether the petitioner approached the Fitment Appellate Committee or not is not there on record. In our opinion, having not availed the remedy available to him to approach the Fitment Appellate Committee, the petitioner, now, cannot raise any grievance against the order of the Chief



Secretary, dated 1.6.2004, which is based on the report of the Fitment Committee. Before the learned Single Judge, it was contended by the petitioner, as would be evident from page 7 of the order under appeal, that prior to passing of the order, dated 16.10.2010, the office order no. 1255, dated 1.6.2004, passed by the Chief Secretary of Bihar reducing the pay scale of the petitioner was not brought to the notice of this Court, when MJC No. 933 of 2011 was filed before this Court, for modification of this Court's order dated 16.11.2010. In our opinion, this was not a correct stand taken on behalf of the petitioner. There is specific averment made in paragraph 10 of the supplementary counter affidavit filed on behalf of respondent on 6.12.2013 that the letter, dated 1.6.2004, was brought on record by way of show cause filed on behalf of the Department in the contempt petition filed by the petitioner. This statement has not been denied. We are, thus, of the view that the petitioner attempted to mislead this Court.

12. In our opinion, fixation of pay scale of the petitioner upon introduction of Central Pay to the employees of the State Government, with effect from 1.1.1996, is entirely a different matter. The earlier pay scale of Rs. 2000-3500/- was granted to the petitioner as a special case, with effect from 1.1.1986, on the basis of 5th Pay Revision Committee Report for the State Government



employees. There has not been any change over the State Government decision to grant the petitioner the said scale of Rs. 2000-3500/- with effect from 1.1.1986. Situation changed after introduction of Central pay for the employees of the State Government with effect from 1.1.1996, whereafter, on the basis of the report of the Fitment Committee, the petitioner was found entitled to the scale of Rs.5500-9000/-.

13. It seems that despite knowing the order, dated 1.6.2004, the petitioner did not question the validity of the said order. In our opinion, there was no material before the learned Single Judge to come to the conclusion that till the date of institution of CWJC No. 10482 of 2013, the petitioner had absolutely no knowledge about the order of the Chief Secretary of Bihar, dated 1.6.2004. Nearly nine years after issuance of the said order, without any plausible explanation for such delay, the writ jurisdiction under Article 226 of the Constitution of India could not have been exercised. Further, we are not ready to accept the plea that the petitioner was entitled for a different and special treatment from others in the matter of grant of Central pay scale with effect from 1.1.1996.

14. We are, therefore, inclined to interfere with the order of learned Single Judge, dated 14.3.2014, passed in CWJC No.

10482 of 2013, which is accordingly set aside.

15. The writ application, i.e., CWJC No. 10482 of 2013, stands dismissed.

16. Though we toyed with the idea of imposing cost on petitioner for not correctly placing before the Court all the relevant facts, we refrain from doing so as the writ petitioner-respondent is a retired employee of the State Government. We, therefore, do not order payment of any cost by the writ petitioners-respondent.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, J.: I agree.

(I. A. Ansari, J.)

ArunKumar/-

U			
---	--	--	--