IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7185 of 2005

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1. Rajya Path Pribhan Kamgar Union through its General Secretary, K. M. Shastri, Son of Late Parmeshwar Lal, House of Sri R. N. Singh, Near Ganesh Market, Jakkanpur, Patna-1.
2. Ramakant Sharma, Son of Late Babu Chand Sharma, Panchwati Nagar, P.S.-Sultanganj, Patna-16.
3. Rajendra Mahto, Son of Late Madan Mahto, Mohalla- Hanuman Nagar, Behind M.I.G. 185, P.S. Patrakar Nagar, Patna.

.... Petitioners

Versus

1. The Bihar State Road Transport Corporation through its Administrator, Paribahan Bhawan, Birchand Patel Path, Patna-1.
2. The Administrator, Paribahan Bhawan, Birchand Patel Path, Patna-1.
3. Chief Accounts Officer , B.S.R.T.C, Paribahan Bhawan, Birchand Patel Path, Patna
4. Chief of Administration, Paribahan Bhawan, Birchand Patel Path, Patna-1.
5. Chief of Operation, Paribahan Bhawan, Birchand Patel Path, Patna-1
6. The State of Bihar through Principal Secretary to the Government, Department of Finance, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 18489 of 2011

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1. Path Pariwahan Nigam Karmchari Sanyukt Sangharsh Morcha through its Convener, Pariwahan Bhawan, Birchand Patel Path, Patna
2. Ajay Kumar, son of Late Shyam Nandan Prasad Singh, General Secretary, Bihar State Road Transport Corporation Employees Federation (Registration No.3901/2001), Kedar Bhawan, Amarnath Road, Patna

.... Petitioners

Versus

1. The Bihar State Road Transport Corporation through its Administrator Pariwahan Bhawan, Birchand Patel Path, Patna
2. The Administrator, Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna
3. The State of Bihar through Principal Secretary to the Government, Department of Finance, Patna
4. The Principal Secretary, Department of Transport, Government of Bihar, Patna
5. The Chief of Administration, Bihar State Road Transport Corporation, Apriwahan Bhawan, Birchand Patel Path, Patna
6. The Chief Accounts Officer, Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna
7. The Chief of Operation, Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 16460 of 2012

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1. Munch of Retired /dependents of deceased employees, B.S.R.T. Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna, through its Convener, Kameshwar Prasad Singh, S/O Late Ram Swaroop Singh, Retired from the post of Assistant Traffic Inspector from Patna Division, Bihar State Road Transport Corporation, Patna, Resident of Village-Dariyapur, P.S.-Fatwah, District-Patna.
2. Shankar Pd. Choudhary @ Shankar Choudhary, S/O Late Anant Choudhary, Retired from the post of Chief Accounts Officer, Head Quarter, B.S.R.T. Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna, R/O Village Hathisarganj, P.S. Hazipur, District-Vaishali.
3. Murli Manohar Singh, S/O Late Ram Subhag Singh, retired from the post of Sectional Officer, Head Quarter, B.S.R.T. Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna, R/O Village-Jamunipur Church, Post & P.S. Maner, District-Patna.
4. Kishori Prasad, S/o Late Lala Prasad, retired from the post of Officiating Section Officer, from Head Quarter, B.S.R.T. Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna, R/O Village- Kishan Colony, Post- Anishabad, Near Satya Gas Godown, P.S.- Phulwarisarif, District- Patna.

.... Petitioners

Versus

1. The State of Bihar through the Secretary, Department of Transport, Vishwesharaiya Bhawan, Bailey Road, Patna.
2. The Bihar State Road Transport Corporation, through the Administrator, Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Road, Patna.
3. The Administrator, Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Road, Patna.
4. The Financial Advisor Cum Chief Accounts Officer, B.S.R.T. Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 24999 of 2013

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1. Ram Dayal Vishwakarma, Son of Late Shiv Lakhan Vishwakarma, Resident of Village - Dhanaut, P.S. Rupaspur, Distt – Patna.
2. Lal Babu Sharma, Son of late Jangil Mistri, Resident of Mohalla - Musallahpur, within a Lane of Kisan Cold Storage, P.S. Kadamkuan, Distt - Patna
3. Ganesh Gupta, Son of Late Ramji Prasad, Resident of Mohalla - Sultanpur, Near Math, Danapur, P.S. Danapur, Distt - Patna
4. Anant Prasad Sharma, Son of Late Ram Prasad Sharma, Resident of Mohalla - New Karbigahiya, P.S. Jakkanpur District - Patna
5. Ram Sharan Ram, Son of Late Ramdhari Ram, Resident of Mohalla - Raja Bazar, P.S. Shastrinagar, District - Patna
6. Ram Bilash Ram, Son of Late Jagdhari Sah, Resident of Village - Sarai, P.S. Maner, Distt - Patna
7. Laxmi Nath Singh, Son of Late Shiv Narayan Singh, Resident of Mohalla - Jhunjhun Mahal, P.S. Gardanibagh, Dist – Patna.

.... Petitioners

Versus

1. The Bihar State Road Transport Corporation through its Administrator, Patna
2. The Accounts Officer, Bihar State Road Transport Corporation, Patna
3. The Chief Mechanical Engineer, Bihar State Road Transport Corporation, Patna
4. The Works Manager, Central Workshop, Bihar State Road Transport Corporation, Camp Jail, Phulwarisharif, Patna
5. Chief Secretary, Road Transport Corporation, Bihar, Patna

.... Respondents

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Appearance :
(In CWJC No. 7185 of 2005)
For the Petitioner/s : Mr. V.N.SAHAY
Mr. Arun Shrivastava
Mr. Abha Kumari
For the Respondent/s :
For the B.S.R.T.C. : Mr. P. K. Verma, Sr. Advocate
(In CWJC No. 18489 of 2011)
For the Petitioner/s : Mr. RAJEEVA ROY
For the Respondent/s : Mr. ASHOK KUMAR KESHRI AAG11
(In CWJC No. 16460 of 2012)
For the Petitioner/s : Mr. Rajeev Kumar Verma, Sr. Advocate
: Mr. Jai Prakash Verma, Advocate
For the Respondent/s : Mr. Ashok Kumar Choudhary, AAG13
Mr. Anil Kumar Tiwari, AC to AAG-13
Mr. Reema Kumar, AC to AAG-13
Mr. P. K. Verma, Sr. Advocate
(In CWJC No. 24999 of 2013)
For the Petitioner/s : Mr. NIL KAMAL
For the Respondent/s : Mr. PRABHAT KUMAR VERMA

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT
Date: 04-06-2015

The factual matrix of all these four writ application is yet another instance of struggle of employee for their entitlement. The affected persons are not seeking any bounty, but seeking their legal dues.

2. The petitioners are association of the employees of the Bihar State Road Transport Corporation (hereinafter referred to as 'the Corporation') and also some employees in individual and

representative capacity. They seek implementation of recommendations of 5th and 6th Pay Revision Committee report with effect from 01.04.1997 and 01.04.2007 respectively.

3. Their case is that since about last three decades they are being paid in the pay scale of 4th Pay Revision Committee recommendations. In the last two or three decades, they had no revision of pay in spite of 5th Pay Revision Committee recommendation w.e.f. 01.04.1997 and 6th Pay Revision Committee recommendation w.e.f. 01.04.2007, which have been implemented in case of Government staff and employees, though they are entitled to the same pay scale and benefits, which are applicable to the Government servants.

4. The relief prayed for by the petitioners is founded on the own resolution of the Corporation adopted on 02.05.1959 by which it was resolved that till Corporation frames its own regulations, the Bihar Traveling Allowance, the Discipline and Appeal Rules, the Conduct Rules, Medical Attendance Rules and similar other rules as usually applied to the Bihar Government Servants and staff of the Corporation shall apply equally to all other categories of officers and staff. The relevant extract of the resolution is quoted herein below for easy reference:

> "2. Resolved that until this Corporation has

> framed its regulation under Section 45(2)(C) of the State Transport Corporation Act 1950, the Rules of Bihar Service Code, the Bihar Traveling Allowance, the Discipline and Appeal Rules, the Conduct Rules, Medical Attendance Rules and similar other rules as normally apply to the Bihar State Government Servants shall apply mutatis-mutandis to all categories of officers and staff of the Corporation."

5. They contend that the Corporation admittedly has not framed its regulations governing the service conditions, payment of salary and emoluments and as such they would be entitled to same financial benefits as applicable to Bihar State Government Servants till such regulations are framed.

6. Both the Corporation and the State have filed their counter affidavits and the matter has been heard from time to time. They submitted that the Corporation was established by the State of Bihar under Section 3 of the Road Transport Corporation Act, 1950 in May, 1959. The share capital is owned by the Central Government and State Government in the ratio of 76:24. It is an autonomous body having its own management (Board of Directors) and legally independent status with its own common seal, fund and system etc. The stand of the Corporation is that it is suffering from huge financial crisis, year after year, since last three decades. The financial crisis can

be visualized from the fact that during the financial year 2011-12 against the total expenditure liability of 130.60 crores, the income generated was only 31.35 crores, thus giving a gap of 99.22 crores. No better was the situation in the year 2009-10 and 2010-11. The total expenditure towards the salary alone was about Rs. 18.58 crores.

7. Mr. P.K. Verma, learned senior counsel appearing for the Corporation submits that the said expenditure does not include the expenses made towards retiral benefits. He submits that unless and until the State assures regular allocation of Additional fund of Rs.32.80 crores per annum to meet the revised pay scale, the Corporation cannot simply bear the burden of the said expenditure.

8. According to the State Government, the payment of wages and salary of the staff and employees of the Corporation is the statutory obligations of the Corporation itself and not of the State Government.

9. The core issue falling for consideration is whether the employees of the Corporation are entitled to the benefits of the 5th and 6th Pay Revision recommendations. The Administrator in its detailed order dated 20.03.2014 (Annexure-A to the supplementary counter affidavit filed on behalf of the Corporation) pursuant to specific query of the Court dated 24.02.2014 admitted that the staff and employees of the Corporation are entitled to revision of pay as per 5th and 6th Pay

Revision Committee recommendations as applicable to the Government servants. However, he expressed his helplessness in implementing the same, as the Corporation is even unable to meet its financial liabilities of salary and retiral benefits even in the old pay scale of 4th Pay Revision. He submits that in case the 5th and 6th Pay Revision is implemented, then the additional sum of Rs.51 crores and 56 crores respectively will be required alone for the payment of salary to the employees as per the 5th and 6th Pay Revision Committee recommendation assuming that the strength of employees would get reduced from 1038 to 700.

10. It would be relevant to minutely scrutinize the reasons of the Administrator in his Memo no. 1163 dated 20.03.2014 refusing to implement the recommendation of 5th and 6th Pay Revision Committee. The Administrator in his order stated that the financial condition of the Bihar State Road Transport Corporation was in a deep financial crisis since late 1980s, which led to filing of C.W.J.C. No. 2403 of 1992 and M.J.C. No. 122 of 1993 for payment of salary. The matter even traveled up to Hon’ble Apex Court in Civil Appeal No. 7290 of 1994. At the direction of the Hon’ble Apex Court, a three men Committee was constituted. On the recommendation of this committee, a sum of Rs. 113 crores was allocated, as a package for rehabilitation of the Corporation and payment of salary and retiral

benefits to the staff and employees till 31.03.1998. The Hon'ble Apex Court vide its order dated 24.09.2004 constituted a committee comprising of representatives from Bihar and Jharkhand chaired by Hon'ble Mr. Justice Sagir Ahmad. On the recommendations of the committee constituted by the Hon'ble Apex Court, a sum of Rs. 611 crores was sanctioned, out of which a sum of Rs. 458.77 crores was allocated for the Corporations and Government undertaking. The Board of Directors of Corporation was also superseded in 1999 under Section 38 of the Transport Corporation Act, 1980 and an Administrator was appointed, who was a Government nominee. The financial position of the Corporation little improved and still it sustained a short fall of 21.15 crores in the year 2010-11, 17.19 crores in the year 2011-12, 8.17 crores in the year 2012-13 to meet the salary and the retiral benefits. The short falls are being taken care of from loan advanced by the State Government pursuant to the package allocated for the Corporation in terms of the order of the Hon'ble Apex Court. He stated that the present income of the Corporation is Rs. 30 lakhs per month, whereas a sum of Rs. 2.70 crores would be required to make payment as per the 5th and 6th Pay Revision Committee recommendation. Furthermore, an additional sum of Rs.300 crores would be required to implement the 5th Pay Revision Committee recommendation w.e.f. 01.04.1997 and 6th Pay Revision

Committee recommendation w.e.f. 01.04.2007 towards payment of salary and retiral benefits. The Corporation has annexed detailed charts in support of the facts and figures with respect to its assets and liabilities. However, I find that as per 1959 Resolution and the order of the Administrator dated 20.03.2014, one thing, which is not in dispute, is that the petitioners are entitled to the recommendations of 5th and 6th Pay Revision Committee.

11. The matter for consideration is whether this Court should issue mandamus to the Corporation to implement 5th and 6th Pay Revision Committee recommendation fully satisfied with the facts and figures produced on record that it awfully lacks basic resources to meet the additional burden of about 30 crores per annum. It is not the case of the petitioners' that the facts and figures given by the Administrator are imaginary and not correct. It is not difficult to notice that in case the Court directs implementation of 5th and 6th Pay Revision Committee, the liability of the Corporation would increase about 8 to 10 times of its total income. The total income is Rs.3.60 crores per annum whereas the anticipated expenditure would be in range of 28 to 30 crores.

12. Situated thus and being in know how of the weak financial position of the Corporation as well its sheer inability to bear the burden of 5th and 6th Pay Revision recommendation, any

mandamus directing the corporation to implement 5th and 6th Pay Revision Committee report, for the present, would be an exercise in futility and achieving near impossible. As such, for the present, the court refrains from issuing any such mandamus directing implementation of the 5th and 6th Pay Revision Recommendation.

13. Mr. Rajeev Kumar Verma, learned senior counsel making the lead argument on behalf of the petitioners next contended that the Administrator in his memo no. 1131 dated 13.03.2014 addressed to the Principal Secretary, Transport Department, Bihar, Patna stated that a sum of Rs.47.80 crores is available, which can take care of two years salary of the employees in the pay scale of 5th and 6th Pay Revision Committee report.

14. As entitlement of the petitioners to the 5th and 6th Pay Revision Committee report is not denied and a sizeable sum is available in the Corporation, I direct the Corporation to release the bulk of Rs. 47.80 crores after keeping some reserves for any exigency and eventuality, so that it may take care of salary for about two years on purely ad-hoc basis proportionately, as per 5th and 6th Pay Revision. This order will not become precedent for the employees to stake claim for implementation of the pay revision recommendations, unless the finances of the Corporation also proportionately improves, capable to share the additional burden on its own.

15. The petitioners alternatively argued that in a welfare State, the State Government being a model employer, it would be liable to meet the shortfall and, differences of the additional expenditures.

16. The State in its counter affidavit has in its conventional approach does not admit of any onus to share the liability of Corporation in the matter of pay revision.

17. Mr. A.K. Chaudhary, learned counsel appearing for the State reiterating the stand, refers to 1st supplementary counter affidavit dated 29.11.2012. Para. 13 of which is quoted herein below:

> "13. That it is the policy decision of the State Govt. that under no circumstances, the State Govt. would incur any financial liability in case of pay revision of the personnel of the public sector undertakings. A copy of the aforesaid Govt. decision as contained in memo No. 605 dated 24.08.2001 is being annexed herewith for better perusal of the Hon'ble Court."

18. Mr. Rajeev Kumar Verma on behalf of the petitioners would submit that the Government right from 1971 is providing budgetary allocations to the Corporation both under Plan and Non-plan head and has been regularly coming to the rescue of the Corporation. He referred to the affidavit filed by the Government in Civil Appeal No. 7290 of 1994 in Writ Petition No. 337 of 2001 read

with Civil Appeal No. 7487 of 2011, arising out of S.L.P. No. 4693 of 2011. He submits that the State under its constitutional scheme and directive principle of State policy being its integral part, cannot escape from its social obligations. He submits that the State is bound to protect the human right as well as fundamental right of its citizens and employees, under Article 21 of the Constitution.

19. Learned counsel submits that these were the reasons, the Hon'ble Apex Court rejected the plea of the State and directed to deposit a sum of Rs.50 crores at first instance for payment of salary of the employees proportionately as per the recommendations of committee, followed by another direction to State of Bihar and Jharkhand to deposit a further sum of Rs.50 crores and 25 crores within 8 weeks of the order respectively in case of Kapila Hingorani Vs. State of Bihar & Others, reported in (2003) 6 SCC 1, again also between the same parties, reported in (2005) 2 SCC 262, and in case of State of Jharkhand & Another Vs. Harihar Yadav & others, reported in (2014) 2 SCC 114.

20. However, the learned counsel for the State submits that the aforesaid direction was passed in view of extraordinary situation, as the employees of various States owned Corporations undertakings were not able to pay its salary to the employees for a number of years and were on verge of starvation and some unfortunately even

immolated. In the present case, he submits that it is not the case that the employees are not getting their salary.

21. I have heard the counsel for the parties. The issue is whether the State Government is vicariously liable for payment of revision of salary of the staffs and employees of the statutory bodies like Bihar State Road Transport Corporation.

22. In my view, the decisions relied upon by the petitioners including State of Jharkhand Vs. Harihar Yadav (Supra) would not fully apply to their case. In the aforesaid cases on account of deep financial crisis, the Corporation and the Government sector undertaking including BHALCO/NALCO were unable to even pay the month to month salary to the employees. The agitation was not for revision of pay, but for payment of the salary itself. Furthermore, the Hon'ble Apex Court in case of A. K. Bindal & Another Vs. Union of India & others, reported in (2003) 5 SCC 163 observed that in absence of relevant materials showing existing pay to be inadequate to lead a life with human dignity, non-revision cannot be violative of Article 21 of the Constitution of India.

23. In the light of the judgment of Apex Court in case of A. K. Bindal (supra), it requires to be examined whether the existing pay to be in adequate to lead life with human dignity, so as to issue mandamus to the State to meet the shortfall.

24. In view of the rising the price index, the Government setup two Pay Revisions Committee, namely, 5th and 6th Pay Revision Committee. The last two Pay Revision Committee recommendations augured 4 to 5 times hike, in the pay structure from the existing 4th pay revision. The Government finding the recommendations to be just and fair, implemented the same in respect of its staff and employees. Though the employees of the Corporation were entitled to the benefit of 5th and 6th Pay Revision Commission recommendations, the same remained unimplemented on account of its poor financial position. The Administrator in his order dated 20.03.2014 (Annexure-A to the supplementary counter affidavit) too acknowledged the entitlement of the employees to the benefits of 5th and 6th Pay Revision Commission recommendations. The Hon'ble Apex Court in case of A. K. Bindal (supra) has not observed that in no case the Government would not be liable for sharing their liability in case of pay revision, rather applying the converse, it can be shown that the employees are unable to lead a life with human dignity, the same would be violative of Article 21 of the Constitution and the State in appropriate cases would have to step in, to ameliorate the lot.

25. I have already held that the petitioners are entitled to 5th and 6th Pay Revision Committee recommendation and that they are stuck up with 4th Pay Revision scale for about two decades or so. In

such circumstances, the Government would constitute a committee comprising of Chief Secretary, Finance Secretary and the Transport Secretary, which would review the present salary position of the employees to lead a life with human dignity in light of principles laid down by Hon'ble Apex Court in case of A. K. Bindal (supra) and consider the feasibility of providing package to the Corporation to enable it to meet the liability of 5th and 6th pay revision committee recommendation with a date it may just and appropriate within a period of four months from the date of receipt of a copy of this order.

26. With the aforesaid directions, these applications stand disposed of.

(Samarendra Pratap Singh, J.)

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