

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1782 of 2015

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1.Satyendra Kumar, s/o Late Ram Sewak Shahi, r/o At + P.O. Anant Kamataul, village Kurhani, District Muzaffarpur.

2.Khurshi Eqbal S/O Late Md.Ataur Rahman R/O-House no.-278, Patliputra Colony, P.S-Patliputra,Town AND Distt.-Patna

3. Syed Hussain Ahmad Son of Late Syed Abu Mohammad R/O Vill-Ahmadganj Sonha,P.O-Bakhadda,P.S-Sahebpur Kamal,Distt.-Begusarai

4. Akhilesh Kumar S/O Late Braj Kishore Rahtogi R/O Flat No.302,SLD Apartment,Old Bye Pass Road,Opp.S.B.I,Kankarbagh,Patna

..... Petitioner/s

Versus

1.The Bihar State Power(holding) Company Limited,Vidhyut Bhawan,Jawahar Lal Nehru Road,Patna-800001.

2. Chairman-cum-Managing Director,Bihar State Power(holding) Company Limited,Vidhyut Bhawan,Jawahar Lal Nehru Road,Patna-800001.

3. Managing Director,Transmission,Bihar State Power(holding) Company Limited,Vidhyut Bhawan,Jawahar Lal Nehru Road,Patna-800001. null null

4. Managing Director,Generation,Bihar State Power(holding) Company Limited,Vidhyut Bhawan,Jawahar Lal Nehru Road,Patna-800001.

5.General Manager, H.R.Administration Managing Director, Transmission, Bihar State Power(holding) Company Limited,Vidhyut Bhawan,Jawahar Lal Nehru Road,Patna-800001.

6. Accounts Officer,Bihar State Power(holding) Company Limited,Vidhyut Bhawan,Jawahar Lal Nehru Road,Patna-800001.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Ojha, Adv

For the Respondent/s : Mr. Vinay Kirti Singh GA-3

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 26-03-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application :-

"(i) For quashing of order dated 27.02.2013 passed by respondent Bihar State Power (Holding) Company Ltd. as contained in Annexure-B whereby and whereunder the benefit



of Bunching (increment) to the petitioners has been denied allegedly in view of Clause-21 of the Notification No. 275 dated 24.10.2010 relating to Bunching.

(ii) For a direction upon the respondents to consider the case of the petitioners for grant of bunching in terms of Notification No. 268 dated 12.10.2010 whereby benefit to the employee of the B.S.E.B. has been allowed to be given in revised scale as per the decision of the Bihar Government taken from time to time so also in view of the fact that the Government of Bihar vide Resolution dated 02.06.1999 (Annexure-10) has rectified mistakes and omissions including the word "Initial" and other clause which were coming in way of grant of benefit of bunching and on the basis of which the claim of the petitioners have been rejected.

(iii) For a direction upon the respondents to fix the pay of the petitioners in view of aforesaid facts in revised replaced scale w.e.f. 01.01.1996 giving effect of bunching in terms of Notification No. 275 dated 24.10.2010 as contained in an Annexure-1 ignoring its Clause-21 as mistake and omission in its corresponding provision of the State Government has already been rectified."



2. Having regard to the scope of the impugned order dated 27.02.2013 whereby and whereunder the claim of the petitioner for giving fixation benefit under the revised pay scale as per the liking of the petitioners has been rejected, this Court has examined the whole issue in the backdrop of the scheme of the erstwhile Bihar State Electricity Board now Bihar State Power (Holding) Company Ltd. based on the decision of the Board for implementing the initial pay scales as per the recommendation of its own pay revision committee.

3. From clause-21 of the notification, it would transpire that the modality was evolved without fixing the pay scales in the revised pay scale by bunching the increments and to that extent, it would be relevant to extract clause-21 of the notification dated 24.10.2010:-

“BUNCHING:

Where in the fixation of pay under this Notification, the pay of the Board's employees drawing pay at more than four consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same (initial) stage, the pay in revised scale of such of these Board's employees who are drawing pay beyond the first four consecutive stages in the existing scale shall be stepped up to the stage where such bunching occurs, as under, by the grant of increment(s) in the revised scale in the

following manner, namely:-

(a) for Board's employees drawing pay from the 5th up to the 8th stage in the existing scale by one increment;

(b) for Board's employees drawing pay from the 9th up to the 12th stage in the existing scale, if there bunching beyond the 8th stage by two increments;

(c) for Board's employees drawing pay from 13th up to the 16th stage in the existing scale, if there is bunching beyond the 12th stage by three increments. If by stepping up of the pay as above, the pay of a Board's employees gets fixed at a stage in the revised scale which is higher than the stage in the revised scale as which the pay of a Board's employee who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short to that of the former.

In the cases of employees who had been drawing maximum of the existing scale for more than a year or have drawn one or more stagnation increment as on 1.1.96 next increment in the revised scale shall be allowed on 1.1.96 will be taken into consideration for purposes of pay fixation.

Provided also that the fixation thus made shall ensure, that every Board's employee will get atleast one increment in the revised scale of pay for every three increment {inclusive of stagnation increment(s), if any} in the existing scale of pay. This means that no increment (s) in revised scale will be admissible if on pay fixation, pay has been fixed at any stage above the minimum in the revised scale.

This notification shall be treated as a Regulation framed by the Board in exercise of powers conferred under Section 79 (c) of Electricity (Supply) Act, 1948 (Act No. LIV of 1948) and will form part of the relevant cadre regulations whenever applicable."

(underlining for emphasis)

4. The grievance of the petitioners is that they were not given the benefit of pay fixation and arrears of increments and therefore, they had approached this



Court by filing C.W.J.C No. 13259 of 2012, which was disposed of by order dated 31.07.2012 by directing the officials of the then Bihar State Electricity Board replaced by Bihar State Power (Holding) Company Ltd., to consider the case of the petitioners in accordance with clause-21 of the pay revision notification.

5. To that extent, it would be also relevant to reproduce the order dated 31.07.2012 of this Court in C.W.J.C. No. 13259/2012, which will have meaningful bearing on the result of this case:-

“Heard learned counsel for the petitioners and learned counsel for the respondents Bihar State Electricity Board and its authorities.

2. This writ petition has been filed by the petitioners for the following reliefs:-

(i) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to fix the pay of the petitioners in revised replaced scale w.e.f. 01.01.1996 giving effect of ‘Bunching’ in terms of notification no.275 dated 24.10.2000 of the Bihar State Electricity Board as contained in Annexure-1 to this writ petition.

(ii) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to issue pay slips of petitioner’s fixing the scale of Rs.3900-125-5150-150-6050/- in revised replaced scale of Rs.12300-375-15675-450-19275 w.e.f. 01.01.1996 giving benefit of ‘Bunching’ in terms of

instruction and directions contained in clause 21 of the notification dated 24.10.2000 whereby initial scale of the petitioner comes to Rs.13050/- instead of Rs.12300/-.

(iii) For issuance of an order, directing the respondents to complete the process of said fixation of scale within time limit and payment of arrear with interest to the petitioners as consequence thereto.

(iv) Any other order/orders, direction/directions for which the petitioners are found entitled to in the facts and circumstances of the present case.

3. It is not in dispute that the revised/replaced scale of the petitioners has to be in accordance with notification no.275 dated 24.10.2000 (Annexure-1).

4. In the said circumstances the authorities are directed to consider the claim of the petitioners in accordance with the said notification specially Clause 21 thereof and dispose of their applications dated 10.06.2005, 26.04.2010 and 31.01.2011 (Annexure 3 & 5 series), if not yet disposed of, within two months from the date of receipt/production of a copy of this order and if any further amount is found to be payable to the petitioners according to fresh calculation it should be paid to the petitioners immediately thereafter.

5. Accordingly, this writ petition is disposed of."

(underlining for emphasis)

6. From the reading of the aforementioned order of this Court and particularly its underlined portion it would be very clear that the petitioners have not questioned the correctness of the notification no. 276 dated 24.10.2000, which is the part of the Annexure-1 series to this writ application. Therefore, clause-21



regarding bunching also is not in dispute. Once the decision of bunching being part of the implementation of the report of pay revision committee is not in dispute, the petitioners can be entitled to get only the benefit of bunching as directed in clause-21 of the notification of the Board dated 24.10.2010.

7. Learned counsel for the petitioners, also does not dispute this proposition but according to him the word 'bunching' already underlined while extracting clause-21 under the heading 'bunching' will be deemed to have been omitted because addendum issued by the State of Bihar in the Finance Department Letter No. 660 dated 08.02.1999 and to that extent he relies on government resolution of the finance department, relevant portion reads as follows:-

*“Revised Scale of Pay
Addendum & Corrigendum to Finance Department
Resolution No. 660 dated 8th Feb., 1999
Memo No. 3277F(2) Dated 2nd June, 1999
Government of Bihar, Finance Department
RESOLUTION
Subject: Revision of the scale of pay of
Government Employees.
It has been brought to the notice of Government that
there are some printing mistakes and omissions in the*

Finance Department's resolution No. 3M2-5VE-PU.01/99-660F/(2), dated 08.02.1999 on the above subject. It has, therefore, been decided that these mistake and omissions be rectified as follows:-

- (i) In para 4 (iii) of the Resolution for the existing entry "Existing scale of pay does not exceed Rs. 10,500", read "Revised scale of pay does not exceed Rs. 10,500."*
- (ii) Delete the words "in a substantive capacity" para 1.*
- (iii) Delete the words "initial" from the schedule IV para 4. iii(i).*
- (iv) Delete the sentence "This means that no increment(s) in revised scale will be admissible if on pay fixation pay has been fixed at any stage above the minimum in the revised scale" in the proviso of para 5 of the schedule IV."*

(underlining for emphasis)

8. Thus, the blunder on the part of the petitioner on the basis of which they have been unnecessarily reeling under a wrong notion that since the word "initial" in the Government notification dated 08.02.1999, was sought to be amended on 2.6.1999, the same would be also adversely affecting the Board's notification dated 24.10.2000. In this regard, firstly it has to be kept in mind that the government pay scale notified from time to time including the one dated 8.2.1999 has never been adopted by the Bihar State Electricity Board and in fact it had always revised pay



scale of employees on the basis of the report of its own Pay Revision Committee, and its application was also made in a different manner. The Finance Department circular dated 8.2.1999 and its modification made on 2.6.1999 therefore will apply to the employees of State Government but not to employees of Bihar State Electricity Board.

9. Once this aspect becomes clear, this Court will have no difficulty in understanding that the petitioners were actually reeling under some misconceived notion while nurturing the grievances as with regard to wrong pay fixation. The principle of pay fixation and/or recommendation of the pay revision committee being decided by the Board, this Court cannot sit over their wisdom in exercise of power of judicial review under Article 226 of the Constitution of India, specially when the petitioners have made out no other case in respect of grievance of their pay fixation save and except for implementation of the government decision in the matter

of pay fixation by the Board.

10. As noted above under Section-79 (c) of the Electricity Act 1948 had vested Board, the power to frame regulation of service conditions of its employees and the pay fixation made by the Board in terms of being its own pay revision committee could not have been changed on account of any decision taken by the State Government for its own implementation of pay revision committee which in case of Government servants was issued on 08.02.1999 as against the employees of the Board vide notification dated 12.10.2000 read with order 24.10.2000.

11. All these aspects therefore, have been considered by the competent authority in the impugned order passed, wherein, while rejecting the claim of the petitioners, it has held as follows:-

“ORDER

The then Bihar State Electricity Board decided to revise pay of its officers and employees vide Notification No. 275 dated 24.10.2000. It is also decided that, where in the fixation, of pay under this Notification, the pay of the Board's employees drawing pay at more than four consecutive stages in an existing scale gets bunched, their pay will be revised by grant of increment in the following

manner:-

(a) For those employees drawings pay from the 5th up to 8th stage in the existing scale by one increment.

(b) For those drawing pay from the 9th up to the 12th stage in the existing scale, if there is bunching beyond the 8th by two increments.

(c) For those drawing pay from 13th up to 16th stage in existing scale, if there is bunching beyond the 12th stage by three increments.

In view of the above notification the pay of Sri Satyendra Kumar, Khurshid Eqbal, Syed Hussain Ahmad, Rudra Narayan Roy, Akhilesh Kumar, Sunil Kumar choudhary and Yuvraj Shaw Azad has been fixed from Rs. 4650/- in the (pay scale of Rs. 3900-125-5150-150-6050) to Rs. 12300/- in the pay scale 12300-375—15675-450-19275/- as on 01.01.1996.

Against the above revision, Sri Satyendra Kumar and other six preferred as writ petition bearing C.W.J.C No. 13259/2012 (Satyendra Kumar & Ors Vrs. B.S.E.B. & others) in the Hon'ble High Court, Patna. The Hon'ble Court disposed of the writ petition by Order dated 04.02.2010 in which it has been directed to consider the claim of the petitioners in accordance with the said notification specially clause 21 thereof of the petitioners in accordance with the said notification specially clause 21 thereof and dispose of their application dated 10.06.2005, 26.04.2010 and 31.01.2011 (Annexure 3 and 5 series), if not yet any further amount to be payable to the Petitioners according to fresh calculation it should be paid to the petitioner immediately thereafter.

Accordingly, the matter has been examined and it has been considered that Clause-21 of the Notification No. 275 dated 24.10.2000 rules to "Bunching", wherein, the word "initial" in small bracket in the preface Para of this clause and the sentence in the concluding para, "This means that no increments in the revised scale will be admissible, if one pay fixation, pay has been fixed at any stage above minimum in the revised scale," restrict allowing the benefit of bunching to the Petitioners in the revised scale.

Moreover, in C.W.J.C No. 7217/2006 filed by Sri Sunil Kumar Choudhary & others, facts stated in aforesaid Para has been filed by the Board and this writ Petition stands dismissed vide order dated 16.09.2010 passed by the Hon'ble Patna High Court.

As such, in view of above, no benefit of bunching is allowed to Sri Satyendra Kumar and other similar Petitioners. Hence, their applications dated 10.06.2005, 26.04.2010 and 31.01.2011 are rejected.

Let this Order be communicated to the Petitioners."

(K.K. Verma)

Secretary."

(underlining for emphasis)

12. Let it be noted, that the Secretary to the Company also being the successor of the Board had not only examined the scheme of Board's resolution no. 276 dated 24.10.2000 but had also found that the word 'initially' so far it relates to the board's resolution had remained intact and on the basis of the same he had also held that no benefit of bunching was to be allowed to the petitioners. In this regard, a precedent case was also relied by the Secretary to the company being the order of this Court dated 16.09.2010 in C.W.J.C No. 7217 of 2006, wherein similar claim of an other employee was rejected.

13. Thus, such detailed objective consideration based on relevant materials cannot be brushed aside by this Court specially when the petitioners have no other

case on merit save and except by way of on Government resolution dated 8.2.1999 and its modification by the State Government on 2.6.1999 for interpreting Board's resolution dated 24.10.2000 which is factually incorrect and legally impermissible in case of the employees of erstwhile Board.

14. Thus, for the reasons indicated above this writ application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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