

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1563 of 2014

IN

Civil Writ Jurisdiction Case No. 25419 of 2013

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The State of Bihar through Principal cum Commissioner, Department of Finance,
Government of Bihar, Patna.

.... Appellant/Respondent No.3

Versus

1. Dr. Radhey Shyam Sharma, son of Late Dr. Hukam Chandra Joshi, presently Residing at 41, Vasundhara Apartment, Road No.3, New Pataliputra Colony, P.S. Patliputra, Town and District - Patna, Bihar.....Respondent/Petitioner
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna 800015.
3. The Principal Finance Commissioner, Government of Bihar, Old Secretariat, Patna 800015.
4. The Secretary-cum-Commissioner, Department of Animal Husbandry, Government of Bihar, New Secretariat, Patna 800015.
5. The Director, Department of Animal Husbandry, Government of Bihar, New Secretariat, Patna 800015.

.... Proforma Respondents/Respondents

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Appearance :

For the Appellant/s : Mr. Harsh Singh, Advocate

For the Respondent/s : Mr. Amit Shrivastava, Advocate

Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 14-12-2015

In this *intra-court* appeal under Clause 10 of Letters Patent of this Court, State of Bihar is aggrieved by an order, dated 22.07.2014, passed, in C.W.J.C. No. 25419 of 2013, by a learned single Judge of this Court, whereby the learned single Judge has allowed the writ application, preferred by the respondent No. 1 under Article 226 of the Constitution of India, holding him to be entitled to

the revised pay scale of Rs. 16,400 to Rs. 20,000, with effect from 01.01.1996, for the Post of Director, Animal Husbandry, Livestock Research Station (LRS), Government of Bihar, which he had, admittedly, held on the said date.

2. Heard Mr. Harsh Singh, learned counsel for the appellant, learned Assistant Counsel to Government Pleader No.-2 for the appellant, and Mr. Amit Shrivastava, learned Advocate appearing on behalf of the respondent No. 1.

3. Before advertng to the grounds taken by the State of Bihar for assailing the order under appeal, it would be proper to briefly refer to the facts of the case, which are not at all in dispute. Respondent No. 1 was appointed in the Bihar Animal Husbandry Service Class-I by a notification, dated 06.07.1966. He was subsequently appointed as Director, Animal Husbandry, Government of Bihar, Livestock Research Station (LRS), Patna, on 13.09.1995, in the pay scale of Rs. 5100 to Rs. 6300, which happened to be the pay scale of the Director, Animal Husbandry, Government of Bihar. Upon attaining the age of superannuation, he retired from service with effect from 30.06.1996. From the uncontroverted pleadings on records of the writ proceedings, we find that the respondent No. 1 was granted promotion and pay scale of the Director, Animal Husbandry, Government of Bihar, i.e. Rs. 5100 to Rs. 6300, with effect from

01.08.1989.

4. Prior to implementation of 5th Central Pay Commission Recommendations for the employees under the State Government of Bihar, pay scale, admissible for the Posts of Director, Animal Husbandry, Director, Dairy Development, Director, Health (Aayush) and Director, Secondary Education, was Rs. 5100 to Rs. 6300. The 5th Central Pay Commission recommended replacement scale of Rs. 16400 to Rs. 20000 for the existing Scale of Rs. 5100 to Rs. 6300 with effect from 01.01.1996. A Fitment Committee and an Appellate Fitment Committee constituted by the State of Bihar, for the purpose of fitting pay scales for different posts under the State of Bihar, in terms of the revised scales of pay recommended by the 5th Central Pay Commission, suggested replacement of scale of Rs. 14,300 to Rs. 18,300 for the post of Director, Animal Husbandry and Director, Dairy Development; whereas it recommended a higher scale of Rs. 16400 to Rs. 20,000 for the post of Director, Secondary Education and Director, Health (Aayush).

5. Evidently, thus, two different scales were suggested for the posts of Directors for which same pay scale was earlier provided. The recommendation of the Fitment Committee and the Appellate Fitment Committee to this effect were accepted by the State Government vide its Resolution, dated 08.02.1999.



6. Aggrieved by the differential treatment meted out to the incumbents holding the post of Director, Animal Husbandry and Director, Dairy Development, by giving them lower replacement scale than that provided for posts of Director, Secondary Education and Director, Health (Aayush), one Sati Kant Mishra, who held the post of Director, Dairy Development, under the State Government of Bihar, filed an application before this Court under Article 226 of the Constitution of India giving rise to C.W.J.C. No. 7087 of 2002. The said writ application came to be allowed by a learned single Judge of this Court vide order, dated 13.07.2006, in the following terms:-

“As a result the petitioner, who was drawing the same salary as that of other Directors working in other Departments, suddenly started receiving less salary than them. He has not yet been told the reason thereof.

In those circumstances the writ petition is allowed with a direction upon the respondents to fit the petitioner also in the pay scale of Rs. 16,400-20,000 with effect from 1st January, 1996. Let the entitlement of the petitioner on the basis of the above direction be made available to him within three months from the date of service of a copy of this order upon the Respondent no. 3

The writ petition is accordingly disposed

of.”

7. The order of learned single Judge was, however, assailed by the State of Bihar by preferring an appeal under Clause 10 of the Letters Patent of this Court giving rise to L.P.A. No. 688 of 2006. A Division Bench of this Court dismissed the said Letters Patent Appeal in following terms:-

“There is no denial that the Directors in other departments were given higher replacement scale of Rs. 16,400-20,000/- Not a single fact has been whispered in the memorandum of appeal nor any document has been annexed to show as to validity or existence of any reason to discriminate the Directors of the Animal Husbandry and Fisheries Department vis-à-vis Directors of other Departments.

Mere bald assertion that the appellants have acted on the basis of recommendations of experts and the Fitment Committee cannot help the appellants where there is a direct challenge to their decision on the ground of violation of principle of equality.”

8. The State of Bihar preferred Special Leave Petition

under Article 136 of the Constitution of India, giving rise to SLP (Civil) No. 21415 of 2011, which also came to be dismissed by an order, dated 05.01.2012, which reads thus,

“We have heard learned counsel for the petitioners.

The special leave petition is dismissed both on the grounds of delay as well as on merits.”

9. The facts, noted above, lead us to an irresistible conclusion that the Division Bench of this Court and later on, the Supreme Court having upheld the order passed by learned single Judge of this Court in case of **Sati Kant Mishra** (supra) in C.W.J.C. No. 7087 of 2002 that differential treatment, in the matter of providing replacement pay scales upon introduction of 5th Central Pay Commission's recommendation, when the pre-revised Scale was same for all the said four posts of Director, was discriminatory and in violation of the principles of equality. It logically follows, in the light of the decision of this Court and Supreme Court as discussed above, that the scale of Rs. 16,400 to Rs. 20,000 would have been admissible to the post of Director, which, admittedly, respondent No. 1 held on the date of his superannuation.

10. What is, now, of immense importance to note is that



respondent No. 1 has, for the first time, made on 04.08.2010, i.e., nearly about 14 years after his superannuation, representation addressed to the State Government claiming replacement scale of Rs. 16,400 to Rs. 20,000, his claim being based on Division Bench decision of this Court dated 12.07.2010, passed in L.P.A. No. 688 of 2006 in case of **Sati Kant Mishra** (supra).

11. Having been denied the said replacement scale by the State Government respondent No. 1 preferred an application, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No. 25419 of 2013, this writ application having been evidently, made after the Supreme Court had dismissed, on 05.01.2012, the Special Leave Petition preferred by the State of Bihar against the decision of the Division Bench in the case of **Sati Kant Mishra** (supra). The said writ application came to be allowed by the order under appeal by learned single Judge.

12. Mainly two submissions have been advanced on behalf of the appellant State of Bihar, to assail the order under appeal. It has been, firstly, contended that the decision of the State Government, accepting the report of the Fitment Committee and Appellate Fitment Committee fitting the scales on the basis of scales recommended by 5th Central Pay Commission, is purely executive in nature and no judicial review of such a decision is, ordinarily,



permissible under Article 226 of the Constitution of India unless it is shown to be erroneous or discriminatory on the face of it. It has been, secondly, argued, and vehemently, that the writ application filed by respondent No. 1 ought not to have been entertained by learned single Judge, when the writ petition was filed 14 years after the date of superannuation of respondent No.1. It has been contended that the same relief, which was granted to **Sati Kant Mishra** (supra) ought not to have been granted to the respondent No.1 by learned single Judge on the sole ground that whereas, said Sati Kant Mishra was vigilant about his right and diligently pursued his remedy, respondent No. 1 acted as a fence-sitter and, therefore, he was not entitled to the same relief under prerogative writ jurisdiction of this Court, under Article 226 of the Constitution of India, which was granted by this Court to Sati Kant Mishra.

13. So far as the first submission made on behalf of the appellant is concerned, we do not find any force inasmuch as we have already concluded that in the light of Division Bench decision of this Court in case of **Sati Kant Mishra** (supra) and the dismissal of Special Leave Petition, wherein denial of same replacement pay scale to the Directors, who were earlier in the same unrevised scale of pay, has been held to be violative of the principle of equality enshrined under Articles 14 and 16 of the Constitution of India.



14. Coming to the second limb of argument, we find that the learned single Judge, in the order under appeal, has dealt with the question of delay and laches on an objection having been raised, in this regard, on behalf of the State of Bihar. After having taken into account the fact that respondent No. 1 had submitted his representation on 04.10.2010 i.e., immediately after the Division Bench decision of this Court, dated 12.10.2010, in case of **Sati Kant Mishra** (supra), learned single Judge turned down the said objection, relying upon Supreme Court decisions in case of *Nand Kishore Nayak v. State of Orissa* reported in **1991 Supp (2) SCC 698**, *State of Karnataka v. C. Lalita* reported in **2006(2) SCC 747** and **K.T. Veerappa Vs State of Karnataka** reported in **2006 (9) SCC 406**.

15. We do not find any reason to have a different view than what has been taken by learned single Judge on the question of delay on the part of respondent No. 1 in approaching this Court, under Article 226 of the Constitution of India, in an *intra* court appeal under the Letters Patent of this Court.

16. Mr. Amit hrivastava, learned counsel appearing on behalf of the petitioner, is correct in his submission, placing reliance on the Supreme Court's decision in the **State of Karnataka v. C. Lalita** (supra), that in the absence of any dispute that the petitioner and the said Sati Kant Mishra were similarly situated, respondent No.

1 herein has wrongly been treated differently on erroneous logic that the person, who had approached this Court, would only be entitled to the said scale of Rs. 16,400 to Rs. 20,000.

17. Learned single Judge has rightly referred to the Supreme Court's decision in the case of **K.T. Veerappa Vs State of Karnataka** reported in **2006 (9) SCC 406**, relevant portion of which has been quoted in the order under appeal and is being extracted hereinbelow for ready reference:-

“.... The defence of the State Government that as the appellants were not the petitioners in the writ petition filed by 23 employees of the respondent-University to whom the benefit of revised pay scales was granted by the Court, the appellants are estopped from raising their claim of revised pay scales in the year 1992-94, is wholly unjustified, patently irrational, arbitrary and discriminatory. As noticed in the earlier part of this judgment, revised pay scales were given to those 23 employees in the year 1991 when the contempt proceedings were initiated against the Vice-Chancellor and the Registrar of the University of Mysore. The benefits having been given to 23 employees of the University in compliance with the decision dated 21.06.1989 recorded by the



learned Single Judge in WPs Nos. 21487-506 of 1982, it was expected that without resorting to any of the methods the other employees identically placed, including the appellants, would have been given the same benefits, which would have avoided not only unnecessary litigation but also the movement of files and papers which only waste public time....”

18. In view of the facts and circumstances in the present case and our discussion on the rival submissions made on behalf of the parties, we are of the considered view that respondent No. 1 could not have been non-suited for the grant of relief, which had been sought for by him in his writ application, on the ground that he approached this Court belatedly in the year 2013, when we notice that there was no dispute that the judgment of this Court, in **Sati Kant Mishra** (supra), upholding pay scale of Rs. 16,400 to Rs. 20,000 being applicable to Sati Kant Mishra, Director, Dairy Development, came to be delivered on 12.07.2010 and, finally, upheld by Supreme Court's order on 05.01.2012. We cannot also prove the fact that respondent No. 1, had, in the meanwhile, already submitted his representation, on 04.08.2010, claiming the said scale, in the light of the Division Bench decision in **Sati Kant Mishra** (supra).

19. The appeal has, therefore, no merit and is accordingly dismissed.

20. There shall, however, be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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