

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.186 of 2014

1. Yogendra Paswan Son Of Late Jageshwar Paswan Resident Of Quarter No. J.K.S., E- 56, Mohalla- Old Jakkanpur, P.S.- Jakkanpur, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Planning And Development, Government Of Bihar, Patna
3. The Director, Statistics And Evaluation Directorate, Old Secretariat, Patna
4. The Finance Commissioner, Government Of Bihar, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. SATISH CHANDRA JHA-3

For the Respondent/s : Mr. JAWAHAR PD. KARN,AAG-IV

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-02-2015

Annexure-1, the order dated 30th August, 2011, is the speaking order passed by the respondent-authorities and issued under the signature of Joint Secretary of the Department of Planning and Development, Government of Bihar.

The petitioner wants quashing of the said impugned order on many a grounds. The learned counsel contends that even earlier, he was compelled to approach the High Court by filing writ application; even at that point of time a plea was taken that in terms of Resolution no. 5552 dated 23-7-2003 need-based post was to be identified. The replacement scale, which the petitioner was looking for, could not be given, because the exercise for identifying the need-based post was never carried out. It was in these circumstances that the Court directed the respondent-authorities to take a fresh look and decide the matter afresh. By virtue of Annexure-1 the prayer of the petitioner has been rejected again.

As per the petitioner, the dispute is not about abolition of the post, creation of new service rules or creation of new cadre of Typist. What is of significance is the Resolution taken by the General Administration Department,



Government of Bihar dated 20th March, 2009, contained in Annexure-11. From a reading of the said Annexure, it is evident that the General Administration Department was aware of the situation that after 2006 on the creation of Bihar Secretariat Clerical Service, the post of Typist had been merged in one cadre and chain of promotion was created therein. But, a problem arose, because in terms of the previous arrangement, there were persons who were holding the post of Superintendent(Typist) or Head Typist. People had been granted promotion in the past in terms of the previous arrangement, and since they could not be relegated to a post lower than what they had held, the General Administration in terms of Annexure-11 took a policy decision that they will continue to hold the post they were holding. Those posts will be available till holders reach age of superannuation; after superannuation the post will vanish.

In other words, a working arrangement was made with the object of removing the difficulty, due to creation of new Service Rule and cadre. If Annexure-11 is to be interpreted, it only means that since the petitioner was granted promotion on the post of Superintendent(Typist) by virtue of Annexure-7 dated 8th March, 1996, he continued to hold the post of Superintendent(Typist) till his superannuation on 31-7- 2012. Since the petitioner served in the capacity of Superintendent(Typist), he was given the pay-scale existing on the date the notification for his promotion was issued, but since he continued to hold the post till his superannuation and rest of the Government employees were given benefit of replacement scale with effect from 1-1-2006, the claim of the petitioner for suitable replacement scale for him is not an unfair prayer to make.

From a reading of Annexure-1 it is evident that the respondent-authorities have messed up the various Circulars and directions issued by the Department of Finance by going into a tangent that a need-based post was required to be identified and then only the benefit of continuance or replacement scale could be given to the petitioner.

Since it was an unique situation created by the decision of the State Government to continue all such persons on the post of Superintendent(Typist) as a passing phase even after the abolition of the post, they will be entitled to a suitable replacement scale of revision in salary vis-à-vis the pay-scale which was given to him on the basis of the 5th Pay Revision Commission and which was extended to him, as would be evident from Annexure-7 dated 8th March, 1996.

Since the counter-affidavit of the State is in similar as Annexure-1 and Annexure-1's logic is flawed therefore Annexure-1 is quashed. The matter is remitted to the authorities to take a fresh decision, keeping in mind that the petitioner cannot be relegated to any other post, but will continue to hold the post of Superintendent(Typist) as a deeming fiction till he superannuated and he will get the suitable replacement scale as an aberration rather than as a rule. The decision in this regard must be taken in the uniqueness of the facts to extend the benefit to the petitioner within a period of three months from the date of production of a copy of this order.

The writ application is allowed.

B.Roy/-

(Ajay Kumar Tripathi, J)

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