

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1979 of 2010

IN

Civil Writ Jurisdiction Case No. 12799 of 2002

Naseer Ahmad Ansari, S/O Late Israil Ansari, R/O Vill.- Mohabbat Chapra, P.S.- Mahesi, District - East Champaran, At Present Store Keeper in Field Machinery, Sub-Division No.-1, Kahalgaon, P.S.- Kahalgaon, District - Bhagalpur

.... Appellant

Versus

1. The State of Bihar through the Commissioner, Irrigation Department, Bihar, Patna
2. The Engineer-In-Chief, Water Resource Department, Bihar, Patna
3. The Chief Engineer, Mechanical, Water Resource Department, Bihar, Patna
4. The Superintending Engineer, Mechanical Circle, Mithapur, Patna
5. The Executive Engineer, Field Machinery Division, Bhagalpur

.... Respondents

Appearance :

For the Appellant : Mr. Lakmesh Marvind, Advocate

Mr. Priyank Samdarshi, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 05-07-2016

The appellant, in this Intra-Court Appeal, is aggrieved by the judgment and order dated 30.09.2010 passed by learned Single Judge of this Court in C.W.J.C. No. 12799 of 2002 (*Naseer Ahmad Ansari Vs. The State of Bihar and another*).

2. Parties have been heard at length and records examined.



3. The appellant, the writ petitioner, had challenged the Office Order dated 23.06.2002 as contained in Annexure-5 to the writ petition, by which it was held that as the appellant/writ petitioner was appointed as a Store Keeper after 01.04.1981, he would be entitled to pay scale of Rs. 580 - 860/-. Instead, he was paid in the pay scale of Rs. 730 – 1080/-. The pay scale, accordingly, being revised all excess money paid to him for the last 20 years be recovered. Learned Single Judge elaborately dealing with the facts as appreciated, but dismissed the writ petition. Hence, this Intra-Court Appeal.

4. The facts are not in dispute. The writ petitioner/appellant was appointed as Work Sarkar in the Irrigation Division of the Water Resources Department at Darbhanga on 14.06.1975. Having worked for a considerable period, the State Government took a decision that people working for long in work charged establishment, like the petitioner/appellant, should be permanently absorbed in regular establishment. Accordingly, on 19.02.1981 State resolving the aforesaid issue, directed all the Chief Engineers of the Irrigation Department to accordingly absorb the work charged employees in permanent establishment within a



period of one month. This is Anneuxre-2 to the writ petition. Several persons situated similarly to the petitioner/appellant were then issued absorption letters. Some of them were absorbed as Store Keeper in the Water Resources Department, prior to 31.03.1981. Some like the petitioner/appellant were absorbed after that i.e. on 27.05.1981. They were all absorbed on the pay scale of Store Keeper i.e. in the pay scale of Rs. 260 - 408/-.

5. It may be noted that earlier in the department there were two separate posts having separate pay scales, they were Accounts Clerk, and, Store keeper/Chief Store Keeper. On 17.01.1980, State Government took a decision to merge the two posts and accordingly the two posts were merged and they were now entitled to the same pay scale i.e. Rs. 730 - 1080/-. This is Annexure-1 to the writ petition.

6. It appears, in the meantime, recommendations of the 4th Finance Commission were received by the State Government. The 4th Finance Commission recommended that the merger of the posts of Accounts Clerk and Store Keeper was wrong. Store Keeper could not be in the same pay scale. They accordingly recommended the pay scale of Accounts Clerk at Rs. 730/ -



1080/- and that of the Store Keeper at Rs. 580- 860/-.

Accordingly, by Memo No. 10770 dated 30.12.1981, the Finance Department advised the Water Resources Department to re-fix the pay scales of all Store Keepers accordingly w.e.f. 01.04.1981. This was challenged in this Court by those Store Keepers, who were appointed prior to 01.04.1981. Their ground of challenge was simple. They were appointed validity before the date of the implementation of the 4th Finance Commission i.e. 01.04.1981, and thus their pay scales could not be reduced.

This court in C.W.J.C. No. 618 of 1990 (Sushant Krishna Ghosh Mallick and Ors. Vs. The State of Bihar) by judgment dated 14.12.1998, accepted the said contention relying on earlier judgment of this Court in C.W.J.C. No. 2947 of 1995 (Nakul Kumar Mishra Vs. The State of Bihar) decided on 08.08.1995. The Division Bench held that the circular of the Finance Department could not effect those who had been appointed prior to the 01.04.1981 being the Store Keepers appointed prior to the said date. Consequently, their initial pay of Rs. 260 - 408/- was maintained in the revised scale of Rs. 730 - 1080/-. The Court did not decide nor was called upon to decide the validity of the notification



otherwise applicable to others. It seems pursuant to this distinction made, that ultimately the impugned directions were issued in the year 2002 pointing out that petitioner/appellant and their like, who had been receiving salary in the pay scale of Rs. 730 - 1080/- be reverted to the pay scale of Rs. 580 - 860/- and recoveries made as they were appointed after 01.04.1981. This was unsuccessfully challenged before the learned Single Judge of the Court.

7. Learned counsel for the writ petitioner/appellant submits that the petitioner and others, who were appointed as Store Keepers, pursuant to the Government Resolution dated 19.02.1981 to absorb those work charged establishment employees, who were working since long were a class by themselves. They were all long standing work charged employees, who by one decision were to be absorbed as Store Keepers in regular establishment of the Water Resources Department. They all were to be absorbed within one month of the decision dated 19.02.1981 (Annexure-2). Administrative delays, spread over their absorption to the month of March 1981, but they belong to a singular cadre, and were brought in permanent establishment in the same transaction. Inasmuch as, when the matter of



seniority/gradation list preparation came up, finding it difficult, State took a decision on 25.09.1990 (Annexure-7) to shift the date of appointment of all such work charged employees absorbed as Store Keeper to 21.03.1981 and gradation list was accordingly prepared. One of the argument before the learned Single Judge was that this decision/office order having shifted the date of appointment, of the petitioner/appellant to 21.03.1981, he would not be covered by the decision of the Government with regard to the cut of date of 01.04.1981. This was rightly rejected by the learned Single Judge on the ground that this office order itself clearly stipulated that this shifting of date of appointment was only for the purposes of determining seniority and would not confer any financial or other benefit but the fact remains that the State also treated both groups of Store Keeper, those who were appointed prior to 01.04.1981 and those who were appointed thereafter as a singular cadre making of one group of similarly placed, similarly selected, similarly absorbed and similarly performing work as Store Keepers and were absorbed pursuant to the same transaction. The only dissimilarity was their actual dates of absorption. On these facts, it is submitted that the job, the work, the responsibility,

the nature of duty being the same under the same employer in the same department only by reason of being appointed later, the distinction in the pay scale cannot be made.

8. On the other hand, learned counsel for the State submits that, there is an intangible differentia between those appointed prior and those appointed later than 01.04.1981, and thus, the classification of different pay scale was valid.

9. We are not impressed by the argument of the State. The challenge is based upon Article 39(d) of the Constitution of India read with Article 14 and 16 of the Constitution of India which simply says equal pay for equal work. When the rank, position, status and responsibility are the same then there cannot be discrimination with regard to remuneration, especially in the same establishment. This is clear from the judgment of the Apex Court in the case of ***P. Savita and Others Vs. Union of India, Ministry of Defence (Department of Defence Production), New Delhi and Others*** since reported in ***1985(Supp) S.C.C. 94***, and what is stated in para 15 thereof which reads as follows:

“15. The case on hand is much stronger than the facts of the Randhir Singh Case. In that case, the drivers belonged to two different

departments. In this case, the Senior Draughtsmen, divided into two groups are in the same department doing identical and same work. It is not a case of different grades created on the ground of higher qualification either academic or otherwise or an entitlement by any other criteria laid down. The justification for this classification is by the mere accident of an earlier entry into service. This cannot be justified.”

(emphasis supplied).

10. Then, we have the case of *Bhagwan Dass and Others Vs. State of Haryana and Other* since reported in *(1987) 4 S.C.C. 634,* and what their Lordships have held in para 13 and 14 which reads hereunder:-

“13. Lastly we have to deal with the contention that the scheme is a temporary scheme and the posts are sanctioned on an year to year basis having regard to the temporary nature of the scheme. We are unable to comprehend how this factor can be invoked for violating ‘equal pay for equal work’ doctrine. Whether appointments are for temporary periods and the schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of ‘equal pay for equal work’ is attracted. As regards the effect of the breaks given at the end of every six months, we will deal with this aspect shortly hereafter. That however is no ground for refusing to respect the ‘equal pay for equal



work' doctrine. Be it realized that we are concerned with the 'equal work equal pay' doctrine only within the parameters of the four grounds and the fact situation discussed hereinabove. We are not called upon, and we have no need or occasion to consider the applicability or otherwise of the said doctrine outside these parameters. For instance we are not required to express any opinion in the context of employment of similar nature under different employers, or in different cadres under the same or different employers. Nor are we concerned with questions required to be dealt with by authorities like the Pay Commissions such as equation of cadres or determination of parity-differential between different cadres or making assessment of workloads or qualitative differential based on relevant considerations and such other matters. We are concerned in the present matter with employees of the same employer doing same work of same nature discharged in the same department but appointed on a temporary basis instead of in a regular cadre on a regular basis. We have therefore decided the questions raised before us in the backdrop of facts of the present case. On the other dimensions of the doctrine we remain silent as there is no need or occasion to speak."

14. In the result we are of the opinion that the petitioners are entitled to be paid on the same basis of same pay scale as per which respondents 2 to 6 who are discharging similar duties as Supervisors just like the petitioners,

are being paid.”

11. In the case of *State of Mizoram and another Vs. Mizoram Engineering Service Association* since reported in *AIR 2004 S.C.C. 3644*; this is what their Lordships said in para 5 dealing with the question of equal work equal pay.

“The State Government cannot be permitted to discriminate between similarly placed individuals in this behalf between those holding the post at the time of revision of pay scales and future incumbents of the post. The argument has no merit.”

12. This decision have rightly been relied to point out that if the nature of duties, responsibilities are the same then similarly because one was appointed later will not be a justifiable reason to give a different financial treatment.

13. Learned counsel for the State submits that this was done pursuant to recommendation to the Finance Commission as accepted by the State. The recommendation was that the pay scale of Store Keepers should be less than the Accounts Clerk. They had recommended the pay scale of Store Keeper at Rs. 580 – 860/- as against Rs. 730 – 1080/, which was the revised pay scale of the Accounts Clerk and was being paid to Store Keepers, who were appointed earlier



than 01.04.1981. The effect of this would be that the Store Keepers having been picked up from the work charged establishment and brought and absorbed as Store Keeper in permanent establishment, those who were appointed prior to 01.04.1981, to draw a much higher remuneration of Rs. 730 – 1080/-, whereas those, who because of lethargy of the State to appoint him within one month as directed in Annexure-2, having been appointed after 01.04.1981, although, from the same source, performing the same duties, having the same responsibility, belonging to the same singular cadre on the same post, and absorbed in the same transaction would be paid considerably less amount in the pay scale of Rs. 580 – 860/-. To us, this is not acceptable. The reason as noted by the Apex Court, is that they being from a singular cadre having same responsibilities merely because Finance Commission recommended reduced pay scales, some of them could not be deprived similar treatment. It would clearly be ultra virus Article 39(d) read with Articles 14 and 16 of the Constitution of India. Such a decision is also not supported by the earlier Division Bench Judgment inasmuch as the issue there was totally different. The issue was with regard to earlier appointed Store Keepers, whose pay scale were



being reduced. The Court said that it could not be done, the dispute was not whether it could be done with other or not i.e. those appointed after 01.04.1981 who were not even party to the earlier litigation. Therefore, the said judgment is an authority only for the decision that people appointed prior to 01.04.1981 could not be deprived of their benefit and nothing more.

14. Thus, in our view, the decision of the State and that too as late as 2002 to enforce the differentiation between the pay scales and to recover the amounts paid cannot be upheld, Annexure – 5 to the writ petition is, thus, liable to be set aside as such. The Judgment and order of learned Single Judge is set aside, and the writ petition is allowed.

15. Any amount recovered from the writ petitioner/appellant or any amount due and not paid to the writ petitioner/appellant now be paid to him forthwith not later than three months from today.

16. Needless to say that consequent upon our judgment, writ petitioner/appellant's salary will have to be revised including the monetary benefits as indicated above has to be worked out and paid to the writ petitioner/appellant

within three months, failing which, as ordered earlier in this appellate proceedings, the State would be liable to pay interest for the amounts to be refunded @ 6% from the date they were due till the time they are paid.

17. This appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

R.K. Sinha/ Rajeev/A.F.R.

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