

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2259 of 2014

Bihar Administrative Service Association Through Its General Secretary Sushil Kumar, Son Of Late Raghunath Prasad, Having Office At Administrative Service Building (Basa Bhawan), Jawahar Lal Nehru Marg, Patna - 1

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary, Finance Department, Govt. Of Bihar, Patna
3. The Principal Secretary, General Administration Department, Govt. Of Bihar, Patna
4. The Under Secretary, Finance Department, Personal Claim Fixation Cell (PCFC), Govt. Of Bihar, Patna
5. The Officer - In - Charge - Cum - Authorized Officer, Personal Claim Fixation Cell (PCFC), Finance Department, Govt. Of Bihar, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhay Shankar Singh

Mr. A. K. Mishra

For the Respondent/s : Mr. SC-4, Md. Raisul Haque

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 06-01-2016

Heard learned counsels for the parties.

2. The Bihar Administrative Service Association is before this Court collectively, seeking a mandamus upon the General Administrative Department, Government of Bihar to carry out the obligation created under the notification, contained in Annexure-1, dated 03.05.2010.

3. There is no dispute that by virtue of a Cabinet resolution, which has also been brought on record as Annexure – D to the supplementary counter affidavit, filed on behalf of the Principal



Secretary, Department of Finance, Government of Bihar, Patna that certain posts were sought to be created giving benefit of certain pay-scale as well as other benefits. This emerges from reading of the Annexure – 1, annexed with the Cabinet resolution. It is the said Cabinet decision, which stands now notified as Annexure – 1 and the core dispute in the present writ application is non-payment of special-pay to the category of officers for whom such a sanction was accorded and made in terms of the notification.

4. It is the stand of the learned counsel representing the petitioner that even budgetary allocation was made and sanctioned, which will be evident from the notification (Annexure – 1). The total expenditure for the year 2010-2011 has been worked out taking into consideration the special-pay as a component. Once the notification has come into play, a right has been created in favour of the members of the association in relation to the posts, which have been talked about in Annexure – 1 and the Cabinet resolution. A right to beget that allowance flows from the date of the notification. However, arbitrarily the functionaries of the State are not paying the said amount in the last five years and now when the writ application has been filed, seeking a direction upon them, they are coming out with one excuse or the other for not making such payment.

5. One of the primary submissions made on behalf of the petitioner at the bar is that so long as this notification, contained in Annexure-1, stands and is not altered or withdrawn, the right of the



petitioners subsists. In addition to that if Annexure – 1 has been issued in furtherance to a Cabinet resolution, then any alteration or modification or rescinding of the same can only be done by the Cabinet and not by any other functionaries of the State, much less any Secretary of any department. With regard to the proposition that a Cabinet decision can only be undone by a Cabinet, counsel, representing the petitioner, relies on paragraph 17 of the decision, rendered in the case of **Anirudh Jha versus State of Bihar and others, reported in 2015 (4) P.L.J.R. 63**. Paragraph 17 reads as under:

“17. The first thing I would like to note here is that once the decisions of the Government has been notified and expressed in the name of Governor, it has a certain sanctity. No Secretary or even Principal Secretary can himself all alone set aside such decisions. They are collective decisions of the government. As noted above, the said decision was taken after consulting various authorities and then issued in the name of Governor and notified. Such an exercise of setting at naught the governmental decision by a Secretary cannot be accepted in the present constitutional setup. Then, the question of arbitrariness and violation of Articles 14 and 16 of the Constitution arises.”

6. There may not be any quarrel on the proposition and the submission on this score.

7. No doubt, an affidavit was filed on behalf of the General Administrative Department as well as the State of Bihar earlier, but it is only now that explanation is sought to be offered taking a stand that such an allowance was never thought to be as part and parcel

of the pay and allowances, which were available to the persons and posts, who stands notified in terms of Annexure – 1.

8. This Court fails to understand that if there was some anomaly in the notification and if certain officers of the General Administrative Department or the Finance Department felt so, they should have taken the process, which was available to them, which is by seeking a new resolution or decision of the Cabinet, annulling or taking away the grant of special-pay benefits to the petitioners' members, but this cannot be permitted so long as the resolution stands and Annexure – 1 stands.

9. This Court does not want to sound alarmist by opining that if such a procedure is allowed to be adopted then the very edifies of separation of power of decision making will today or tomorrow not only get diluted but will have serious consequences for democratic polity of the State.

10. The sanctity of the Cabinet has to be maintained and it is the Cabinet, which has to reconsider its decision, if something amiss is found by any authority, during the course of any review or revisit to such decisions. The Secretaries have no special privilege even if it is the Chief Secretary to dilute or undo a Cabinet decision in the manner in which it is sought to be done, in the present case.

11. In view of the aforesaid facts and circumstances, this writ application is allowed.

12. The respondent-authorities of the General

Administrative Department as well as the Finance Department are directed to release and pay the special-pay to the members for whose benefits Annexure – 1 has been issued. The said pay or the arrears will accrue in their favour from 03.05.2010 and this will subsist and continue in consonance with the notification, contained in Annexure-1. The payments must be made within a period of three months from the date of communication / production of a copy of this order.

(Ajay Kumar Tripathi, J)

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