

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.821 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 9097 of 2012
Along with
Interlocutory Application No.3506 of 2015

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Bihar State Financial Corporation Karamchari Federation, Bihar State Financial Corporation, Fraser Road, Patna through its General Secretary, Shyam Shekhar Lal
.... Appellant/s

Versus

1. Bihar State Financial Corporation, Fraser Road, Patna through its Chairman-cum-Managing Director.
2. Chairman-cum-Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Senior Advocate
Mr. Manik Vedsan, Advocate

For the Respondent/s : Mr. Y. V. Giri, Senior Advocate
Mr. Ashish Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 31-08-2016

Re.: Interlocutory Application No.3506 of 2015

The application is for condonation of delay of 31 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.821 of 2015

The challenge in the present Letters Patent Appeal is to an order dated 11th February, 2015 passed by the learned Single Bench in CWJC No.9097 of 2012 filed by the appellant, namely, the Bihar State Finance Corporation Karmchari Federation, wherein the claim is for the benefit of 5th pay revision with effect from 1.1.1996. Vide the aforesaid order, the learned Single Bench also decided two other writ petitions bearing CWJC No.2529 of 2009 filed by some of the employees of the respondent-Corporation in their individual rights and CWJC No.7115 of 2014 by the Bihar State Finance Corporation Karmchari Federation wherein the claim is for grant of benefit of 6th Pay Revision.

2. The appellant is an association of the employees of the Bihar State Financial Corporation (for short, 'the Corporation') the respondent no.1 herein. The Board of Directors of the Corporation in its meeting held on 14th September, 1970 resolved that it shall follow the pay scales, cost of living allowance and House Rent Allowances to its employees *mutatis mutandis* as per the State Government's orders from time to time under intimation to the Board. The relevant resolution read as under:

"Re. Acceptance of pay scales and other accompanying emoluments to be employees of the Bihar State Financial Corporation in the lines of State Govt.'s orders issued from time to time.

“RESOLVED that the Corporation shall follow the Pay Scales, Cost of living allowance and House Rent Allowances to its employees *mutatis mutandis* as per the State Government’s orders from time to time under intimation to the Board.”

3. After the said decision, the Corporation granted financial benefits to its employees for some time, but the recommendation of the 5th Pay Commission recommending revised pay scale with effect from 01.01.1996 was not given effect to by the Corporation.

4. The stand of the Corporation is that in its meeting held on 29th September, 2008, the Corporation has decided that the pay scale of its employees in the revised scale should be implemented with effect from 1st of October, 2008 instead of 1st of January, 1996. Still further, merger of 50% D.A. with basic pay was not allowed. The relevant Resolution reads as under:

“Minutes of the 2nd meeting (2008-2009) of the Board of Directors of the Corporation held on 29.09.2008.

14168 Re: Revision in the Pay Scale and other service conditions for the employees of the Corporation in line with the decision taken by the Govt. of Bihar for the State Govt. Employees.

After detailed discussion on the agenda item placed before it the Board resolved as under:

RESOLVED that there would be review of the working of all the officers and employees of the Corporation who have attained age of 55 years, and those who are not found useful should be considered for compulsory retirement.

RESOLVED further that pay scales of the employee, in the revised scale (as given in Annexure-IV, of the memorandum placed vide item no. 14060) should be implemented with effect from 01.10.2008. Pay fixation will be done with effect from 01.10.2008. Further merger of 50% D.A. with basic pay was not to be allowed.

RESOLVED further that Payment in the revised scale would accrue from 01.10.2008.

RESOLVED further that Payment of HRA and CCA as per the revised scale will arise from 01.10.2008.

RESOLVED further that for the employees, accumulation of unavailed ordinary leave will be allowed to accumulate up to 300 days w.e.f. 01.10.2008.”

5. The appellant invoked the writ jurisdiction of this Court to claim benefit of pay revision as has been granted to the employees of the State Government in terms of earlier Resolution of the Corporation dated 14th of September, 1970. However, learned Single Judge dismissed the writ petition on the ground that the Corporation is an autonomous body created under the State Financial Corporation Act and, therefore, it has to develop its own resources for paying the salary and emoluments of its employees. It cannot be forced to accept and make payment of salary for its employees in the pay scales of the State Government. The learned Single Bench, thus, found that the decision dated 29th September, 2008 supersedes the earlier decision of the year 1970 inasmuch as in another decision, the

Corporation has resolved to extend the benefit of 6th pay revision with effect from 1st of October, 2010.

6. We have heard learned counsel for the parties and find that the order of the learned Single Bench cannot be sustained. The resolution of the Board of Directors dated 14th of September, 1970 is unequivocal that the Corporation will follow the pay scales, including the cost of living allowances and House Rent Allowance, as per the State Government's order issued from time to time. Therefore, as and when the State Government revises the pay scales of its employees, the same revised pay scale is to be extended to the employees of the Corporation in terms of the said resolution.

7. No doubt, the Corporation is an autonomous body created under the Statute, but the fact remains that the resolution dated 29th September, 2008 can supersede the earlier resolution dated 14th September, 1970, but from the date the Corporation has passed such resolution. The resolution dated 29th September, 2008 will not supersede the earlier resolution from the retrospective effect. The pay scale, as has been revised by the State Government from time to time up to 28th September, 2008, has to be extended by the Corporation to its employees. The resolution of the Corporation dated 29th September, 2008 would be applicable from the date the same was passed. It would not affect the already concluded rights. Therefore, we find that the Learned Single Judge has committed illegality while

dismissing the writ petition. Consequently, the appeal is allowed and the order passed by Learned Single Judge is set aside. It is held that the resolution of the Corporation dated 29th September, 2008 cannot be given retrospective effect and the employees of the Corporation are entitled to the same pay scale as are given to the State Government employees with effect from 01.01.1996.

8. Another question would arise as to whether, the pay scale of the employees can be reduced from the date, the Corporation passed the resolution in the year 2008. Since such issue has not been raised before this Court, therefore, we leave such question open for an appropriate decision by the Corporation at appropriate stage.

9. In view therefore, the present Letters Patent Appeal is allowed in the manner mentioned above.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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