

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1959 of 2012

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1. The State of Bihar, through the Principal Secretary, Road Construction Department, Bihar, Patna
 2. The Deputy Secretary, Road Construction Department, Bihar, Patna
 3. The Chief Engineer, (Mechanical) Mechanical Up-Bhag, Road Construction Department, Bihar, Patna
 4. The Superintending Engineer (Mechanical), Mechanical Circle, Road Construction Department, Darbhanga
 5. The Executive Engineer, (Mechanical Division, Road Construction Department, Khagaria

.... Appellants

Versus

Satyendra Sharma, son of Late Ramadhin Sharma, resident of village – Chandra Nagar (Rako), P.S. – Mofassil Khagaria, District – Khagaria.

.... Respondent

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Appearance :

For the Appellants	:	Mr. P.K. Verma, AAG-5 Mr. Suman Kumari Jha, AC to AAG-5 Dr. Mankeshwar Tiwary, AC to AAG-5 Mr. Dilip Kumar Tiwari, Advocate
For the Respondents	:	Mr. Raj Dular Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 13-07-2016

State is in Intra-Court Appeal against the judgment
and order dated 21.11.2011, passed in C.W.J.C. No. 9829 of
2010 (Satyendra Sharma Vs. The State of Bihar and another).

As pleadings are complete, with consent of learned
counsels for the appellant, the State and the private
contesting respondent, who was writ petitioner, we have
heard this matter at length for its final disposal at this stage

itself.

There are no disputes with regard to the facts. The dispute is essentially with regard to the revised pay which the writ petitioner/respondent would be entitled consequent to pay revision w.e.f. 01.01.1996. The learned Single Judge was of the view that as the writ petitioner/respondent had been promoted to the post of Fitter Grade - II in the year 1981, he was in the pay scale of Rs. 975 – 1540/-, he thereafter got the second Time Bound Promotion. As per the scheme of the Time Bound Promotion invoked, he became entitled to the next higher pay scale. The first thing to notice is, it is not a promotion. The second thing is that he would be entitled to only pecuniary benefits of the next higher pay scale. Accordingly, the writ petitioner/respondent was put in a pay scale of Rs. 1200 – 1800/-. This was the position on 31.12.1995. In the year 1999, by resolution dated 08th February, 1999, the State Government accepted the recommendation of the Pay Revision Commission as well as various recommendations of the Fitment Committee, and the same was notified. This is Annexure- B to the counter affidavit of the State in the writ proceedings. This Pay Revision was made effective



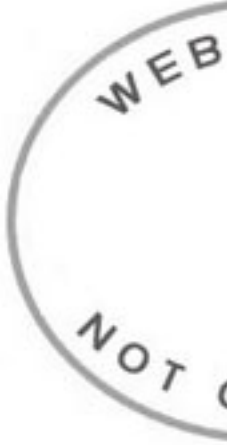
retrospectively with effect from 01.01.1996.



We have perused the said Government Resolution in detail. The first thing noticeable is that the Pay Revision has been done corresponding to the posts. There is no replacement scales of pay provided which was earlier the concepts, from reading, the scheme as a whole. What we find is that, the intention was that for a post, the pay scales were revised and a person holding a post would get the revised pay scale alone. But there was a problem. The problem was that, in some cases, because of Time Bound Promotions, the persons were in receipt of pay on the scale above the pay scale for the post. This would have created an anomaly. As noted above, the concept at that time was that a person would get the revised pay scale for the post he was holding. Time Bound Promotion was not a promotion. In fact, it was payments of remuneration of the next higher pay scale.

To meet this contingency, Clause 11 of the Resolution gives a guideline. Clause 11 of the Resolution dated 08th February 1999, as published in the Gazette on 13th February, 1999 which is quoted hereinunder:

“11. The State Government have decided to abolish the existing facilities of Time Bound Promotions and Selection Grades,



discussed in paras 10 and 12 of F.D. resolution no. 6021 dt. 18th December, 1989 and they shall cease to be applicable with effect from 1st January, 1996 and thereafter in the existing pay scales. If any such promotion, however, is due under the Rules before 1st January 1996, it shall be given and the payment of arrears in the existing scale shall be made only upto 31st December, 1995 after which the promotion would be deemed to have been automatically terminated. While fixing pay in the revised scales, such promotions given after 31st December, 1995 will not be taken into consideration. If such promotions have been given after 31st December, 1995 then the question of adjustment of such additional emoluments obtained in the process, will be decided after the Fitment Committee submits its recommendations on promotion Policy. Promotion to any vacancy of a post identified as need based post would be admissible. The procedure for identification of such need based posts has been set out in paragraph 12.”

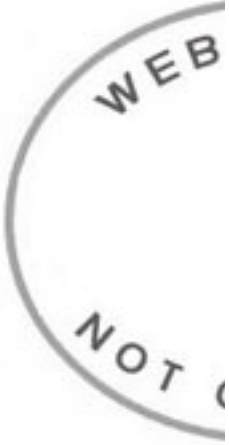
The whole dispute is what would be the effect of
the Pay Revision in respect of the writ

petitioner/respondent and what is the import of Clause 11 of the notified resolution dated 8th February, 1999.

On behalf of the writ petitioner/respondent, it is submitted that as he was in the pay scale of Rs. 1200 – 1800/-, he would be entitled to the equivalent of the said pay scale upon revision, which would be Rs. 4000 – 6000/-. Instead, what has been done is, his revised pay has been fixed in the pay scale of Rs. 3050 – 4590/-, which is the revised pay scale of Rs. 975 – 1540/- in respect of the post.

Prima facie, this argument appears logical and the learned Single Judge accepted the same. Accordingly, the learned Single Judge directed that the writ petitioner/respondent herein would be entitled to the pay scale of Rs. 4000 - 6000/- on revised basis.

On the other hand, Sri P.K. Verma, learned Additional Advocate General – V, submitted that there is a basic fallacy in the judgment and order of the learned Single Judge as well as the contention of the writ petitioner/respondent. He pointed out that from the government resolution and in particular Schedule III thereof shows that writ petitioner/respondent was admittedly Fitter Grade – II, his unrevised pay scale was Rs. 975 – 1540/- and





the revised pay scale would be Rs. 3050 – 4590/-. This could be apparent from serial no. 105 of Schedule – III of the said notification. If, what the writ petitioner/respondent submitted is to be accepted as was accepted by the learned Single Judge, then, the pay scale claimed by the writ petitioner/respondent would be Rs. 1200 – 1800/- being the next higher pay scale pre 01.01.1996. If we now refer to Schedule - III again that is not the pay scale of Fitter Grade – II, but is the pay scale of Excavator Operator, serial no. 102, which the writ petitioner/respondent is not. The whole concept of this revision was that the pay revision was *vis-a-vis* the post and not replacement pay scale. He further pointed out that if we refer to Clause 11 of the said notification, the validity of which was never challenged, it clearly contemplates that on and w.e.f. 01.01.1996, the notional promotions granted earlier would come to an end. The expression used is “*would be deemed to have been automatically terminated*”. The effect would be that the monetary benefit which persons like the writ petitioner/respondent enjoyed by way of time bound promotion would come to an end. Meaning thereby, the writ petitioner/respondent or their like would revert to their



original pay scale and get the revised pay scale for the said post. But this will not make any difference, because, there is a pay protection provided in case of the writ petitioner/respondent. The calculation sheet (Statement A) has been annexed as Annexure – C to the counter affidavit of the State in the writ proceedings, and a reference to that would show that writ petitioner/respondent does not suffer any pecuniary disadvantage. It would be his submission that the writ petitioner/respondent and the learned Single Judge proceeded on the concept of pay revision by providing of replacement scales, which, in fact, was not at all there. This pay revision is in respect of a post in the Grade of the post. This is the error to which the learned Single Judge fell.

We have examined the matter in detail. In our view, the learned Additional Advocate General – V is correct. Firstly, there is a conceptual difference between what used to be the practice earlier i.e. upon pay revision replacement scales were provided. Therefore, if a person was in a particular scale irrespective of the post he would be entitled to the replacement pay scale. That was given a go-bye in the present pay revision. First, as evident from Schedule II thereof, the number of pay scales was restricted.



Then, in Schedule III, in respect of each post, the basic pay scale and the revised pay scale for the said post was provided. This abundantly makes clear that the concept of replacement pay scale has not been adopted in this pay revision. Therefore, as the writ petitioner/respondent was Fitter Grade – II in the pay scale of Rs. 975 – 1540/- , his revised pay scale being revised pay scale of Fitter Grade – II would be 3050 – 4590/-, irrespective of the higher scale of pay granted by virtue of the time bound promotion which stands terminated by virtue of Clause 11 of the resolution, as quoted above, the validity of which has not been challenged nor could be challenged as it is an attempt to bring everyone to a post at par. Apparently, it seems shocking that a person who was in the pay scale of 1200 – 1800/-, the revised pay scale whereof was 4000 – 6000/-, he is brought down to the revised pay scale of Rs. 3050 – 4590/-. On the face of it, it is a drastic reduction. It is this probably what persuaded the learned Single Judge to agree with the writ petitioner/respondent but in fact it not so. If we look to the calculation chart, Statement-A, in respect of the writ petitioner/respondent himself, the situation is explained. On the upgraded pay scale of Rs. 1200 – 1800/- as he was



receiving by virtue of time bound promotion as on 31.12.1995, his basic pay came to Rs. 1740/-. With dearness allowance and other allowances, his total pay came to Rs. 5285/- upon pay revision being Fitter Grade – II. He would now be in the revised pay scale of Rs. 3050 – 4590/-. Thus, the maximum he would get as basic pay would be 4590/- which sure is less than 5285/- by Rs. 695/-. When we go further and come to his pay fixation upon revision, we find that he was given the maximum of the revised pay scale of Fitter Grade II i.e. Rs. 4590/- plus Rs. 695/-, which was the difference as noticed above, total being Rs. 5285/-. Thus there is no loss.

To the contrary, this amount of Rs. 5285/- now became his basic pay over which he would be now entitled to dearness allowance and in addition thereto other allowances. As and when the basic pay would increase upon yearly increments, this Revised Pay Protection (RPP) of Rs. 695/- would go on reducing but his basic pay would never be less than what he was receiving as a pay, pre-revision. The calculation, as per Statement A, is correct application of the government resolution.

Thus, in our view, the contention of the writ

petitioner/respondent as accepted by the learned Single Judge that he would be entitled to the replacement pay scale to the pay scale he was last getting is in the face of it, is erroneous and cannot be accepted, that would put the entire Clause 11 as also Clause 13 of the resolution redundant. As noticed above, Clause 11 had a purpose. It cannot be rendered as an otiose. It is well established that no provision could be rendered by interpretation or otherwise an otiose and when the legislature or executive have formulated any provision, one has to look to the purpose thereof, there cannot be redundancy in statutes or resolution, having force of statute.

Thus, we are unable to affirm the judgment of the learned Single Judge. We would, accordingly, set it aside and allow the appeal and dismiss the writ petition.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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