

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16664 of 2016

- =====
1. Kamla Pati Singh Son of Late Hanuman Singh resident of Village- Barej, P.S.- Mohania, District- Kaimur at Bhabhua.
 2. Uday Kumar son of Late Kedar Singh resident of Village- Chechaul, P.S.- Naubatpur, District- Patna.
 3. Rabindra Kumar Sinha Son of Late Ram Krishna Prasad Sinha resident of Hope Ananda Apartment, Flat No.204, Anandpuri, P.S.- Srikrishnapuri, District- Patna.
 4. Narendra Kumar son of Late Sidheshwari Prasad Sinha, resident of Sidhi Sadan, Juran Chapra, Road No.3, P.S.- Brahmpura, District- Muzaffarpur.
 5. Krishna Mohan Prasad Singh Son of Late Mahendra Narain Prasad Singh resident of Village- Ektara, P.S.- Arer, District- Madhubani.

.... Petitioners

Versus

1. The State of Bihar.
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
5. The Deputy Secretary (Management Cell), Road Construction Department, Govt. of Bihar, Patna.
6. The Under Secretary, Personnel Claim Fixation Cell, Department of Finance, Govt. of Bihar, Patna.

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Y.V. Giri, Senior Advocate
Mr. Prabhu Nath Pathak, Advocate
For the Respondents : Mr. Manoj Kr.Ambastha, SC-26
Mr. Tripurari Nath Ambastha, AC to SC-26

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT

Date: 30-11-2016

There are five petitioners before this Court who are seeking quashing of the Notification dated 12.09.2016 issued under the signature of Additional Secretary, Road Construction Department, Government of Bihar. The quashing of the Notification basically relates to the issue of non-grant of pay protection to them.

2. There is a long history behind the present litigation.

These petitioners, along with large number of other candidates, came



to be appointed as Junior Engineer between the year 1981 to 1985. They were also loosely referred to as the graduate engineers. They worked on an *ad hoc* manner. Their engagement was casual and not by following any procedure as such. In the year 1997, they also came to be promoted to the post of Assistant Engineer, if the expression 'promotion' could be used in the present set of facts. They got a particular pay-scale and increments, but their status remained so all these years and they never had the privilege or benefit of becoming a regular Government servant. Obviously, the demand and lobbying started when these petitioners started inching towards the evening of their life. With the long service behind them, the State of Bihar, as a matter of policy, decided to regularize them, give them the benefit of past service for the purposes of grant of pension etc. and a notification in this regard was issued on the basis of a Cabinet resolution. The Notification in question is Annexure-5 dated 28.03.2012. From a reading of Annexure-5, especially paragraph 2 and 3 of the Notification, it seems that pay protection was granted to them, which, subsequently, was deleted by Notification dated 13.05.2014 contained in Annexure-7.

3. The petitioners had approached the High Court earlier, where they took a plea that the matter was being unnecessarily delayed and there was no basis for the Finance Department to issue Annexure-7. The Court was informed that the



matter after reconsideration is being placed before the Cabinet, which got dragged on for some time. Finally, the Cabinet retook a decision since controversy prevailed that Annexure-5 was not in conformity with earlier Cabinet decision. The Cabinet, in a conscious decision, decided not to extend the pay protection to the petitioners, which they were asking or looking for. This is the beginning of second round of battle and the prayer in the writ application with regard to the aspect of pay protection has been made.

4. Learned senior counsel for the petitioners submits that the petitioners were Government servants for all practical purposes. Right from their hiring they have been transferred and posted at various stations under the orders issued by the State. They have been given the benefits of pay-scales as well as increments right through and, therefore, Rule 39 of the Bihar Service Code comes into play and not Rule 78 as is the stand of the State.

5. Attention of the Court was also drawn to a similar kind of litigation which was initiated in the State of Jharkhand and travelled up to the Hon'ble Supreme Court as substantial number of such engineers, after bifurcation of the State of Bihar on 15.11.2000, ended up in the State of Jharkhand. When they demanded regularization etc., the State of Jharkhand decided to remove them. Decision was challenged before a learned Single Bench and then before a Division Bench and finally before the Hon'ble Supreme

Court, where the decision of the Division Bench which held in favour of those petitioners and against their removal was upheld by the Hon'ble Apex Court.

6. Learned senior counsel for the petitioners thereafter makes a submission that the benefit, which has been extended to such employees of the State of Jharkhand on the basis of the decision of the Hon'ble Apex Court, should be extended and made applicable because all benefits had been extended post their regularization.

7. The issue of regularization is not before this Court. That decision has already been taken as a matter of policy by the State of Bihar. The recognition for past service has also been given. The only bone of contention before this Court so far as these petitioners are concerned is that they were drawing a particular pay-scale which was in the range of 24,000.00 rupees and which stands reduced to Rs.14,000.00 now. Therefore, their pay should be protected and they cannot end up with lower pay than what they were being paid.

8. Rule 39 of the Bihar Service Code reads as follows :-

“39. Personal pay means pay granted to a Government servant: -

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to revision of pay or to any reduction of such substantive

pay otherwise than a disciplinary measure, or

(b) in exceptional circumstances, on other personal considerations.”

9. Submission of learned senior counsel for the petitioners that in terms of the above Rule, the petitioners are required to be extended the benefit of pay protection at the time of their regularization. The words of Rule 39 are unambiguous; it talks in terms of such benefits to regular employees of the State. By no stretch of imagination, these petitioners could be treated as a Government servant prior to the issuance of the notification dated 28.03.2012. If they were Government servant, there would have been no occasion for the State to take a policy decision to regularize them, give them the benefit of past service etc. Obviously, there is a wedge or a gap between the status which the petitioners perceived about themselves prior to their regularization and post regularization. The petitioners became a Government servant only after Annexure-5 dated 28.03.2012 was issued. Prior to the said date their status was nebulous and by no interpretation they could be treated to be a Government servant.

10. Since Rule 39 protects pay of a regular Government servant and not of persons of such *ad hoc* hiring, therefore, the Court is not willing to confer upon them a status which only a permanent

Government servant is entitled to.

11. Another aspect of the matter would be that despite the precarious and nebulous position in which the petitioners were all along, they had now acquired status and secured their future by payment of pension etc. if the prayer of the petitioners will be accepted there would be two kinds of pay-scales, would be dished out to substantively hired Assistant Engineers working in the State of Bihar. Similarly, there would be two kinds of pension, which would accrue to the same set of people. Therefore, the Court is not willing to create a class amongst a class and violate Article 14 and 16 of the Constitution of India. The prayer of the petitioners, therefore, seeking quashing of that part of the Notification regarding pay protection, which is the outcome of a conscious Cabinet decision and a policy of the State of Bihar, is not required to be interfered with. Petitioners have no right to claim pay protection prior to their regularization as a Government servant.

12. Writ has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.12.2016
Transmission Date	N/A