

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10378 of 2011

=====

Sheo Kumar Yadav, son of Late Munsii Yadav, resident of Village- Shipara, P.S.- Phulwari, Distt.- Patna in the capacity of General Secretary, Bihar State Industry Development Corporation Employees Association, Indira Bhawan, Ram Charitra Path, Bailey Road, Patna

.... Petitioner

Versus

1. The State of Bihar
2. Managing Director, Bihar State Industrial Development Corporation, Ram Charitra Path, Bailey Road, Patna
3. Industrial Commissioner, Government of Bihar, Patna
4. Principal Secretary, Finance, Government of Bihar, Patna
5. Chief Secretary, Government of Bihar, Patna

.... Respondents

=====

Appearance:

For the Petitioner	: Mr. Arbind Kumar Sharma, Advocate.
For the BSIDC	: Mr. Lalit Kishore, Sr. Advocate.
	: Mr. Satyabir Bharti
	: Ms. Aparna Arun, Advocates
For the State	: Mr. Ranjan Kumar, AC to GP-7

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-08-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for a direction to the respondents to implement the recommendations of the 5th P.R.C. with effect from 01.01.1996 and 6th P.R.C. with effect from 01.01.2006 along with allowances as admissible to employees of the State Government as per circular issued by the State Government through Finance Department vide Circular No. 660/F (2) dated 08.02.1999.

3. Learned counsel for the petitioner submits that despite



the resolution of the Board of the respondent-Bihar State Industrial Development Corporation (for short 'the BSIDC') taken in its meeting held on 22.12.1961 (Annexure-2) by which the relevant Rules of the Bihar Service Code and T.A. Rules were adopted until such time that Rules were framed by the BSIDC, the benefits of the 5th and 6th pay revision have not been granted to the petitioner. The petitioner relies on the judgment dated 31.08.2016 passed by a Division Bench of this Court in LPA No. 821 of 2015 which was also not interfered with in Special Leave to Appeal (C) No. 31055 of 2016 filed by the Bihar State Financial Corporation (for short 'BSFC').

4. Learned counsel for the respondent-BSIDC resists the writ petition, submitting that the judgment relied upon by the petitioner is not applicable in the facts and circumstances of the case. That case involved a resolution of the BSFC dated 14.09.1970 in the following terms:

"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."

5. The BSFC had taken the stand that in terms of its subsequent resolution dated 29.09.2008, it had decided to implement



the revised scale for grant of benefit of the 5th pay revision with effect from 01.10.2008 instead of from 01.01.1996. In view of the resolution of the BSFC accepting the pay scale and other emoluments on the lines of the State Government's orders issued from time to time, this Court held that the subsequent resolution dated 29.09.2008 could not be given retrospective effect to deny the benefit of the 5th pay revision which had already accrued on 01.01.1996 to the employees.

6. In the instant case, the resolution of the BSIDC is not at par with the resolution of the BSFC. The BSIDC merely adopted the provisions of the Bihar Service Code and T.A. Rules without however taking into account the subsequent amendments as may be made from therein time to time. Learned counsel for the BSIDC relies on a Division Bench judgment in LPA No. 1558 of 2011 (*Namindra Singh vs. The State of Bihar*) wherein the relevant resolution of the Bihar State Electronic Development Corporation was on similar lines as in the present case. It was held therein that the provisions of the Bihar Service Code would be applicable as they existed on the date when the resolution was passed, observing as follows:

"We see no merit in this Appeal. The above referred order only indicates that whatever service Rules and financial Rules of the State Government were applied to the employees of the Corporation, such application was approved by the Board of Directors of the Corporation. Nothing in the said order indicates that the Corporation has/had adopted the provisions contained in the Bihar Service Code as modified or altered



from time to time, unless the Resolution passed by the Board of Directors expressly or by necessary application provides that the Provisions contained in the Bihar Service Code as amended from time to time shall apply to the employees of the Corporation the contention cannot be countenanced”.

7. The above decision was applied by a co-ordinate Bench of this Court in C.W.J.C. No. 10502 of 2013 (*Shri Sachchidanand Sinha vs. The State of Bihar & others.*) which was a matter concerning the BSIDC's resolution dated 22.12.1961 which was on similar lines as in the present case. Relying on Namindra Singh's case (*supra*), it was held as follows:

“In view of the subsequent decision taken by this Court and the resolution passed by the Corporation, it does not indicate that the future amendment in the Bihar Service Code would automatically apply to the employees of the Corporation. This Court is of the view that whatever the provisions of the Bihar Service Code was there at the time of resolution, will only apply to the employees of the Corporation in absence of any further resolution thereby adopting the amended provisions of the Service Code. This Court has great reservation in accepting the submission of the petitioner that the age of superannuation of employees of the Corporation will be treated to have been extended to 60 years.

In view of the aforesaid discussion, this Court is of the view that the petitioner is not entitled to the relief sought for, first it suffers from delay and laches and secondly on merit also.”

8. Having heard the parties and on a consideration of the



material on record, this Court finds the writ petition to be devoid of merit. The issue at hand is no longer *res integra* and already stands decided in LPA No. 1558 of 2011 as applied in C.W.J.C. No. 10502 of 2013, the respondent in the latter case also being the BSIDC. It must therefore be held that inasmuch as the resolution of the respondent BSIDC does not provide for adopting the amendments to the Bihar Service Code from time to time, the same would not automatically be applicable to the petitioner in absence of a specific resolution to that effect. Learned counsel for the petitioner has not brought any such subsequent resolution to the notice of this Court.

9. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	25.08.2017
Transmission Date	N.A.

