

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9334 of 2002

SAKHI CHAND MODI & ORS

... .. Petitioner/s

Versus

THE BIHAR STATE ELEC.BOARD &OR

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. SUBODH KUMAR JHA, Adv. Mr. Pranav Kumar Jha, Adv.
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 27-03-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing the Clause 12 (3) of the Notification No. 275 dated 24.10.2000 and further to direct the respondents to give pay protection to the petitioners as being granted to the employees of Government of Bihar under Bihar Service Code.

Petitioners were initially appointed as Assistant Engineer (Electrical) in the year 1964, 1965 and 1966. The respondents vide Notification No. 275 dated 24.10.2000 Clause 12(iii) has imposed a condition that in case of employees who were drawing



equal pay with their juniors in prepromotional stages prior to pay revision from 1.1.1996 will not be entitled to pay protection. The pay revision under the Respondent-Board has been made after the revision of pay of Bihar Government employees and Government of Bihar has revised pay of its employees from 1-1-1996 vide Notification dated 8.2.1999 giving pay protection to senior employees against junior employees and pay slips have been issued in favour of petitioners without giving pay protection from 19.1.1996 from their juniors. The service conditions of employees under the Respondent-Board and service conditions of employees of State Government are identical and Bihar Service Code has been adopted by the Board with respect to service conditions of employees of the Respondent-Board and in view of State of Bihar pay revision order and pay protection clause, petitioners are also entitled to get pay protection from 19.1.1996 from the date the juniors to petitioners have been granted higher pay and petitioners are entitled for pay protection from their juniors from the date juniors were getting higher pay. Petitioners had represented before the authorities i.e., Respondent-Board but no decision was taken on their representation and petitioners thereafter have retired also.

A counter affidavit has been filed on behalf of the Respondent-Board that after considering recommendation of Pay



Revision Committee Board took decision vide resolution No. 7674 to revise the existing pay scale of employees of Board and accordingly Notification No. 268 dated 12.10.2000 was issued and the pay scale of employees was accordingly revised. It has further been stated that pursuant to Board's Notification No. 275 dated 24.10.2000 petitioners are not entitled for getting pay protection from 19.1.1996 as Clause-13(iii) of the notification states that both the juniors and senior employees should have been promoted in the identical post in the same cadre and scale of pay and also the senior employees were drawing higher pay in all prepromotional posts as their juniors. It has further been stated that petitioners and Sri H. P. Singh have been promoted from identical posts in the same cadre and petitioners are senior to H.P. Singh and were not drawing higher pay in all prepromotional posts. As such, their claim for pay protection is not tenable.

A reply to the counter affidavit has been filed on behalf of the petitioners in which they have stated that service condition of the petitioners is similar to State Government employees as such Bihar Service Code is applicable to the petitioners, same principles of pay fixation (pay protection) should have been adopted by the Respondent-Board as adopted by Government of Bihar. In past also pay revision in 1971, 1981 and 1986 has been adopted by



Respondent-Board as per pay fixation conditions of Government of Bihar. As such, petitioners are entitled for similar pay protection over juniors in case seniors' pay in all prepromotional posts over juniors being higher or equal. But in notification of pay revision made on 1.1.1996 the clause (equal pay) has been left out debarring the petitioners from pay protection over their juniors which is available in Government of Bihar. Petitioners were drawing higher or equal pay in all prepromotional posts and their claim of pay protection over their juniors is genuine and bonafide.

The petitioners are entitled to stepping up of their pay to bring it on at par with their juniors under the general principle of service juris prudence. The principles relating to stepping up of pay of the seniors with reference to the higher pay of juniors are now well settled based on the principle of "Equal Pay for Equal Work."

Principle of stepping up of the pay would arise when a junior employee on his promotion is drawing higher pay than his seniors, in that case, they would be entitled to the stepping up of the pay so as to be on a par with juniors on the principle that the persons who are similarly situated and are drawing the same scale of pay and are doing the same duty and being senior to the persons drawing higher pay, are entitled to have their pay stepped up.



That the respondent Board by resolution dated 21.6.1997 had resolved that:-

“(1) That whenever and wherever there is a conflict between the Bihar State Electricity Board Service Regulation, 1976 and the Bihar Service Code considered along with the Bihar Financial Rules, the latter would prevail until such time the Bihar State Electricity Board Service Regulation, 1976 are suitably revised and amended.”

The employees of Central Government as well as State Government pay fixation is done under fundamental rules after revision of pay. In case, the pay of juniors is fixed more than seniors pay protection is to be provided to senior employees for which conditions have been prescribed. It has been decided that in such cases the pay of senior officers in the higher post should be stepped up to a figure equal to the pay as fixed for juniors in higher posts. The stepping up should be done with effect from date of promotion for appointment of junior officers subject to preconditions:

“(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) the scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The Orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next



increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay.”

After hearing both the parties and going through the materials available on record, this Court finds that petitioners are entitled for pay protection against their juniors if juniors have been granted equal pay or lower pay in all pre-promotional posts. The pay of petitioners cannot be lower than their juniors and they are entitled to similar pay at par with juniors. This is the basic principle of service jurisprudence that pay scale of juniors in the same cadre cannot be more than their seniors after revision of pay scale and seniors are at least entitled for stepping up their pay equal to their juniors and same should be at least equal to the juniors barring few exceptions.

It has been submitted on behalf of petitioner that they have filed several representations for pay protection/stepping up pay to the Respondent-authority but no action has been taken on their representation. Petitioners are directed to file a fresh representation before Respondent no. 2, who shall decide their claim within three months from date of production/receipt of a copy of order of this Court in accordance with law and observation and direction as contained in this order. If the authority denies the claim, he should



reject the claim of petitioners by a speaking and reasoned order
and meeting all the points raised by petitioners.

This writ petition is accordingly disposed of.

(S. Kumar, J)

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Transmission Date	

