

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.4 of 2015
IN
Civil Writ Jurisdiction Case No. 22597 of 2012**

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1. The State of Bihar.
 2. The Principle Secretary, Home, Govt. of Bihar, New Secretariat, Patna.
 3. The Principle Secretary, Finance Department, Govt. of Bihar, Patna.
 4. The I.G. Prison, Bihar.
 5. The Joint secretary-cum-Director Administration Home (Jail) Govt. of Bihar.

.... Appellants

Versus

1. Surendra Kumar Ambastha S/O Late Maheshwari Prasad Superintendent, Central Jail, Buxar.
2. Mushtaque Ansari S/O Shri Abdul Masid Ansari Superintendent, Central Jail, Gaya.
3. Veshwanath Prasad S/O Late Ram Avatar Prasad Superintendent, Shaheed Khudi Ram Bose, Central Jail, Muzaffarpur.
4. Uma Kant Sharan S/O Shri M.N. Kishore A.I.G.(Jail Inspectorate) Bihar, Patna Naya Tola, Saristabad Road, Gardani Bagh Road No. 3, Patna.
5. O.P. Gupta S/O Shri Durga Prasad Jaiswal Director (Prison), Probation, Jail Inspectorate, Government of Bihar, Patna. Permanent Resident Of Hospital Road, Padrona Devaria (U.P.).
6. Pratap Narayan Singh Son of Late Dwarika Prasad Singh Resident of Village- Nepura, P.S. Ashthawan, District- Nalanda At Present Posted As Jail Superintendent, Central Jail, Purnea.
7. Dilip Kumar Singh Son of Shri Late Yogendra Narayan Singh R/O Vill. + P.O. Rondpur, Distt. Bhagalpur.
8. Kailash Pat Pingua Son of Shri Late Umesh Pingua Superintendent Central Jail, Motihari.
9. Lallan Kumar Son of Shri Bindeshwari Kumar Superintendent, District Jail, Biharsharif.
10. Prem Kumar S/O Late Babu Bhagwan Prasad Superintendent, District Jail, Samastipur, Quarter No. H/52, D.V.C. Colony, P.O. Chanderpur, District- Bokaro.
11. Ila Eshar Son of Shri Nalini Kant Ishar Superintendent, District Jail, Hajipur, Permanent Resident of Mohalla Station Road, Dalsinghsarai, District- Samastipur.
12. U.P. Singh Son of Shri Mahendra Narayan Singh Superintendent, District Jail, Sitamarhi, Resident of Village Bhawani, District- Supaul.
13. Neeraj Kumar Jha Son of Shri Prabhakar Jha Superintendent, District Jail, Begusarai, Permanent Resident of Koratbari, Maithell Tola, DistrictPurnea.
14. Shivendra Priyadarshee Son of Shri Madan Mohan Prasad Superintendent, Beur Central Jail, Patna.
15. Rupak Kumar Son of Shri Vasant Prasad Superintendent, Shaheed Jubira Sahani, Central Jail, Bhagalpur Resident Of Jagat Sheela Bhawan, Alkapuri (Damaria) O.P. Anisabad, Patna.
16. Jitendra Kumar Son of Shri Devendra Kumar Superintendent, Special Central Jail, Bhagalpur, Permanent Resident of Village- Sanda, P.O. Sanda, P.S. Islampur, District- Nalanda.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG-4

For the Respondent/s : Mr. Rajendra Narain, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

ORAL JUDGMENT**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)****Date: 09-02-2018**

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna is directed against the judgment and order dated 27.6.2014 passed in C.W.J.C.No. 22597/2012, whereby the writ petition has been allowed and the writ petitioners have been found entitled to replacement scale of Rs.8000-13500 with effect from 1.1.1996 under 5th Pay Revision together with interest @ 8% per annum on the arrears as found admissible.

The facts essential for disposal of the appeal briefly stated is that a writ petition was filed on behalf of 16 petitioners in the cadre of Bihar Jail Service (Junior Branch) for replacement scale of Rs.8000-13500 on the basis of recommendation made by the 5th Pay Revision Commission as endorsed by the Fitment Appellate Committee and implemented by the Finance Department in its resolution No. 238 dated 12.1.2004. While some of the writ petitioners were appointed in the scale of Rs.1000-1820 vide appointment order dated 31.3.1986 at Annexure 1 to the writ petition, there are others who were appointed



in the revised scale under 4th Pay Revision Commission of Rs.2200-4000 as manifest from the notification dated 6.11.1995, 1.6.1993, 29.11.1988 and 8.2.1990 all forming part of Annexures 1 series to the writ petition. There is no dispute that these petitioners were appointed in the Junior Branch of the Bihar Jail Service Cadre which carried a pre-revised scale of Rs.1000-1820. The pay scale was revised under the 4th Pay Revision Commission to Rs.2200-4000/-. It is again not in dispute that all the appointments in question were made until 31.12.1995. This date become relevant because the 5th Pay Revision was enforced with effect from 1.1.1996 in the State of Bihar though financial benefits were to be given from 1.4.1997.

The State Government in the process of implementation of the 5th Pay Revision Commission, appointed a Fitment Committee for postwise recommendation as to the scales of pay to be applied departmentwise and postwise. It is taking note of the Fitment Committee recommendations that the Finance Department through resolution No. 660 dated 8.2.1999 at Annexure- A to the counter affidavit of respondents no. 2, 4 and 5 filed at the stage of writ petition and Annexure-B to the present appeal resolved that the existing scale would mean the scale held by the employee as on 1.1.1996 in a substantive capacity. It is not in dispute that all the writ petitioners were appointed in the Junior Branch of the Bihar Jail



Service Cadre which carried a pay scale of Rs.2200-4000 as on 1.1.1996. The revised pay scale was to be made effective from 1.1.1996 and as already stated the actual payments were to be made from 1.4.1997. Such stipulations are present at paragraphs 1 and 3 of the resolution dated 8.2.1999. Paragraph 12 of the resolution talks about fixation of pay on promotional post or on need based post. According to the resolution, while the Superintendent of District Jail was recommended a revised pay scale of Rs.6500-10500 as against the existing pay scale of Rs.2200-4000, the Superintendent of Central Jail was recommended the revised pay scale of Rs.8000-13500 in place of existing pay scale of Rs.2400-4150.

Objections were raised by the aggrieved and to resolve the same, the matter reached the Fitment Appellate Committee so constituted by the State Government to examine the complaints/ grievances so raised, in the backdrop of the recommendation of the Fitment Committee as well as Finance Department Resolution No. 660 dated 8.2.1999. Annexure 2 to the writ petition and Annexure-A to the appeal is a resolution dated 12.1.2004 of the Finance Department to implement the recommendations of the Fitment Appellate Committee in consideration of the grievances so raised by the affected parties. In so far as the writ petitioners are concerned, they have been dealt at running Page-32 of the appeal which contains



the replacement scale recommended by the Fitment Appellate Committee and a perusal of Item No.9 would confirm that whereas the Superintendent of Central Jail was recommended a replacement scale of Rs.10,000-15,200 in place of existing scale of Rs.2400- 4150 in supersession of the scale of 8000-13500 recommended by the Fitment Committee, the Fitment Appellate Committee similarly recommended a scale of Rs.8000-13,500 in the case of Superintendent, District Jail in supersession of the Fitment Committee recommended scale of Rs.6500-10,500, in place of the existing scale of Rs.2200-4000. The Fitment Appellate Committee at the same time also recommended a scale of Rs.6500-10,500 for the Superintendent, Sub Jail which post did not carry a separate pay scale earlier as confirmed from item No.12 of the recommendations. It is when despite such recommendation of the Fitment Appellate Committee and the decision of the Finance Department to follow the same as reflected from the resolution dated 12.1.2004 at Annexure A, the petitioners were allotted a scale of Rs.6500-10,500 with effect from 1.1.1996 that after representing before the authorities they filed the writ petition.

The appellants herein as the respondents before the Writ Court filed three set of counter affidavits and each of them created more confusion than the previous one. While it was a simple case of



the petitioners that having been appointed to the Junior Branch of the Bihar Jail Service Cadre and drawing their salary in the scale of Rs.2200-4000, the replacement scale of which was Rs.8000-13,500, the fixation of their salary in the scale of Rs.6500-10,500 was dehors the recommendations, a ghost was created by the respondent State and its authorities in the Jail Department to canvass that since these petitioners were in the basic grade with no promotion having been earned by them at any stage, in view of the Fitment Appellate Committee recommendations allotting a scale of Rs.6500-10,500 to those in the basic grade, that the petitioners have been accordingly allotted the said scale. According to the respondent authorities, who are in appeal before this Court, since these petitioners were not included amongst those adjusted in the scale of Rs.10,000-15,200 against need based post which adjustment was given to those in the Junior Selection Grade and Senior Selection Grade, the petitioners were not entitled to the same. The statement of the respondents in paragraphs 6 and 10 of the counter affidavit filed before the Writ Court on behalf of respondents no. 2, 4 and 5 confirms this position.

On the other hand, it is the claim of the writ petitioners that the Bihar Jail Service Rules, 1953 (hereinafter referred to as 'the Cadre Rules'), a copy of which is placed at Annexure-C to the second supplementary counter affidavit filed on behalf of respondents no. 1,



2, 4 and 5 in the writ petition, consists of only two Branches, namely, Senior Branch and Junior Branch as manifest from Rule 3. According to the petitioners, Rule 4 deals with source of recruitment and while in the case of Senior Branch posts are to be filled from the Officers of the Junior Branch, in so far as Junior Branch is concerned, it is to be filled up either by direct recruitment through competitive examination to be held by the Commission or by promotion from the Officers of the Jail Department. According to the petitioners, the pay scales of the Junior Branch and the Senior Branch has been mentioned under Rule 31 and while the post of Superintendent, District Jail carried a scale of Rs.1000-1820 with a replacement scale under 4th Pay Revision as Rs.2200-4000, the Superintendent of Central Jail had a pay scale of Rs.1350-2000 with replacement scale of Rs.2400-4150.

Learned counsel while relying upon Rule 3 have submitted that even though the 'Cadre Rules' provide that normally the member of the Senior Branch would be employed as Superintendent, Central Jail while the members of the Junior Branch would be employed as Superintendent of District Jail but the rule further provides that the Member of either Branch may be required to perform other duties as the Government may from time to time by order direct. It is thus the contention of the writ petitioners that the duties of these petitioners was inter-changeable and they could be assigned the duties in the



Central Jail or the District Jail or even the Sub Jail but that would not alter the situation for allotment of the pay scale. In short, it is the contention of the petitioners as upheld by the Writ Court that it is for the first time that following 5th Pay Revision a scale was allotted to those appointed as Superintendent, Sub Jail and since these petitioners, who were appointed in the Junior Branch of the Bihar Jail Service Cadre, even if were found discharging the duties as Superintendent, Sub Jail, it would not alter the situation because there is no third category of Superintendent, Sub Jail in the Bihar Jail Service Cadre Rules which simply recognizes a Senior Branch and a Junior Branch.

As we have noted, the respondents have tried to confuse the matter by creating the ghost of need based post which is not even a matter in issue, for no kind of promotion is being asked by these petitioners, rather their simple claim is for a replacement scale assigned to the members of the Junior Branch in the Bihar Jail Service Cadre carrying a scale of Rs.2200-4000 and which is undisputedly Rs.8000-13500. It is taking note of the circumstances so eloquent from the notification in consideration dated 12.1.2004 that the learned Single Judge has allowed the claim together with interest and while doing so has rightly observed that even if a new pay scale of Rs.6500-10500 was introduced for the post of Superintendent, Sub Jail, since



such a post did not carry a separate pay scale prior to 1.1.1996 even though the members of the Junior Branch in the Bihar Jail Service Cadre were discharging the duties in a Sub Jail, the scale may be applicable to those appointed after 1.1.1996 but certainly not to those appointed in the Junior Branch of the Bihar Jail Service Cadre prior to 1.1.1996.

It is feeling aggrieved by the judgment and order of the learned Single Judge that the present intra-Court appeal has been filed and Mr. Anjani Kumar, learned Addl. Advocate General No.4, has addressed the Court on behalf of the appellants while respondents-writ petitioners are being represented by Mr. Rajendra Narain, Senior Advocate assisted by the Advocate on record.

Learned Addl. Advocate General while reiterating the stand taken by the respondents before the Writ Court as present in the counter affidavit has submitted that the judgment impugned of the learned Single Judge suffers from two infirmities, namely,

(a) the assignment of scale is a duty reserved for the expert body and the learned Single Judge in exercise of power under Article 226 of the Constitution of India certainly could not have issued a writ of mandamus for a particular pay scale; and

(b) the award of interest is in absence of any prayer to such effect made in the writ petition.



Learned Addl. Advocate General while taking this Court through the resolution of the Finance Department bearing No. 660 dated 8.2.1999 enclosed at Annexure-B to the appeal has laid much emphasis on Clause 12 of the resolution to contest the findings of the Writ Court as well as the claim of the petitioners and to submit that since these petitioners were in the basic grade and the scale of which had been fixed at Rs.6500-10500 and since these petitioners had never earned any promotion nor were granted any selection grade, they could not claim a higher pay scale which was allotted to posts identified as need based posts. Learned counsel in support of his submission has referred to a notification dated 1.7.2010 at Annexure-D to the second supplementary counter affidavit filed on behalf of respondents no. 1, 2, 4 and 5 in the writ proceedings to submit that it is taking note of the stipulations present in resolution No. 660 dated 8.2.1999 that after consultation and seeking approval of the Finance Department, the Superintendent who had been promoted in the Junior/Senior Selection Grade upto 31.12.1995 were adjusted against ten cadre posts and two ex-cadre posts in the scale of 10,000-15,200 while others were kept in the basic grade of Rs.6500-10500. It is thus the argument of the learned Addl. Advocate General that there is absolutely no infirmity in the allotment of scale to these petitioners. Learned Addl. Advocate General, however, has not been able to



explain as to the need of canvassing that these petitioners were not entitled to the scale of Rs.10,000-15,200 even when no such claim was raised by these petitioners who were demanding the scale of Rs.8000-13,500.

Neither the counter affidavit filed in the writ proceedings nor the memo of appeal explains why these petitioners were denied the scale of Rs.8000-13500 except for placing reliance on the resolution No. 660 dated 8.2.1999 of the Finance Department which was superseded by the resolution dated 12.1.2004 of the Finance Department enclosed at Annexure A to the appeal.

Mr. Anjani Kumar, learned Addl. Advocate General, has referred to an unreported decision of the Supreme Court rendered in Civil Appeal No. 1507/2008 (**State of Bihar v. Bihar Veterinary Association & ors.**) and a judgment reported in (2007)8 SCC 279 (**S.C.Chandra v. State of Jharkhand**) to submit that the law stands well settled and the fixation and grant of pay scale lies in the domain of the executive exclusively.

Mr. Rajendra Narain, learned Senior Counsel, has addressed the Court in support of the judgment and order of the learned Single Judge to submit that it does not require any interference. According to the learned counsel appearing for the respondents-writ petitioners, since the Bihar Jail Service Rules in its Rule 3 consists of only two



Branches i.e. Senior Branch and Junior Branch, the respondents cannot introduce a third category until such time that the Rules are appropriately amended. According to the learned counsel, Rule 3 itself conceives of inter-change of duties between the member of Senior Branch and Junior Branch which is confirmed from the nature of duties discharged by one Shivendra Priyadarshi, whose service details have been placed at running Page-25 of Annexures 1 series to the writ petition. It is the submission of Mr. Narain, learned Senior Counsel, that the Finance Department having resolved to implement the Fitment Appellate Committee recommendations vide notification dated 12.1.2004, they cannot resile from their obligation of granting pay scale of Rs.8000-13500 to the petitioners which is the replacement scale of Rs.2200-4000. He further submits that the notification dated 12.1.2004 while taking note of the recommendations of the Fitment Committee as present in resolution no. 660 dated 8.2.1999 confirms that the decision present in resolution dated 12.1.2004 is after noticing the objections raised against the Fitment Committee recommendations.

We have heard learned counsel for the parties and perused the records and we are of the opinion that the contentions of the writ petitioners as upheld by the learned Single Judge together with award of interest warrants no interference. It is not in dispute that the cadre



under the Bihar Jail Service Rules, 1953 consists of only two Branches i.e. Senior Branch and the Junior Branch and even though the posts in the Senior Branch is to be filled up by promotion from the Officers of the Junior Branch but the nature of duties of either Branch is inter-changeable as confirmed from the statutory provisions. It is thus immaterial whether these petitioners have discharged the duties of a Superintendent in a Sub Jail or in the District Jail or in the Central Jail. In either situation, they continue to be members of the Junior Branch. It is again not a case where the petitioners are seeking a higher pay scale or seeking a scale of promotional post, a ghost of which has been created all through by the appellants- respondents. It is again not in dispute that no separate pay scale was assigned to a Superintendent of Sub Jail prior to the implementation of the 5th Pay Revision Commission recommendation i.e. prior to 1.1.1996. It is again not in dispute that all these petitioners were appointed in the Junior Branch of the Bihar Jail Service Cadre prior to 1.1.1996. It is again not in dispute that the pay scale attached to the Junior Branch of Bihar Jail Service Cadre was Rs.1000-1820 which was replaced under 4th Pay Revision Commission to Rs.2200-4000 vide resolution No. 6021 dated 18.12.1989 as manifest from the details present under Rule 31 of 'the Rules'. Now even though the Fitment Committee attempted to grant a replacement scale of Rs.6500-10500 to the



Superintendent, District Jail as against the existing pay scale of Rs.2200-4000 while recommending a replacement scale of Rs.8000-13500 to the Superintendent, Central Jail as against the existing pay scale of Rs.2400-4150 as can be seen from the scales enclosed with the resolution no. 660 dated 8.2.1999 at Annexure-B to the appeal at running Page-43 but the Fitment Appellate Committee so constituted by the State Government to examine the grievances raised against the Fitment Committee recommendations as well as the recommendation of the Finance Department as contained in the resolution no. 660 dated 8.2.1999, has chosen to resolve the matter by recommending a scale of Rs.6500-10500 for a Superintendent of a Sub Jail while recommending a replacement scale of Rs.8000-13500 for Superintendent, District Jail in place of Rs.2200-4000 and in supersession of the recommendation of the Fitment Committee of Rs.6500-10500. The Fitment Appellate Committee accordingly also recommended a scale of Rs.10000-15200 for the Superintendent of a Central Jail in place of Rs.2400-4150 and in supersession of the recommendation of the Fitment Committee of Rs.8000-13500.

In our opinion, where the 'Cadre Rules' stipulates for only two Branches i.e. Junior Branch and the Senior Branch and since it is not in dispute that the petitioners belong to the Junior Branch, then it simply becomes a case of grant of replacement scale of Rs.8000-



13,500 to the members of the Junior Branch who were in the pay scale of Rs.2200-4000 and which recommendation of the Fitment Appellate Committee was implemented by the Finance Department through its resolution dated 12.1.2004. In such circumstances, the conduct of the respondents to create a bogey of a need based post and trying to fit the claim of the petitioners against such need based post even when no such claim was advanced by the petitioners, is wholly uncalled for and is an attempt by the respondents to sidetrack the issue by misleading the Court. The very reliance by the respondents to Annexure-D to the second supplementary counter affidavit filed before the Writ Court, is a confirmation of the opinion expressed above because while it relates to grant of scale of Rs.10000-15200 to those who had earned Junior/ Senior Selection Grade, such relief is not even being claimed by the writ petitioners, who simply pray for a replacement scale of Rs.8000-13500 against the existing scale of Rs.2200-4000.

Learned Single Judge has very expressly answered the bogey of need based post so raised by the appellants- respondents to conclude that there was nothing in the resolution to deny the pay scale of Rs.8000-13,500 attached to the post of Superintendent, District Jail, to the petitioners until they have been granted promotion. In our opinion where the 'Cadre Rules' only stipulates for a Junior Branch



and a Senior Branch with duties interchangeable between the two branches, the capacity in which the members of a Junior Branch or the Senior Branch is discharging their duties, becomes immaterial because the members of either branch can be posted either in the Central Jail or the District Jail or a Sub Jail. In our opinion even if a post of Superintendent, Sub Jail has been recognized by the Fitment Appellate Committee with a scale of Rs.6500-10500, simply because the petitioners were in the basic grade, it would not give any jurisdiction to the respondents to relegate them to the said pay scale. In fact whereas the Fitment Committee recommended a scale of Rs. 6500-10,500 for the Superintendent District Jail, on objections raised, the Fitment Appellate Committee upheld the same to modify the recommendation of the Fitment Committee and grant a scale of Rs.8000-13,500 to the Superintendent District Jail and similarly supersede the scale recommended for Superintendent Central Jail to enhance it to 10,000-15,200. It is in this exercise that a scale of Rs.6500-10,500 was recommended for the post of Superintendent, Sub Jail which is being misinterpreted as a replacement scale for those in the basic grade. In our opinion considering the cadre defined in 'the Cadre Rules' such recommendation would remain on paper until such time that Rule 3 of 'the Cadre Rules' is appropriately amended to have a third category in addition to the Senior Branch and Junior



Branch..

As we have observed at the outset, an unnecessary ghost has been created by the State in defence of the impugned action because even though the claim of the petitioners is for grant of replacement scale of Rs.8000-13500, the reply of the State is either in reference to promotion on need based post or in respect of grant of replacement scale of Rs.10,000-15200 but in the entire set of affidavits filed in the proceedings or in the present appeal except for trying to illegally attach the petitioners to the scale recommended by the Fitment Appellate Committee for the post of Superintendent, Sub Jail of Rs.6500-10,500 on grounds that the petitioners were in basic grade with no promotions earned, despite the fact that the Bihar Jail Service Rules does not even conceive of a third branch other than the Junior and Senior Branch, there is no explanation as to why the petitioners were not granted a scale of Rs.8000-13500, which admittedly is a replacement scale of the scale of Rs.2200-4000 as per recommendation of the Fitment Appellate Committee and which has been implemented by the Finance Department through its resolution dated 12.1.2014.

For the reasons so discussed, we find no error in the judgment and order of the learned Single Judge requiring interference either on merits or on award of interest.



The appeal is dismissed with no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.02.2018
Transmission Date	NA

