

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1362 of 2014

IN

Civil Writ Jurisdiction Case No. 9730 of 2013

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Nand Kishore Shukla, Son of Shri Bhigunath Shukla, resident of village + P.O. – Masti Chak, Via-Parsa, P.S. – Dariapur, District – Saran, Bihar

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Science and Technology, Bihar, Technology Building, 4th Floor, Bailey Raod, Patna
3. The Principal Secretary, Department of Finance, Government of Bihar, Old Secretariat, Patna, Bihar
4. The Director, Department of Science and Technology, Bihar, Technology Building, 4th Floor, Bailey Road, Patna
5. The Secretary, All India Council for Technical Education, Patna
6. The Principal, Lok Nayak Jai Prakash Institute of Technical Training, Chhapra, Saran, Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh, Advocate

For the Respondent/s : Mr. Alok Kumar Rahi, AC to GP 21

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE MADHURESH PRASAD)

Date: 27-09-2018

Heard the parties.

2. Claiming benefit of the revised pay with effect from 01.01.2006 in the pay scale recommended by the University Grants Commission (for short 'UGC) for category of teachers, the petitioner approached this Court by filing CWJC No. 9730 of 2013. He was seeking replacement scale meant for Assistant Professor, though the petitioner was working as foreman instructor in the Government



Engineering College. The claim of the petitioner has been rejected by the Writ Court under order dated 14.05.2014. Accordingly, they are before this Court by way of intra Court Appeal.

3. Counsel for the petitioner has submitted that the foreman instructor should be considered to be teaching staff, though not *stricto sensu* Teachers. It is contended that till implementation of the recommendations of 6th Pay Revision Committee with respect to grant of revised pay with effect from 01.01.2006, petitioner was getting the revised pay meant for teaching staff. It is submitted that as a result of an amendment in the Bihar Universities Act amending the definition of teachers, the entitlements of the petitioner now has been altered. They are thus deprived of the replacement in UGC scale for teachers.

4. This Court put a question to the counsel for the respondent State whether amendment in the definition of teacher under the Bihar Universities Act would apply to the petitioner since they were not working in the Engineering Colleges under the Universities Act ? On such query being made Court has been taken through the material on record by way of counter affidavit in the proceedings. Counsel for the respondent State is not in a position to satisfy the Court that amendment in the definition of teacher as contained in Clause (v) of Section 2 of the Bihar State Universities Act, 1976 by the Amendment and Validation Act of 2012 would



apply to the petitioner. Admittedly petitioner is foreman instructor in the Government Engineering College under the Science and Technology Department of the Government of Bihar, and not in Colleges run by the University.

5. However, on going through the material available on record, this Court would observe that the State Government under the Science and Technology Department of the State Government, in consultation with the Finance Department has taken a decision with respect to creation of posts of the teaching and non-teaching staff in the various colleges established under the said department, including the M.I.T., where the petitioner is employee. It is clearly stipulated that the Pay Scale as well as qualification for appointment is to be governed by the All India Council for Technical Education (for short 'A.I.C.T.E') norms. The A.I.C.T.E norms are admittedly applicable for determining the qualifications for appointment and grant of pay scale to employees of the Engineering Colleges/Polytechnic, established under the Science and Technology Department under the Government of Bihar.

6. From perusal of the table showing various posts in the colleges in the decision of the Science and Technology Department, Government of Bihar (Annexure E), it is apparent that posts have been categorized as Teaching posts, as well as Technology



Assistants/Non-Technology Assistant workers. The post of workshop foreman and workshop instructor has been placed in the second category i.e., Technical Assistant/ Non-Technical Assistant. It is clear from the decision of the State Government that the workshop foreman as well as instructor are not posts in the teaching staff rather they are posts of administrative/technical supporting staff and other staff.

7. This decision of the Department of Science and Technology is of the year of 2008, i.e., prior to the recommendation made by the 6th Pay Revision Committee in the year 2010.

8. It is also relevant to consider the notification dated 05.03.2010 issued by the A.I.C.T.E. whereby “All India Council for Technical Education [pay scales, service conditions and classifications for the Teachers and other Academic Staff in Technical Institutions] (Degree) Regulations, 2010 has been notified. The qualification of “B.E./B.Tech. and M.E./M.Tech., in relevant branch with first class or equivalent either in B.E. /B.Tech. or M.E./M.Tech.” is prescribed for the post of Assistant Professor. On holding such qualifications the Assistant Professor as per the recommendations of the 6th Pay Revision Committee are entitled to the pay scale of Rs. 15,000-39,100/- with A.G.P. of Rs. 6,000/-, admittedly the qualifications of the petitioner is much below the qualification prescribed for the post of Assistant Professor in Engineering



Colleges/Institutions as per qualification of the petitioner.

9. This Court in view of the foregoing discussion has no hesitation in holding that they are not entitled to claim parity in the matter of grant of revised pay scale, with that granted to the Assistant Professor.

10. Since the A.I.C.T.E. norms governs the qualifications for appointment as well as grant of pay scale to the teaching and non-teaching staff of the Government Engineering Colleges, the State of Bihar while accepting the recommendation of the 6th Pay Commission by Resolution dated 21.01.2010 issued by the Finance Department, prescribed replacement/revised scale for foreman and foreman instructor post in the said Engineering Colleges/Institutions, difference/lower than that granted to the teaching staff which as per the regulation 1.2 (i) of the 2010 Regulation comprises of only three designation i.e., Assistant Professor, Associate Professor, and Professor.

11. In view of the distinction between the teaching staff and foreman/foreman instructor as prescribed by A.I.C.T.E norms, the petitioners, who are instructors and foremans in the State Engineering Colleges have been extended the benefit of pay revision in the scale provided under the aforesaid resolution dated 21.01.2010 vide resolution dated 28.06.2012 bearing memo no. 1541 the petitioner.



However, they claim pay revision on a higher replacement meant for Assistant Professor (Teaching Staff). Such claim of the petitioner is not sustainable in view of the 2010 Regulations, as noticed hereinabove as also the Finance Department's Resolution dated 21.01.2010 giving effect to the recommendations of the Pay Revision Committee for revision of pay scale of the State Government employees with effect from 01.01.2006. The A.I.C.T.E as well as the Finance Department of the Government of Bihar in these two regulations and resolution respectively has treated the foreman and foreman instructor (petitioner) to be non-teaching Staff. Claim for parity with the teaching staff is therefore, not justified. Admittedly the petitioner is lower in terms of educational qualifications and is not teacher.

12. This Court would also notice that petitioner has never challenged his classification as non-teaching staff by virtue of 2010 Regulations. He has also not challenged replacement scale granted under the Finance Department Resolution dated 21.01.2010 benefits of which have already been extended to the petitioner and which they have accepted. In absence of challenge to the aforesaid 2010 Regulation as well as Finance Department Resolution of 2010, the petitioner cannot be heard to claim a benefit contrary to that which is prescribed as a harmonious constructions of the 2010 regulation and



Finance Department Resolution dated 21.01.2010.

13. In this regard, law is settled in the case of **K. Vasudevan Vs. Mohan N. Mali and Ors.**, reported in (2002) 10 SCC 117 that where the order is not challenged then the action taken under such order cannot be challenged and in such circumstance the Court cannot issued a direction contrary to the order under which the action is taken.

14. For the reasons indicated hereinabove, this Court does not fined any reason to interfere with the rejection of the petitioner's claim under order dated 14.05.2014 passed in CWJC No. 9730 of 2013.

15. For the reasons indicated hereinabove, the Letter Patent Appeal is devoid of merit and stands dismissed.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
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