

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.535 of 2016
IN
Civil Writ Jurisdiction Case No. 7163 of 2008**

- =====
1. Bihar Rajya Jail Chaturthvargiya Kamgar Union, Patna through its General Secretary, Sri Narayan Purbay, S/o late Raj Kumar Purbey, 69 M.I.G. Hanuman Nagar, P.S. Patrakar Nagar in the district of Patna.
 2. Bholu Thakur, S/o late Salut Thakur, R/o Vill- Khajpura, P.S. Gardanibagh in the district of Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Home (Jail) Department, Government of Bihar, Main Secretariat, Patna.
2. The Inspector General (Prison) Home (Jail) Department, Main Secretariat, Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Mr. Vinay Kumar Mishra, AC to AAG-15

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 25-06-2018

Challenge in the present Letters Patent Appeal is to the judgment dated 18.09.2015 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.7163 of 2008. The learned Writ Court has refused to interfere with the order as contained in Annexure-7 to the writ application passed by the Inspector General of Police (Prison).

2. A reading of Annexure-7 would show that the Inspector General of Police (Prison) has, vide his letter dated 18th April, 1996, issued certain directions to the Superintendent of different Jails in the State of Bihar in the light of the directions of this



Court vide order dated 21.08.1995 passed in CWJC No.3909 of 1995. The direction includes payment of wages on the recommendation of the Pay Revision Committee as adopted by the State of Bihar and minimum of the pay scale of Rs.775-1025 (without there being any increment on the same). The letter (Annexure-7) also states that the minimum pay of Rs.775/- and the admissible dearness allowance on the same as declared from time to time should be paid. Annexure-7 further states that the direction in this regard shall be applicable only in respect of the applicants whose names have been shown from serial nos. 2 to 82 in Annexure-1.

3. The grievance of the writ petitioners is that in partial modification of the letter dated 18.04.1996 (Annexure-7) and letter no.4409 dated 22.10.2003 (Annexure-9) the Inspector General of Police (Prison) came out with another letter dated 7th May, 2007 (Annexure-1) by which a decision has been taken to pay only minimum of the scale of pay without there being any other kind of allowance on the same. It is the submission of the petitioner that pursuant to the letter, as contained in Annexure-7 to the writ application, petitioner no.1 along with 260 other contingent menials filed another case vide CWJC No. 7655 of 1996 with similar prayer as had been made in CWJC No.3909 of 1995 and this Court vide its order dated 14th September, 1999 passed in CWJC No.7655 of 1996



(Annexure-8) directed the respondents to pay the petitioners their admitted wages in terms with aforesaid decision, including current wages in the minimum of the scale of pay of the post against which one or other petitioner is performing duty. The decision of this Court in CWJC No.7655 of 1996 was implemented by the State Government vide letter dated 22nd October, 2003 (Annexure-9). There is yet another order dated 06.04.2005 passed by this Court in CWJC No.4282 of 2000 by which the similar reliefs prayed by the petitioners of the said case who were functioning in the different jails of the State of Bihar as contingent menials were granted and the respondents were directed to take necessary steps forthwith to make available to the petitioners similar benefits as accorded to the petitioners of other writ applications.

4. In the aforementioned background of the facts and pleadings, learned counsel representing the appellants submits that the Writ Court is not justified in refusing to interfere with the direction contained in letter dated 7th May, 2007 as contained in Annexure-1 to the writ application. It is submitted that vide Annexure-1 to the writ application the respondents have taken away the benefit of dearness allowances which were granted to the members of petitioner no.1 who were functioning in different jails as contingent menials.

5. On the other hand, learned counsel representing the



State-respondents would submit that the earlier orders passed in CWJC No.3909 of 1995 and CWJC No.7655 of 1996 did not mention anything about dearness allowance or any other allowance, therefore matter was taken up with the Law Department and keeping in mind what has been held by the Hon'ble Supreme Court in its order dated 10.04.2006 in the case of Secretary, State of Karnataka Vs. Uma Devi in paragraph 55 the State-respondents are justified in passing the order as contained in Annexure-1 to the writ application.

6. It is submitted that the Hon'ble Supreme Court in Uma Devi (supra) held that such (daily wages earners) menials are to be paid minimum pay under the minimum time scale of the post against which they are working and no other allowances are admissible to them. It is in this view of the matter the departmental orders were partially modified to pay such menials only the minimum of the time scale. Learned counsel also submits that now the Inspectorate of Prisons has framed rules regarding the appointment of Nai and Safai Mazdoors known as Bihar Nai and Safai Mazdoors Cadre Rules 2011 which has been modified in the year 2014. It is stated that appointment of Nai and Safai Mazdoors and other menials have been made in the Department on regular basis and the process for regularization of the rest menials are in process.

7. After hearing the learned counsel for the parties and



on perusal of the records, we find that in CWJC No.3909 of 1995, while disposing of the same, the learned writ court has directed the respondents to pay the petitioners their admitted arrears of wages for the periods as shown in Annexure-1, including the uptill date wages and it is clearly stated in the order that such wages is to be paid in the minimum of the scale of the post on which the petitioners are performing their duties. It, however, appears that Annexure-7 was issued providing for payment of minimum of the scale of pay together with admissible dearness allowances as applicable from time to time. This position remained applicable since then and only after the judgment of the Hon'ble Apex Court in the case of Uma Devi (supra) came, the State-respondents seems to have come out with partially modified order as contained in Annexure-1 by which the benefits which were already accrued to the petitioners/members of the petitioners as regards payment of dearness allowance has been taken away. In our view, before passing such modified order, as contained in Annexure-1, the State-respondents were required to give a hearing to the persons who are likely to be affected by such modifications and that would have been only in consonance with the principles of natural justice.

8. In the given facts and circumstances of the case, we would direct the I.G. (Prison) to keep the order as contained in



Annexure-1 in abeyance, call upon the individual member of the petitioner no.1 who are likely to be affected by the impugned order, give them opportunity to submit their submissions in writing within a prescribed period and then upon consideration of the entire facts and circumstances as also their submissions, an appropriate order be passed by him. The entire exercise shall be completed within a period of six months from the date of receipt/production of a copy of this order. The issue of monetary benefits on account of dearness allowance will depend upon the final order which shall be passed by the I.G. (Prison) within the aforesaid period.

9. The order passed by the learned Writ Court is modified to the extent indicated hereinabove. The Letters Patent Appeal is disposed of accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.06.2018
Transmission Date	N/A

