IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9652 of 2017

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Bihar Rajya Zila Parishad Karmachari Mahasangh Through Its General Secretary, Diwakar Thakur, son of Late Kameshwar Thakur, resident of Village- Rajkhand, Police Station- Aurai, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary, Panchayat Raj Department, Government of Bihar, Patna.
4. The Director, Panchayati Raj Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi, Sr. Adv.
Mr. Prabhat Kumar Singh, Adv.

For the Respondent/s : Mr. Kameshwar Prasad Gupta, GP-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

CAV JUDGMENT

Date: 05-04-2018

The petitioner claims to be a registered association of the employees of Zila Parishad and espousing the cause of these very employees, through its General Secretary, on being so authorized, has moved this Court, inter alia, praying for the following reliefs:

(i) For quashing of letter No. 4345 dated 3.5.2017 issued by the Secretary, Panchayati Raj Department whereby the earlier Letter No. 1129 dated 28.2.2013 has been deleted on non-est ground and in consequence thereof benefits of 4th, 5th and 6th pay-scale have been stopped to the employees of Zila Parishad.

(ii) For a direction upon the respondents to treat the members of Zila Parishad at par with State Government employees and grant benefits so far as pay-scale is concerned in view of option exercised by them in terms of rule 5 of Bihar Panchayat Samiti and Zila Parishad (Service Conditions) Rules, 1964.

(iii) Any other order/orders for which the petitioner is found entitled to in the facts and circumstances of the case.”

While Mr. P.K.Shahi, learned Senior Counsel alongwith Mr. Prabhat Kumar Singh, Advocate on record has appeared for the petitioner, the respondent State including its authorities are represented through Mr. K.P.Gupta, learned GP-10.

Having heard learned counsel for the parties and having considered the affidavits filed on their behalf, in my opinion, the only issue which falls for consideration before this Court is whether or not the Zila Parishad is empowered to take a decision to implement revision of pay scales in tune with the resolution so passed by the State Government to the extent similar revisions is allowed to its employees and whether before any such decision is taken by the Zila Parishad, it would require a prior approval and consent of the State.

In other words, despite autonomy granted to the local bodies at the grassroot level of democracy under the 73^{rd} amendment and even though these local bodies are substantially dependent on the State Government for financial assistance and even though 73^{rd} constitutional amendment vide Articles 243H and 243I amply delineates rights and responsibility of the Panchayats on its economic front as well as a review of the financial position of the Panchayats by the Finance Commission constituted thereunder, yet the State does not intend to grant autonomy of decision to the Zila Parishad and which is the foundation for the contest raised herein.

It is not in dispute rather admitted that whereas the State has implemented even the 7th pay revision recommendations with effect from 1.1.2016 for its employees, the employees of the Zila Parishad have not been permitted to rise above the 4th pay revision which was implemented in the State more than three decades ago, with effect from 1.4.1981 and a decision taken to allow the 5th and 6th pay revision, implemented in the State in so far as the State Government employees are concerned, with effect from 1.1.1996 and 1.1.2006, has been withdrawn vide order impugned herein simply because, according to the Department of Panchayati Raj, the Director had exceeded his jurisdiction to allow such revision which was taken without prior approval of the State Government.

While exhaustive arguments have been advanced by Mr.Shahi, learned Senior Counsel appearing for the petitioner, with reference to the umpteen documents enclosed in the proceedings and well contested by Mr. Gupta in reference to the stand of the department in the counter affidavit but the crux of the matter is whether at all the Zila Parishad is required to take prior approval before implementing a pay revision for its employees which already has been implemented by the State Government for its own employees and in case such a decision has been taken whether by the impugned order, which is not an order of the State Government, the Secretary, Panchayati Raj Department, could have recalled the same. That even when these issues have earlier engaged this Court and the orders so passed after being contested before the superior courts has been implemented by the State Government, yet the State in its habit of creating an otherwise routine implementation has given rise to the present litigation which, in my opinion, should not have traveled so far.

Before I would refer to the pleadings of the present proceedings I deem it necessary to refer to some of the enactments which have a bearing to the contest herein. The Bihar Panchayat Raj Act, 1947 and the Bihar Panchayat Samiti and Zila Parishad Act, 1961 were repealed and replaced by the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as ‘the 1993 Act’) which under section 157 saved the operation of the previous enactments and the action taken therein. It is in exercise of powers vested under section 75 of the Bihar Panchayat Samiti and Zila Parishad Act, 1961 that the Bihar Panchayat Samiti and Zila Parishad (Service Condition) Rules, 1964 was framed by the State Government vide notification no. 6918 dated 4.5.1964. For the purpose herein Rule 5 would be relevant and which runs under:

> “5. धारा 50 की उपधारा (3) के अनुशार जिला परिषद के अधीन अपने-अपने पदों पर नियुक्त जिला बोर्ड के पदाधिकारियों या कर्मचारियों की सेवा-शर्तें वही बनी रहेंगी जो ऐसी नियुक्ति के पूर्व थी। यदि वे उक्त तारीख से चार महीन की अवधि के भीतर ऐसा विकल्प दे ंतो नियम 9 के उपबंधों के अधीन रहते हुए उनकी सेवा-शर्तें वह होंगी जो राज्य सरकार में उसी कोटी के पदाधिकारियों की हैं।”

‘The 1993 Act’ has been repealed and replaced by the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the ‘2006 Act’) and section 171 of this Act while saving the operation of the previous enactment, specifically provides under Clause (g) that all rules made under the repealed Act shall be continued to operate till replaced by fresh rules. It is not in dispute that the Bihar Panchayat Samiti and Zila Parishad (Service Condition) Rules have not yet been framed under the ‘2006 Act’. It is again not in dispute that as per option exercised by the employees of the Zila Parishad they are governed by the service condition applicable to the State Government employees except that they would not be entitled to pension. Specific statement to such effect made in the writ petition, has not been denied nor can be an item of dispute in view of the position settled vide advisory issued by the Panchayati Raj Directorate on 18.3.1981, a copy of which has been enclosed at Annexure 1 to the writ petition. Despite the legal position existing as such, when the State Government refused to accord benefit of 4th pay revision with effect from 1.4.1981 that the employees of the Zila Parishad were forced to move this Court through their Association in C.W.J.C.No. 3514/1986 and vide judgment and order dated 22.1.1992, a Co-ordinate Bench while quashing the order denying such benefit to the employees of the Zila Parishad, issued a writ of mandamus for providing them with the benefit of 4th pay revision with effect from 1.4.1983 though the 4th pay revision had been implemented with effect from 1.4.1981.

I am persuaded to refer to certain paragraphs of the judgment which would be supportive of my initial observations that these petitioners have unnecessarily been subjected to the present litigation even when the issue as regarding extension of the benefit of pay revision in tune with the revision accorded to the State Government employees, has been put at rest.

> "1. The grievance of the petitioners in this application initially was against the order, as contained in Annexure-3, and they had prayed that this order should not be given effect to. Their further claim is that they are entitled to the same pay scale as has been recommended by the 4th Pay Revision Committee.
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> 2. By reason of the aforesaid order, as contained in Annexure-3 issued by respondent no.3, it was held that

the petitioners, being employees of the Zila Parishad, were not entitled to the scale of pay as that of the employees of the State Government. In this order it has also been mentioned that the matter of revised scales of pay was still under consideration of the Government.

7. A counter affidavit has been filed on behalf of the State, Paragraph '8' of which, inter alia, states:

> " It is also submitted that respondent State have no objection if Zila Parishad desire to grant revised pay scale and bear the burden thereof out of their own resources under clause (i) of section 54 and which has been explained in Annexure 1/1 of the writ petition."

8. Similarly in paragraph '5' of the counter affidavit, it has been, inter alia, stated that most of the District Boards have no funds and they are financially handicapped and as such Government has to come to help them financially in the shape of grant and loan. It has been further averred in the said paragraph that due to paucity of funds at the disposal of Government, the respondent State was not in a position to give desired help in shape of loan and grant to Zila Parishad.

9. Taking into consideration the claims and counter claims of the parties, I am of the opinion that there can be possibly any justification in not implementing the scale of pay as recommended by the 4th Pay Revision Committee with the specific date i.e. 1.4.1981 in respect of the petitioners also. If the recommendation of the said Committee has been approved by the State of Bihar in respect of its other employees and if the said recommendations have been implemented in relation to

> other classes of employees of the State Government with effect from 1.4.1981, in my view the respondents cannot discriminate in relation to the date of implementation so far the employees of the Zila Parishad are concerned.
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> 10. My aforesaid view is supported by a Division Bench decision of this Court reported in 1984 Bihar Law Times 268 (Janardan Prasad vs. State of Bihar and others), which has also been relied upon by another Hon'ble Judge of this court in the case of Md. Israel Khan and others vs. State of Bihar and others (C.W.J.C.No. 879/82(R), disposed of on 29th July, 1987.
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> 11. In view of the mater, the writ application is allowed and clause/ Paras '5' and '10' of Annexure-13 are hereby quashed and it is, accordingly, held that the petitioners are entitled to get the same scale of pay from 1.4.1981 (fixation benefit) instead of 1.4.1983. There will be, however, no order as to costs."

The judgment of this Court was appealed against by the State of Bihar before the Supreme Court in S.L.P. (Civil) No. 15091 of 1993 which was dismissed vide judgment and order passed on 13.9.1993. A copy of the judgment of the Single Judge and the Supreme Court are enclosed vide Annexures 5 and 6 respectively to the writ petition. It is after having lost the challenge until the Supreme Court that the State Government decided to implement the judgment of this Court vide its resolution dated 15.9.1993 published in the Bihar

Gazette (Extraordinary) on 21.9.1993, a copy of which has been placed at Annexure 2 to the writ petition. The resolution at paragraph-6, inter alia, stipulates a financial assistance by way of grant to the extent of 30%, by way of loan to the extent of 40% and by requiring the Zila Parishad to bear the balance 30% liability from its funds but nonetheless the benefit of 4th pay revision had been extended to the employees of the Zila Parishad in tune with the benefit so allowed to the employees of the State Government.

Despite Rule 5 of 'the Rules' reproduced above stipulating that the service condition of the Zila Parishad employees would be the same as those governing the State Government employees and despite the employees opting for such service condition as specifically pleaded by them yet when the State Government vide its resolution dated 24.3.2005 chose to enhance the superannuation age of its employees from 58 to 60 years, the Zila Parishad employees were not allowed to do so and which again forced them to come before this Court through their Association in C.W.J.C.No. 8583/2005 and vide judgment and order dated 15.9.2006 enclosed at Annexure 3, a Co-ordinate Bench of this Court directed the State Government to implement the decision of enhancement of age even in the case of Zila Parishad employees and all those who were made to superannuate prematurely, were recalled back in service for their continuation until the age of 60 years. Paragraph 6 of the judgment which takes note of the effect of Rule 5 of 1964 Rules would be relevant for consideration which runs under:

> "6. Having heard the counsel for the parties and having considered the provisions of the Bihar Panchayat Raj Act, 1993 as also the provisions contained in Rule 5 of the 1964 Rules (which is still in vogue by virtue of Section 27 of General Clauses Act) I am of the view that the decision of the State Government to extend the retirement age of its employees from 58 years to 60 years is ipso facto applicable to the employees of the Zila Parishad as they have already exercised their option to be governed by the service conditions applicable to the State Government employees. In my opinion, there is no requirement to seek further approval of the State Govenrment for enhancing the age of superannuation of the employees of the Zila Parishad from 59 to 60 years with effect from 24.3.2005 the date of resolution of the State Government. As the petitioner no.2 of C.W.J.C.No. 8583 of 2005 and petitioner of C.W.J.C.No. 7598 of 2006 have been made to superannuate after 24.3.2005 without completing the age of 60 years their superannuation is premature and this Court accordingly directs that they be taken back in service of the Zila Parishad concerned and paid all arrears of salary between the date of superannuation till the date of this order as also continued in service

> until they reach the age of superannuation i.e. 60 years."

It is not in dispute that the judgment has attained its finality for it was not appealed against. The two judgments referred to above are conclusive on the issue that the service condition of the Zila Parishad employees would be the same as that governing the State Government employees and since the issue of extension of in-service benefits as applicable to the State Government employees to the Zila Parishad employees, has already been contested and put to rest under the judgments referred to above, in my opinion, there should not have been any road blocks created by the Department of Panchayati Raj in so far as extension of 5^{th}, 6^{th} and 7^{th} pay revisions are concerned, which benefit uncontestingly, has already reached the State Government employees.

The 4^{th} pay revision was though granted to the employees of the Zila Parishad by virtue of the judgment at Annexure 5 but when the 5^{th} Pay Revision in the State was implemented with effect from 1.1.1996, again objection came to be raised when it came to be extended to the Zila Parishad employees. The State in its Panchayati Raj Directorate vide its letter dated 24.4.2000, a copy of which has been enclosed at Annexure- A to the counter affidavit issued direction to the Zila Parishad to submit their expenditure statement before implementing the 5th Pay Revision and it is only after taking approval from the State Government that its implementation was to take place in the Zila Parishad. The order further stipulates that such Zila Parishads who have already implemented the 5th Pay Revision without seeking approval from the State Government should recover the same from its employees albeit in instalments. Even while obstacles were created by the State Government on the implementation of the 5th Pay Revision in the Zila Parishad though it was implemented for the State Government employees with effect from 1.1.996, time passed and in the meantime even the 6th Pay Revision was implemented with effect from 1.1.2006.

It is in between this tussle that 3rd Finance Commission was constituted in the year 2004 and in my opinion, the statement made by the respondents in reference thereto at paragraphs 11, 12 and 13 of the counter affidavit, would conclude the whole contest for even though the respondents claim to have acted pursuant to the recommendations of the 3rd Finance Commission for the financial year 2007-08 to 2011-12, 4th Finance Commission for the financial year 2011-12 to 2014-15 and also made reference to the 5th Finance Commission to comment that Clause 9.13 of the recommendations of the 5th Finance Commission at Chapter IX requires the Zila Parishad to make arrangement for payment of salary from its own resources but the answer to the poser before this Court lies in the recommendation of the 3rd and 4th Finance Commission which submitted its report in 2004 and 2010 respectively. It is necessary to note that the State Government's counter affidavit is silent as to the recommendations of the 1st and 2nd Finance Commission following the constitutional amendment in the year 1993.

Be that as it may, a cursory glance of the recommendation of the 3rd Finance Commission which submitted its report in the year 2004, an extract of which has been placed by the petitioner at Annexure R/10 to the reply to the counter affidavit, would confirm that as per the points of memorandum of the different departments present at paragraph 5.2 vide sub-clause (2) and (5), it is the own stand of the department that the establishment expenditure of the staff of Panchayati Raj Institutions should be fully borne from the consolidated fund of the State Government and since the source of revenue of Zila Parishad is inadequate, the arrears of salary of its employees should be borne by the State Government. It is surprising that even though the department itself has expressed thus, yet at implementation time, obstacles have been created. The recommendations of the 3rd Finance Commission was implemented by the State Government as manifest from the letter dated 30.3.2007 of the Addl. Finance Commissioner addressed to the Secretary, Rural

Engineering Organization and Panchayati Raj, a copy of which is placed at Annexure R/5 and which letter was circulated by the Director, Panchayati Raj amongst all Deputy Development Commissioners cum Chief Executive Officer, Zila Parishad vide letter dated 16.4.2007 at Annexure R/6. The letter dated 16.8.2007 of the Finance Commissioner addressed to the Secretary, Panchayati Raj at Annexure R/7 as well as the letter of the Principal Secretary, Panchayati Raj addressed to the Accountant General, Bihar, Patna dated 29.3.2008 at Annexure R/8 at paragraph 2(kh) would confirm the acceptance of implementation of the 6th Pay Revision to the employees of the Zila Parishad to those appointed on compassionate ground after 1.1.1996. Clause 13.3 of the recommendation of the 4th Finance Commission again provides that expenditure on current salary of employees against sanctioned post of the local body should be borne by the Government for another five years without any tapering. Clause 13.14 further provides that arrears of retirement benefits to the employees of local bodies be cleared by giving a one time lump sum grand-in-aid. The recommendations have been implemented by the State Government as accepted by them at paragraph 11 of the counter affidavit.

In these admitted circumstances where recommendations of the Finance Commission of bearing financial needs of the Panchayati

Raj Institutions has been acted upon that a meeting is stated to have been held in the Chamber of the Principal Secretary on 15.1.2013 as manifest from the letter dated 28.2.2013 to consider the grievance of the employees in relation to implementation of the 6th Pay Revision and when the Director in reference to the implementation of the recommendations of 3rd and 4th Finance Commission as also resolution No. 2102 dated 26.3.2007 at Annexure R/4 to the reply to the counter affidavit issued directions for implementation of the 6th Pay Revision vide Annexure 7 and which has been recalled by the Secretary vide Annexure 8 in reference to the resolution dated 24.4.2000 of the State Government which in fact stood diluted by the recommendations of the 3rd and 4th Finance Commission as implemented by the State Government. The dispute raised in the light of the discussions above would need an answer on two issues:

(a) Whether in view of the legal position settled in the earlier judgments of this Court present at Annexures 5 and 3 respectively in so far as the implementation of the 4th Pay Revision and age enhancement is concerned, where this Court taking note of discriminatory action of the State Government in its Panchayati Raj Department in though extending the benefits to its own employees had precluded the benefits to the Zila Parishad employees, had quashed such decision to direct the State Government for implementation of the 4th Pay Revision for the Zila Parishad employees as also for enhancement of retiral age respectively, whether the issue yet would require any further discussion for the purpose of implementation of the 5th and 6th Pay Revision which is sought to be denied by the Secretary, Panchayati Raj Department through the impugned order dated 3.5.2017 at Annexure 8.

(b) The second issue which would require consideration is that where the undisputed recommendations of the 3rd , 4th and 5th Finance Commission, inter alia, not only recognizes the poor financial status of the Zila Parishad but also recommends for bearing the liability from the State resources, which recommendation has somewhat been diluted in the 5th Finance Commission recommendations made as recent as 2015-16, even if the said recommendations reminds the Zila Parishad of its responsibility to garner resources, it yet recommends the State Government to meet the arrears of salary of the Zila Parishad employees. Such is the position at Annexure-D to the counter affidavit.

In the nature of discussion made hereinabove and the uncontested circumstances taken note of, in my opinion, the respondent Department has acted not only discriminatory in denying the benefit of 5th and 6th Pay Revision to the employees of the Zila Parishad but in the process has also tried to overreach the judgment of this Court which would squarely apply to the issues raised herein and would not permit the State Government either in its Department of Panchayati Raj or the Finance to create any impediment either for extending such benefit or to meet the liability arising therefrom which would be fully in tune with the recommendations of the 3rd , 4th and 5th Finance Commission which in no uncertain terms requires the State Government to meet the arrears arising towards payment of salary.

For the reasons so discussed, the order of the Secretary, Panchayati Raj Department, bearing No. 4245 dated 3.5.2017 whereby grant of 5th Pay Revision by the Zila Parishad to its employees has been recalled in absence of approval by the State Government, is held discriminatory and is accordingly quashed and set aside.

The State Government certainly having implemented the 5th and 6th Pay Revision to its employees cannot deny or create obstructions in its extension to the employees of the Zila Parishad for it has no administrative control over the statutory functions discharged by the Zila Parishad and it is exclusively for the Zila Parishad(s) concerned to consider its financial viability before it resolves to implement the pay revisions for its employees bearing in mind its income from its own resources as well as its budgetary expenditure. In so far as the State Government is concerned, it is fixed on its responsibility arising from the recommendations of the Finance Commission which derives its power from the Constitution of India as well as under the ‘2006 Act’. In the nature of the obligation so cast neither the State Government and its authorities can shirk away from its responsibility nor can they avoid sharing the financial responsibility.

The writ petition is allowed with the directions and observations aforementioned.

(Jyoti Saran, J)

Surendra/-

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