IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10364 of 2011

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Md. Ashfaque Alam S/o Latel Md. Umaair Alam, R/O Village-Mehdawan, P.S.-Maner, Distt.-Patna

.... Petitioner

Versus

1. The State of Bihar through Labour Commissioner, Bihar, New Secretariat, Patna
2. The Labour Commissioner, Bihar Patna New Secretariat, Patna
3. The Chief Inspector of Factories, Labour Compound Building Bailey Road, Patna
4. The Inspector of Factories, Chapra Circle, Chapra, Saran
5. The Sasa Musa Sugar Works Ltd. R/O P.O. +P.S.-Musa, Distt.-Gopalganj
6. The Managing Director, Sasa Musa Sugar Works Ltd., R/O P.O. + P.S.-Sasa Musa, Distt. Goplaganj

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Braj Nandan Kumar Tiwary, Advocate
For the Respondent Nos.5 and 6 : Mr. Satyendra Krishna, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 26-06-2018

The petitioner has filed this writ petition for a direction to the Chief Inspector of factories to fix the salary of the petitioner as per notification dated 04th July, 2006 issued by the State Government under Section 115 of the Factory Act whereby the wage scale as provided under Rule 6 of the Factory Welfare Officers Rule, 1952 (for short 'the Rule') were revised. He has further prayed for a direction to the Chief Inspector of factories to get the wage paid by the sugar factory in accordance with calculation made under the aforesaid notification.

2. The notification dated 4th July, 2006 as contained in Annexure-2 to the writ petition was made effective from 01.01.1996 but the financial benefit was made applicable with effect from 01.04.1999. By the said notification, the Labour Welfare Officer has been made entitled to dearness allowance at par with Government employees proportionately to the same rank/same wage scale of the State Government.

3. The contention of the petitioner is that he was appointed as Factory Welfare Officer on 28.12.2005 in Grade-II in the respondent Sasa Musa Sugar Works Ltd. He joined on the said post on 1st of January, 2006. He retired while working on the said post on 30th July, 2010. In view of 2006 notification, he became entitled to new scale of pay and corresponding to dearness allowance with effect from the due date.

4. Learned counsel for the petitioner submitted that as per sub-clause (2) of clause (6) of the Rule, every Welfare Officer is entitled to dearness allowance and other benefits and privileges as admissible to officers or employees of similar rank and status in the State Government. He submitted that though the petitioner has written several letters to the Inspector of Factories, Circle-Chapra and requested for getting the revised scale of pay and dearness

allowance of Factory Welfare Officers, till today, he has not been paid salary and dearness allowance in the revised scale and its arrear.

5. A counter affidavits have been filed on behalf of respondent no.4 and respondent nos. 5 and 6 respectively. The stand of the respondent no.4 in the counter affidavit is that since the petitioner was appointed as Welfare Officer with effect from 01.01.2006 by the respondent no.5 vide its letter dated 28.12.2005, his pay scale was revised by the respondent no.5 vide letter no.1022 dated 18.09.2017 from the date of notification i.e. from 04.07.2006 and was given variable dearness allowance of Sugar Wage Board payable to other officials of the sugar factory.

6. The respondent nos. 5 and 6 have also taken stand in their counter affidavit that the admissible scale of pay has already been given to the petitioner from due date and he is not entitled to receive dearness allowance at par with the officers in the services of the State Government.

7. Learned counsel for the respondent no.4 submitted that the Factory Welfare Officers are appointed in the factory on the salary, grade and dearness allowance as per provisions of the Sugar Wage Board and also they are given other facilities as provided to

similarly situated supervisory cadre officers and, thus, the dearness allowance applicable to the employees/officers of the State would not be applicable upon the employees/officers of the sugar factory.

8. Similarly, learned Advocate appearing for the respondent nos. 5 and 6 submitted that though the Welfare Officer is appointed under Clause 6 of the Rules still neither he is a public servant nor in any way of Government Official nor any Government Authority. He submitted that the issue raised by the petitioner in the instant case is squarely covered by the ratio laid by a Division Bench of this Court in **Bishnu Sugar Mills Ltd. Vs. State of Bihar [1998 (3) PLJR 686].**

9. I have heard learned counsel for the parties and perused the record.

10. The issue raised in the this writ petition is no more *res integra*. In **Bishnu Sugar Mills Ltd. (supra),** it has categorically been held by a Division Bench of this Court that a delegatee has no jurisdiction to frame a rule with effect from a retrospective date if such a power is not delegated to it by the Statute either in express term or by necessary implication. The Bench held that under Section 49 of the Factories Act and the rules framed thereunder, the State Government has not been empowered to frame rule with

retrospective date. Having ruled so the Bench set aside the notification dated 27.04.1994 issued by the State Government whereby retrospective effect was given to the notification. Similarly, with regard to grant of dearness allowance, the Bench held that a Welfare Officer cannot be treated as equal with an officer of the same rank employed in the State Government. They are not entitled to get dearness allowance at the rate of State Government employees. The Bench further held that the rate of dearness allowance as per the recommendation of Sugar Wage Board to the Welfare Officer was legal and justified.

11. In view of the above binding precedent of this Court, I see no merit in this writ petition. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2018
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