

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11995 of 2016

-
1. The Bihar State +2 Vocational Teachers Associaton through its SEcretary Vidhu Mangal Singh having its registered office at Indrapuri Road No- 7, P.S. Rajeev Nagar, District- patna- 800024.
 2. Vidhu mangal Singh, son of Sri Fakir Chand Singh, resident of Village- kurmuri, P.S. - Sikrahata, District- Bhojpur. presently Posted in H.N.K. +2 School Ara. P.S.1- Nawad, District- Bhojpurm, the Secretary, Bihar State +2 Vocational Teachers Assocatioan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government Of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prashant Kumar Shahi, Sr. Advocate Mr. Satyam Shivam Sundaram, Advocate
For the State	:	Mr. Pushkar Narayan Shai, AAG-6 Mr. Prashant Pratap- GP-2

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 09-10-2018

Heard Mr. Prashant Kumar Shahi, learned senior counsel appearing on behalf of the petitioners and Mr. Pushkar Narayan Shai, learned Additional Advocate General No. 6 appearing on behalf of the State.

2. The instant writ petition has been filed by the petitioners for quashing of the office order contained in Memo No. 547 dated 1.7.2016, whereby the pay scale of Laboratory Assistant of +2 Schools have been reduced and direction was issued for



recovery of the alleged excess amount paid to the Laboratory Assistants of +2 Schools including the petitioners.

3. Mr. Prashant Kumar Shahi, learned senior counsel appearing on behalf of the petitioners has submitted that on the basis of the recommendation of the Pay Revision Committee, the issue of revision was considered by the Cabinet and after due deliberation the Cabinet approved the recommendation of the Pay Revision Committee and after the decision of the Cabinet the Finance Department issued Resolution No. 660F2 dated 8th February, 1999, whereby the revised pay scale of different categories of the employees of the State Government including the Laboratory Assistant, was notified in the Official Gazette on 13th February, 1999. Referring to Sl. No. 121 of Gazette notification dated 13.2.1999 learned senior counsel highlighted that Laboratory Assistant of Muzaffarpur Institute of Technology and other institutions under the administrative control of the Science and Technology Department was granted revised pay scale of Rs. 5000-8000 and in the remark column it was mentioned as B.Sc and Diploma/Certificate otherwise Rs. 4500-7000. Learned senior counsel for the petitioners then drew the attention of this Court to the scale admissible to the Laboratory Assistant in the Education Department where the revised pay scale was shown Rs. 5000-



8000/- and there was no corresponding entry in the remark column like the Laboratory Assistant of the MIT, Muzaffarpur and other institutions under the administrative control of the Science and Technology Department. Mr. P.K.Shahi has drawn attention of this Court to para-2 of the Resolution dated 8th February, 1999, which is quoted below for ready reference:-

“2. In certain cases the fitment Committee have recommended enhanced educational/ recruitment qualifications or prescribed other conditions. These have been accepted by the Government. The Department are directed to amend the relevant Rules within a period of six months. For the present incumbents in some of the above cases, who do not fulfil the newly prescribed qualifications, the Fitment Committee have recommended lower pay scales. Those have been approved and are show in Schedule III. For cases where the Fitment Committee have not indicated any lower pay scale, the existing incumbents, whether fulfilling the newly prescribed qualification or not, will draw their pay in the revised pay scale in accordance with the procedure laid down in the resolution. However, those who do not fulfil the newly prescribed conditions would not be eligible for further promotion unless they obtain the requisite qualifications. In respect of a few recommendations of the Fitment Committee as regards the pay scales, it has been decided to review them in consultation with



the Fitment Committee. Annexure V lists these cases.”

4. Mr. Prashant Kumar Shahi, learned senior counsel submitted that the Finance Department has maintained a distinction between the Lab Assistant of MIT, Muzaffarpur and other institutions under the administrative control of the Science and Technology Department and Lab Assistant of Education Department. Whereas in the matter of revision of pay scale in MIT, Muzaffarpur and other institutions under the administrative control of the Science and Technology Department in the remark column it was categorically mentioned that in case where the individual is holding the qualification of B.Sc. and Diploma/Certificate then their pay scale would be Rs. 5000-8000 otherwise the admissible pay scale would be Rs. 4500-7000. This is in tune with explanation in para-2 of resolution dated 8.2.1999 quoted above but there was no such stipulation in the case of the Lab. Assistant in the Education Department. Mr. P.K. Shahi highlighted that wherever on the recommendation of the Pay Revision Committee and after decision of the Cabinet, the Finance Department has decided to fix Rs. 4500-7000/- as replacement scale of Rs. 1400-2600 due to lack of B.Sc Diploma/Certificate specific entry was made in the remark column for such pay scale of Rs. 4500-7000 instead of Rs. 5000-8000.



5. Mr. P.K.Shahi, referring to the impugned order dated 1.7.2016, Annexure-6, submitted that the aforesaid decision was taken by the respondents reducing arbitrarily the pay scale from 5000-8000 to 4500-7000 was without opportunity of hearing. He also contended that once the expert committee, namely, the Pay Revision Committee has recommended the pay scale and that was approved by the Cabinet, the Education Department has no business to tinker with the recommendation of the Pay Revision Committee, decision of the Cabinet and follow up resolution dated 8th February, 1999. Referring to the letter dated 1.9.2000, Annexure-7 he submitted that the said letter has to be read in the context of the resolution dated 8th February, 1999 and a conjoint reading of Annexure-7 with Annexure-3, the resolution dated 8th February, 1999, would make it clear that the letter dated 1.9.2000 is clinching on the point that revised pay scale of other category of Lab. Assistants other than under the control of Science and Technology Department has been retained as intact and in that view of the matter, the action of the respondents in reducing the pay scale of the petitioners is totally without jurisdiction and total non-application of mind. He next contended that after the resolution dated 8th February, 1999, the respondents have introduced 6th Pay Revision Committee with effect from 1.1.2006



notionally and with financial benefit with effect from 1.1.2007. He submitted that even at the stage of introducing 6th PRC there was no whisper that the petitioners (Lab. Assistants) were given wrong revised pay scale. He further submitted that even 7th PRC benefit has been extended to the petitioners with effect from 1.1.2016 and none of the Pay Revision Committee recommendations have raised any objection that the petitioners have been wrongly granted the pay revision notwithstanding they are not holding the qualification of B.Sc. and diploma/ certificate. He submitted that when experts had decided the pay revision of the employees of the State of Bihar including the Lab. Assistant in the Education Department, they had considered all relevant aspects and on consideration of entire matter of pay revision they must have taken the decision of revision of pay scale and at no point of time they have even whispered that pay revision was wrongly extended to the petitioners. Mr. P.K. Shahi referring to the recommendation of the 7th Pay Revision Committee report has submitted that when the issue as to anomaly in the pay revision of the petitioners was highlighted the 7th PRC categorically held out that there is no infirmity in the grant of pay scale to the Lab. Assistant in the Education Department. He next contended that the action of the respondents in reducing the pay scale, after 17 long years by



memo No. 547 dated 1.7.2016 is unsustainable as all said and done about the pay revision in resolution of 8th February, 1999 has lost its significance when the pay revision committee has granted the corresponding pay revision is subsequent PRC on the basis of pay revision on the resolution dated 8.2.1999 and reiterated in 7th pay revision committee report.

6. Mr. Pushkar Naraya Shahi, learned Additional Advocate General No. 6 appearing on behalf of the State has fairly conceded that there is no denial of the fact that before taking decision contained in Annexure-6, no opportunity of hearing was provided. He is not in a position to contend that there was no application of mind by the pay revision committee, Cabinet or the Finance Department which issued resolution No. 660F2 dated 8th February, 1999. He has not been able to contradict the position that the subsequent pay revision, 6th PRC was introduced on 1.1.2006 and there was no whisper that pay revision granted to the Lab. Assistant in Education Department was erroneous. He submitted that when other Lab Assistant were subjected to particular qualification for grant of revised pay scale of Rs. 5000-8000, grant of pay scale 5000-8000 to the Lab Assistant in the Education Department without adhering to that qualification is erroneous decision but he has not been able to point out who has committed



error , expert of pay revision committee, Cabinet which approved the report or the Finance Department which introduced the revised pay scale by the notification which was published in the official Gazette dated 13th February, 1999. He submitted in his argument that there is financial implication on public exchequer.

7. The Court does not approve the stand taken on behalf of the State for the simple reason that recommendations of pay revision were approved and accepted by the Cabinet after due deliberation and thereafter the resolution was issued by the State Government extending the benefit of revision of pay scale. When they have specifically enumerated in relation to the Lab Assistant of the MIT, Muzaffarpur and other categories of Lab. Assistants under the control of Science and Technology Department where they have specifically mentioned that revised pay scale of Rs. 5000-8000 is only admissible on fulfilling educational qualification and in case of non-fulfillment pay scale of Rs. 4500-7000 is admissible, there is no such remark in the remark column so far as the Lab. Assistant in the Education Department is concerned.

8. In view of the conscious decision of the experts, the decision of the Cabinet after due deliberation and the resolution of the Government dated 8th February, 1999, the Court is not in a



position to accept that there was any error in the matter of pay fixation of pay revision of Lab. Assistant of Education Department.

9. Mr. Pushkar Narayan Shahi has submitted with reference to para-21 of the resolution dated 8th February, 1999 that in case of any error, the Finance Department has the right to rectify the mistake.

10. The Court cannot approve such belated action directly or indirectly and as such the action is violative of the law as held out by the Apex Court in the case of **Dr. D.C. Wadhwa & Ors vs State Of Bihar & Ors (1987) SCC (1) 378.**

11. When the expert committee has jurisdiction to decide the pay revision and when the expert committee has rejected the contention as to error in grant of pay revision of Lab Assistant in the Education Department, the Education Department has absolutely no jurisdiction to sit in appeal against the decision of the expert committee and usurp the power and function of the expert committee. Such exercise of power, in the opinion of the Court, is fraudulent exercise of power.

12. Considering the totality of the fact situation the Court is of the considered view that the order contained in



Annexure-6 is totally without jurisdiction and it is, accordingly, quashed.

13. The respondents have to restore the benefit of pay revision admissible to the petitioners including all consequential benefits in terms of the resolution No. 660F2 dated 8th February, 1999 within a maximum period of four months from the date of receipt/production of a copy of this order.

14. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.10.2018
Transmission Date	

