IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5400 of 2014

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Dr. Rajan Sinha Son Of Late Dr. Ganesh Prasad Sinha Resident Of Mohalla Road No. 10-H, Rajendra Nagar, Police Station Kadam Kuan, District Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Sugar Cane, Govt. Of Bihar, New Secretariat, Patna
2. The Cane Commissioner, Department Of Sugar Cane, Govt. Of Bihar, New Secretariat, Patna
3. The Managing Director, Bihar State Sugar Coporation Limited, Arunalaya Ram Jaipal Nagar, Baily Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Narain Singh, Advocate Mr. Kundan Kumar Sinha, Advocate
For the State	:	Ms. Smriti Singh, AC to AAG 10
For the Corporation	:	Mr. Gyan Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 05-09-2018

Heard learned counsel for the petitioner as well as the respondents.

2. The writ petition has originally been filed challenging the exit policy adopted by the Bihar State Sugar Corporation Limited under Resolution issued on 23.10.2013 under the signature of the Principal Secretary, Sugar Cane, Government of Bihar on the ground that the same has been issued without approval of the government.

3. Counsel appearing for the petitioner submits that since the counter affidavit of the respondents have revealed that the Resolution was issued with approval of the Cabinet, Government of

Bihar, the issue regarding the policy being without jurisdiction or without approval of the Competent Authority is not being pressed in the instant application.

4. He submits that he would confine his submission to the validity of the policy as the same is arbitrary, causing hardships to the petitioner. He submits that there is no rational in the policy as another decision of the same date i.e., 23.10.2013 issued under the signature of the Principal Secretary of the Department bearing memo No. 189, contemplates that for carrying out the existing duties in the Corporation, contractual appointments may be made on an honorarium for one year subject to extension on satisfactory performance from amongst the retired/retrenched employees who were fulfilling the requisite standard and qualification. It is submitted that if the Corporation was requiring personnel for discharging of duties, there was no rational for the policy, and replacing the petitioner who had served the Corporation for such a long time with others on contractual basis was highly irrational.

5. The Court's attention has been drawn to the memorandum of association and the article of the association of the Corporation. Relying upon Clause 29 and 30, it is submitted that amongst the objectives of the Corporation the objective to grant pension or gratuity for the employees and their family etc., and contribution to provident fund for the benefit of the employees of the

company etc. were objectives contained in the memorandum.

6. The petitioner has also raised a grievance that under the exit settlement plan he was coming within Clause ‘Kha’ which provided that in respect of employees like the petitioner who had 5-10 years of service left in the Corporation, they were to be paid six months salary in addition to the arrears of salary, DA, IA, City Allowances, HRA etc. He submits that this scheme does not provide for payment of the employees’ contribution of PF for the remaining period of petitioner’s service after the exit plan came into existence.

7. It is his submission that contribution to provident fund for the benefit of employees of the company was one of the objectives for which the company is established under the memorandum. Thus, the exit settlement plan to the extent it did not contemplate paying of employer’s contribution to provident fund for the remaining length of the petitioner’s services was contrary to the memorandum and articles of association of the Corporation. Petitioner has also raised a grievance that the exit settlement plan does not contemplate grant of benefits under the Fifth Pay Revision Committee recommendation made for employees of Government of Bihar even though the same was due to them in light of the letter dated 17.09.2009 bearing memo no. 274 issued by the Managing Director of the Corporation.

8. In support of his submission regarding the exit policy being without any rational, counsel for the petitioner has relied upon

the regulatory requirements of exit policy of the Government of India web hosted on its business portal.

9. In support of his claim to benefits under the Fifth Pay Revision Committee, counsel for the petitioner has relied upon the decision of the Hon'ble Apex Court in the case of **State of Bihar vs. Sunny Prakash** reported in **2013(1) PLJR (SC) 233**.

10. Counsel for the respondents on the other hand, has opposed the prayer. He has denied petitioner's claim for benefit of the employer's contribution towards provident fund for the remaining length of service after implementation of the exist settlement plan. It is his submission that the petitioner has no right to such employer's contribution to provident fund as the benefits which employees are entitled are enumerated within the exit settlement plan itself. He submits that the entitlement of benefits under the exit plan have been uniformly applied to all the employees. The same has been worked out keeping in view the chronic severe financial crunch which the Corporation had been facing for the decades. It is his submission that the petitioner was very fortunate in the sense that he had been on deputation to other entities such as Indira Gandhi Institute of Medical Science as its Administrative Officer as also in the Bihar State Hydro Electric Power Corporation as Officer on Special Duty and thereafter, as Joint Director in the Administrative Training Institute, wherein he was fortunate enough to get salary and

all other service benefits from the said entities. All other employees of the Corporation, who due to the severe financial crunch were not getting regular salary, have, in fact benefited from the exit settlement plan. The same has been applied uniformly to all the employees and had been formulated keeping in view the benefit of the employees, so as to make available the best that could be done under the existing circumstances and with the limited financial resources.

11. This Court would find substance in the submissions made by counsel for the respondents. The policy of the respondents has uniform application, is based on a rational keeping in view interest of the employees with the limited resources.

12. As regards the other claims of the petitioner regarding benefits under the Fifth Pay Recommendation Commission, the letter dated 17.09.2009 relied upon by the petitioner itself reveals that there was no decisions/notifications extending the benefit under the Fifth Pay Recommendation Commission to the employees of the Corporation. The petitioner therefore, has no enforceable claim to the said benefit. The letter dated 17.09.2009 relied upon by the petitioner makes it abundantly clear that the same was merely a request to the department for sanctioning the said benefit, which sanction was never made by the Department.

13. He submits that some other employees had also moved for benefit of the Fifth Pay Recommendation Commission and

keeping in view the financial crunch in the Corporation, this Court under order dated 26.03.2010 passed in CWJC No. 4677 of 2010 in the case of **Ram Krishna Roy and Ors. Vs. Bihar State Sugar Corporation Ltd., & Ors.,** much prior to coming into existence of the exit plan had rejected the prayer for benefit of Fifth Pay Recommendation Commission. Claim in this respect has also been rejected by this Court under order dated 19.04.2010 passed in CWJC No. 6591 of 2010. In the case of **Ram Bharosa Singh and Ors. Vs. The Bihar State Sugar Corporation Ltd.**

14. Petitioner, in the instant proceedings has not made any prayer for grant of benefit under the Fifth Pay Recommendation Commission. Petitioner has never claimed the benefit. Now at this belated stage in the instant case, that also by way of rejoinder when the matter is being taken up for hearing the claim has been raised for the first time. This Court is also conscious of the fact that similar claim in respect of the same benefit has been rejected in respect of others in CWJC No 4677 of 2010 and 6591 of 2010 noted hereinabove.

15. Regarding the claim for employer's contribution towards provident fund for the balance length of service, this Court would observe that no such prayer has been made in the writ petition. The oral submission is being made by the counsel without any prayer in this respect. Apart from that the same is not available under the

exit plan. Counsel for the petitioner has not been able to make out any legally enforceable claim, on the basis of any right to receive employer's contribution towards provident fund for the period of balance length of service after availing the exit plan.

16. In the opinion of the Court petitioner's reliance on Clause 29 and 30 of the memorandum and articles of association is misconceived. The admitted case of the petitioner is that their services were non-pensionable. He has served in the Corporation for such a long time under a non-pensionable service even though the memorandum and articles of the association provided for pension amongst other benefits as one of the objectives of the Corporation. Enforceability of the objectives laid down in the memorandum and the articles of association by way of the writ proceedings is an issue on which counsel for the petitioner has not made any submissions or placed any law or citations. In the earlier order dated 03.02.2015 in the instant proceedings this Court has taken note of the terms and conditions of the appointment of the petitioner contained in memo no. 995 dated 05.02.1988. This Court on 03.02.2015 admitted the petitioner's case for hearing by the following order :

> "Having regard to the terms and conditions of appointment of the petitioner as contained in Memo No. 995 dated 5.2.1988 envisaging termination of service of the petitioner by making payment of three months salary in

> advance, while this Court is not inclined to pass any interim order staying the operation of the Exit Settlement Plan which ensure also payment of four months salary, nothing said in this order, however, will come in the way of the either of the parties to get rid of each other in the manner they would like as per the terms and conditions of appointment letter."

17. The contours of judicial review and the limits thereof in the matters of policy of the government are very limited. It is established that the Court exercising jurisdiction under Article 226 of the Constitution of India under normal circumstances is not to interfere with the matters of policy as they are best left to the administrative authorities who have sufficient expertise and experience in administrative matters. The Court however as a rule are not precluded from interfering in an appropriate case where the policy brings out any hostile discrimination or where the policy is unconstitutional and violative of any statute. Such grounds do not exist in the instant case.

18. The limits of judicial review have been reiterated by the courts time and again. In this connection this Court would refer to the decision of the Hon'ble Apex Court in the case of **W.B. Housing Board v. Brijendra Prasad Gupta** reported in **1997 (6) SCC 207**. The regulatory requirements in respect of exit policy downloaded

from the business portal of India which have been annexed in the writ petition neither support the contention of the petitioner nor have been shown to be binding upon the State Government and Corporation. When this regulatory requirement has come, is also not apparent from the print out which has been made Annexure 5 to the rejoinder. Clearly the petitioner therefore, cannot be permitted to place reliance on the same.

19. This Court does not find any reason for interfering with the exit policy adopted by the Bihar State Sugar Corporation Limited dated 23.10.2013.

20. For the reasons indicated hereinabove, this Court would hold that the writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	26.07.2018
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