IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.117 of 2018
In
Civil Writ Jurisdiction Case No.10795 of 2011

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1. The State of Bihar through the Joint Secretary, Finance Department, Government of Bihar, Patna.
2. The Principal Secretary, Environment and Forest Department, Bihar, Patna.
3. The Deputy Secretary, Environment and Forest Department, Bihar, Patna.
4. The Director, Ecological and Environment Department, Government of Bihar, Patna.
5. The Principal Chief Conservator of Forest, Patna, Bihar.
6. Regional Chief Conservator of Forest, Patna, Bihar.
7. Forest Conservator, Patna Circle, Patna.

... ... Appellant/s

Versus

Rajdeo Chaudhary Son of Sri Shiv Pujan Chaudhary Resident of Village - Umeshbad, P.O. - Baidrabad, District - Gaya.

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Parijat Saurav, AC to AAG 10
For the Respondent/s	:	Mr. Bankey Bihari Singh, Advocate
		Mr. Sanjay Kumar, Advocate
		Mr. Manoj Kumar, Advocate
		Mr. Shailendra Prasad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 06-09-2018

Heard the learned counsel for the appellant-State and the respondent.

The appellant-State has questioned the correctness of the judgement dated 25.05.2017 passed by the learned Single Judge in C.W.J.C. No. 10795 of 2011, whereby the order bearing No.

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22/09-630, dated 09.03.2011, issued by the Joint Secretary, Government of Bihar, Patna, denying the benefit of the Resolution No. 7872 dated 26.10.2007 of the Finance Department granting higher grade of pay to the Assistants Grade-II in the pay-scale of Rs. 5000-8000 /- to the respondent in view of such resolution being applicable only to the concerned Assistant Grade-II who were appointed prior to 20.12.2000.

The short facts giving rise to the present appeal are as hereunder:

The respondent was appointed as a Draftsman in the Forest Department in the pay-scale of Rs. 680-965/- on temporary basis. Later, with the recommendation of absorption and conversion of the post of Draftsman into that of the Assistant, was accepted and the respondent was absorbed on the post of Assistant vide order dated 03.06.2005. The aforesaid absorption was in the pay-scale of Rs. 4000-6000/- under Rule 56(A)(2) of the Bihar Service Code. Later, the Finance Department vide resolution bearing No. 7872 dated 26.10.2007 revised and upgraded the pay of upper grade Assistant to Rs. 5000-8000/- w.e.f. 01.01.1996. However, the aforesaid revision of pay was made applicable to only those Assistants who were appointed prior to 20.12.2000.

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The learned Single Judge, finding such fixation of cut-off date to be arbitrary and having an impact of creating an artificial classification, thereby depriving all those Assistants appointed after 20.12.2000 from the benefit of the revised pay-scale, quashed the order bearing No. 22/09-630 dated 09.03.2011, issued by the Joint Secretary, Govt. of Bihar.

While deciding the matter, the learned Single Judge took note of the fact that the benefit of revision of pay-scale was made effective from 01.01.1996, but only to those Assistants who were appointed prior to 20.12.2000. Giving a purposeful construction to the aforesaid resolution after taking into account that the benefit of revised pay-scale of Rs. 5000-8000/- was extended to such Assistants who were appointed prior to 20.12.2000 for drawing arrears w.e.f. 01.01.1996, the learned Single Judge was of the view that the prospectivity of such resolution could not be denied to the respondent or other Assistants appointed to the post after the cut-off date, i.e., 20.12.2000. It was, therefore, held that respondent was entitled to the revised pay-scale of Rs. 5000-8000/-, which is admissible to the Assistants in terms of resolution dated 26.10.2007 w.e.f. his absorption against that post, i.e. from 03.06.2005. It was further directed that the arrears be calculated

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accordingly and be paid to the respondent within a period of three months from the date of passing of the judgement.

Learned counsel appearing on behalf of the appellant-State assailed the aforesaid judgement on the ground that it does not take into consideration that the respondent was initially appointed on the post of Draftsman and was only later absorbed as Assistant at the entry level and therefore, he was not entitled to the benefits of the resolution dated 26.10.2007. The cut-off date, it has been argued, fixed by the Executive Authorities, could not have been extended or diluted. However, learned counsel for the appellant-State could not ascribe any reason for fixing the cut-off date or any intelligible basis for differentiating between the Assistants appointed on or after a particular date.

In support of the aforesaid contention, reference was made to a judgement in *Government of Andhra Pradesh & Ors. Vrs. N. Subbarayudu & Ors., reported in (2008) 14 SC 702*, wherein the Supreme Court has opined that not in all cases can the choice of a cut-off date be dubbed as arbitrary, even if no particular reason is given for the same.

In the aforesaid case, the respondents were Lecturers in a private aided college. Their age of superannuation was brought down from 60 years to 58 years and were held to be entitled to

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pension only w.e.f. a particular date. In that context, while testing the correctness of the amendment by which the age of superannuation was brought down and a cut-off date was fixed for the entitlement of pension, the Supreme Court has held that the cut-off date is fixed by Executive Authorities keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. Since fixation of a cut-off date falls within the domain of Executive Authorities, it was held by the Supreme Court that normally, the Court should not interfere with such fixation, unless such fixation appears to be blatantly discriminatory and arbitrary.

We have examined the resolution of the Finance Department fixing a date for giving the benefit of revised pay to only such Assistants who were appointed before the cut-off date. There does not appear to be any reason for fixing that date and the net impact of such a fixation has an evil portent of creating a class within a class, which is impermissible.

In the case of *Government of Andhra Pradesh & Ors. Vrs. N. Subbarayudu & Ors.* (supra), the Supreme Court has after holding the cut-off date to be valid has held that it could be interfered with if such cut-off date leads to some blatantly capricious or outrageous results. The cut-off date, in the present

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case, has invariably divested such Assistants appointed later than that cut-off date to the benefits of the revised pay-scale. Such arbitrary fixation militates against rules of fairness and equality.

For the aforesaid reasons, we do not wish to interfere with the judgement impugned.

The appeal has no merits and is accordingly dismissed.

However, there shall be no order as to costs.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Skm / Praveen

AFR/NAFR	N.A.F.R.
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