

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.783 of 2016

In

Civil Writ Jurisdiction Case No.1577 of 1996

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Bihar Council on Science and Technology through its Project/Programme
Director (Pariyojna Nideshak), Indira Gandhi Science Complex, Planetarium,
Adalatganj, Bailey Road, Patna- 800001

... ..Respondent/Appellant

Versus

1. Vijoy Kumar Sinha son of Late Parmeshwar Dayal C/o Late Kanahiya Prasad,
Advocate, Kadamkuan, Dariapur, Gola Road, Patna- 3
2. Rajesh Singh sonof Shri Amar Singh, Resident of Mohalla Langoor Gali, P.S.
Jhauganj, P.S. Chauk, Patna City, Patna- 8

Petitioners/Respondents

3. Chairman, (Development Commissioner, Bihar Ex-Officio), Bihar Council on
Science and Technology, Science and Technology Department, Bihar, Maurya
Complex, Patna
4. Vice -Chairman, (Commissioner-cum-Secretary, Department of Science and
Technology Ex. Officio), Bihar Council on Science and Technology, Maurya
Complex, Patna
5. Secretary (Director, Science and Technology, Govt. of Bihar), Bihar Council
on Science and Technology, Maurya Complex, Patna

... .. Respondents/proforma Respondents

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Appearance :

For the Appellant/s : Mr. Alok
For the Respondent/s : Mr. Shailendra Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 26-06-2018

We have heard Mr. Alok, learned counsel, appearing
for the appellant and Mr. Shailendra Kumar Sinha, learned
counsel for the respondent-writ petitioners.

It is feeling aggrieved by the judgment and order
dated 01.03.2013 of a learned Single Judge of this Court passed



in CWJC No.1577 of 1996, whereby the learned Judge, while allowing the writ petition, has issued direction(s) to the official respondents for removal of disparities in the pay scales of Accountant as well as the Bill Clerk-cum-Cashier as existing in the Establishment of the Bihar Council on Science and Technology(hereinafter to be referred to as 'the Council') qua the Bihar Remote Sensing Application Centre(hereinafter to be referred to as 'the Centre') and the Indira Gandhi Science Complex Planetarium, Patna(hereinafter to be referred to as 'the Planetarium') that the Council, through this Project Director, is before this Court through this intra-Court appeal filed under Clause 10 of the Letters Patent of the High Court of Judicature at Patna.

The facts lie in a very narrow compass and in the nature of the contest engaging this Court, as noticed through the pleadings on record, we certainly do not intend to give an exhaustive discussion on the intra-party claim. Suffice it to say that while the two writ petitioners, who are respondent no.1 and 2 herein, claim parity in the matter of pay scales with those holding similar posts in 'the Centre' as well as in 'the Planetarium', respectively, the claim is contested on issue of qualification, nature of duties and the financial implications.



The claim was contested by the respondents by filing counter affidavit on all the grounds which bear relevant consideration for determining the issue of parity in pay scales viz. the service conditions governing the post; the educational and other qualification prescribed for the post; the funding agency; the nature of duties discharged etc. The learned Single Judge rejecting the opposition and expressing satisfaction on the claim raised, has been pleased to allow the writ petition with appropriate direction to 'the Council' to grant the same pay scales to the petitioners as being paid to the employees at 'the Centre' and it is feeling aggrieved by such direction(s) that the Council is before this Court through its Project Director, as noted above.

We have heard learned counsel for the parties and have perused the materials on record. As we have observed at the outset, we do not intend to engage in a long-drawn discussion on the merits of the claim because according to us, the issue has neither been raised by the two writ petitioners before their employer nor deliberated upon, save and except that a legal notice was served on the employee for granting he relief, which does not satisfy the condition precedent for seeking a writ in the nature of mandamus. We are also not satisfied



with the materials that have been pressed into service by the writ petitioners for seeking a relief in the nature of 'equal pay for equal work'.

Mr. Sinha, learned counsel for the respondent-writ petitioners has been rather serious in canvassing the claim of the petitioners for parity, but in the nature of the grounds raised in this appeal that we have noticed, we are satisfied that the issue first requires a deliberation at the level of the employer, which is the appropriate forum, before a power of judicial review can be exercised. In our considered opinion, the learned Single Judge has pre-empted this exercise by granting a relief which is based on facts. We certainly do not intend to express our views on the merits of the contest rather while maintaining as such, we intend to dispose of the appeal reserving the right of the respondent/writ petitioners to canvass their claim before their employer, together with materials supporting their claim, for parity in the pay scale on the principles of 'equal pay for equal work' bearing in mind the distinction made by the Council through the grounds raised in support of its appeal.

It goes without saying that should the respondents-writ petitioners raise their claim for parity in the pay scales with the employees at 'the Centre' and 'the Planetarium' before their



employer, the authority concerned in ‘the Council’ would consider and dispose of the same in accordance with law with due opportunity of hearing to the writ petitioners.

Considering the nature of the issue raised, the appropriate authority should dispose of the representation so filed by the respondent-writ petitioners within three months of its filing.

The judgment and order of the learned Single Judge dated 01.03.2013, passed in CWJC No. 1577 of 1996 stands modified to the aforementioned extent.

The Letters Patent Appeal is allowed with the modification as above.

No order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	Nil
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