

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6851 of 2017

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1. Rajendra Prasad Mistri Son of Late Nagina Mistri, resident of Village- Aganur, Police Station- Kaler, District- Arwal.
2. Anil Kumar Srivastava, Son of Late Jwala Prasad Srivastava, resident of Kanti Factory, Mahatma Gandhi Nagar near Rose Garden Apartment, Janki Niwas, Bahadurpur-26, Police Station- Agam Kuan, District- Patna.
3. Jaggan Prasad Sah, Son of Late Sukhdeo Sah, resident of Village- Ghiya, Post Office- Praast Dih, Police Station- Goradih, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Irrigation Department, Government of Bihar, Patna.
2. The Regional Development Commissioner, Sone Command Area Development Agency, Sone Bhawan, 'R' Block, Patna.
3. The Secretary, Sone Command Area Development Agency, Sone Bhawan, 'R' Block, Patna.
4. The Accounts Officer, Sone Command Area Development Agency, Sone Bhawan, 'R' Block, Patna.
5. The Director, Water and Land Management Institute (WALMI), Phulwarisharif, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Dwivedi, Advocate
For the State	:	Mr. Harish Kumar, GP 8
For the WALMI	:	Mr. Harshvardhan Shivsundaram, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 13-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Anil Kumar Dwivedi, learned counsel for the petitioners; Mr. Harish Kumar, learned Government Pleader 8



(hereinafter 'Government Pleader 8') for the State and Mr. Harshvardhan Shivsundaram, learned counsel for the Water and Land Management Institute, Patna (hereinafter referred to as 'WALMI'), the agency into which the erstwhile Sone Command Area Development Agency (hereinafter referred to as 'SCADA') has since merged.

3. The petitioners have moved this Court for the following relief:

'That this writ application is being filed for issuance of a writ of mandamus directing the respondents to pay the withheld retiral benefit amount (the Group Gratuity amount) of petitioners which has been given by L.I.C. separately to all the three petitioners after maturity out of which some of the part of amount has been withheld by Respondents without any cogent reason and the petitioners have been given lessor amount against their retiral dues though most of the employees of the same Sone Command Area Development Agency hereinafter referred to as "SCADA" have been paid their full amount as has been sanctioned by L.I.C. to the department for payment of other employees which is clear cut discrimination with petitioners and further for any other writ(s)/order(s)/direction(s) which is found just and proper in the facts and circumstances of the case.'

4. The only point arising for determination is with regard to the gratuity amount. The petitioners claim they have been paid less than the money received by WALMI/SCADA from



the Life Insurance Corporation of India (hereinafter referred to as the 'LIC') for the said purpose.

5. Learned counsel for the petitioners submitted that they had superannuated from service with effect from 29.02.2016 (petitioner no. 1), 30.06.2016 (petitioner no. 2) and 31.01.2016 (petitioner no. 3). It was submitted that till then i.e. till the date the last of three petitioners superannuated, the gratuity amount was being paid through the account opened and operated by the then SCADA with the LIC. It was submitted that after superannuation, though the petitioners have been paid gratuity, but the amounts are much less than what has been paid to other retired employees in terms of the amount sent by the LIC to the erstwhile SCADA, as per details in Annexure 5 of the writ petition. It was submitted that the petitioners have been patently discriminated against in making such payment.

6. Learned counsel for WALMI/SCADA submitted that till 14.12.2016, as the State Government did not give any separate fund for payment of gratuity, the then SCADA was using the aforesaid LIC account for making such payments. However, it was submitted, that with effect from 14.12.2016, such LIC account was closed and thenceforth, the State Government provided the fund. It was submitted that due to this, the amounts paid to the



retired employees have differed. It was submitted that with effect from 14.12.2016, the formula which was applied for payment to the State Government employees has been adopted by the SCADA and after making calculations with regard to the petitioners, the amount has been paid strictly in terms of such formula. It was submitted that the LIC did not maintain accounts in individual name of any employee and rather it was a common account opened by the then SCADA. It was, thus, submitted that LIC forwarded the total amount it had in the account on the cut-off date of 14.12.2016. Learned counsel submitted that the issue was also before a co-ordinate Bench of this Court in CWJC No. 2385 of 2017 titled **Ram Balak Singh v The State of Bihar and Ors.** wherein, *vide* order dated 01.06.2020, the Court has upheld the payment of gratuity to the employees of erstwhile SCADA in terms of the State Government's formula. It was submitted that the petitioners in the present case have also been paid the same amount as per the formula applicable in the case of government employees. It was submitted that several other employees along with the petitioners have also been paid the amount as per the calculation applicable to State Government employees.



7. Learned GP 8 submitted that the State Government provides the amount to WALMI/SCADA and they are competent to make payments to their employees.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioners have made out a case for interference under exercise of extraordinary writ jurisdiction under Article 226 of the Constitution.

9. The first and foremost point which the Court would consider is the cut-off date. In the present case, there is no controversy with regard to the fact that with effect from 14.12.2016, the then SCADA, under the order of the competent authority took a decision to close its LIC account with regard to payment of gratuity to its employees. Thereafter, the same was to be paid as per what was payable to the State Government employees. In the present case, it is an admitted position that all the three petitioners superannuated much prior to 14.12.2016. The second point which needs to be considered is whether the petitioners, who may not have been actually paid their gratuity pre-14.12.2016, would be governed by such new policy of the then SCADA. In this view, there is no reasonable basis to deny the gratuity to the petitioners as per the LIC formula, while pay the



gratuity as per the LIC formula to some employees, both sets being equally situated, would be plainly violative of Article 14 of the Constitution.

10. Once the LIC account was closed with effect from 14.12.2016 and the LIC forwarded its entire money to the then SCADA, all persons, who have superannuated before 14.12.2016, obviously have to be covered by such amount which was transferred by LIC as, clearly, they cannot be governed by any policy decision which took effect much after their superannuation.

11. The ancillary point which arises at this juncture, is the one which has been raised by learned counsel for WALMI/SCADA, that the account with LIC was not in the individual name of any employee, but rather it was a general fund of the then SCADA. This point would have, perhaps, been of some relevance and would have benefited the WALMI/SCADA, if the LIC had simply forwarded the total amount to the then SCADA. This is not the case. As per the materials brought on record in the supplementary counter affidavit filed on behalf of WALMI/SCADA, it is clear that when the LIC forwarded its total amount to the then SCADA, after closing the account, it also disclosed a formula as per which such payment of gratuity to the retired employees of the then SCADA had been calculated. This,



in the considered opinion of the Court, would be vital for considering the issue in the present case. Further, the Court is also required to take into consideration the fact that many persons who have been mentioned in the writ petition (Annexure 5 of the writ petition), as having superannuated pre-14.12.2016, have been paid the amount as per the formula indicated by the LIC.

12. Thus, having considered the matter in its entirety, this Court finds that where persons who had superannuated prior to 14.12.2016, have been paid their gratuity in terms of the formula which was indicated by LIC while forwarding its money to the then SCADA after closing the account, and then paying certain employees who have also superannuated pre-14.12.2016 applying the State Government's formula would clearly amount to a situation where there would be unreasonable classification amongst persons similarly situated, and that is, *per se* discriminatory. Whatever policy may have been adopted by the then SCADA much after superannuation of the present petitioners, they cannot be subjected to or made to suffer adversely, in terms of such later policy decision. The WALMI/SCADA can only take this plea legally, to be considered on its own merits, for persons, who may have superannuated on/after 14.12.2016. At the cost of repetition, the Court would indicate that had the LIC simply



forwarded a particular amount without disclosing any formula, the WALMI/SCADA could maybe have taken a plea that the formula to be adopted is what the State Government employees are entitled to, but once a formula has been indicated in the amount sent by LIC to the then SCADA, such formula has to be adopted uniformly, without any discrimination and pick-and-choose policy, for all employees till the date the amount was forwarded by the LIC to the then SCADA, which in the present case has been stated to be 14.12.2016.

13. In **Maneka Gandhi v Union of India, (1978) 1 SCC 248**, the Hon'ble Supreme Court commented thus on Article 14 of the Constitution:

*'7. Now, the question immediately arises as to **what is the requirement of Article 14** : what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] namely, that "from a positivistic point of view, equality is antithetic to*



arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.'

(emphasis supplied)

14. In Uttar Pradesh Power Corporation Limited v

Ayodhya Prasad Mishra, (2008) 10 SCC 139, the Hon'ble

Supreme Court held:

'36. It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

37. Every classification, to be legal, valid and permissible, must fulfil the twin test, namely,:

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and



(ii) such differentia must have a rational relation to the object sought to be achieved by the statute or legislation in question.

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40. It is well settled that equals cannot be treated unequally. But it is equally well settled that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. The High Court was, therefore, right in holding that Executive Engineers placed in Category I must get priority and preference for promotion to the post of Superintendent Engineer over Executive Engineers found in Category II.'

(emphasis supplied)

15. A Division Bench of the Madras High Court in **Tamil Nadu Housing Board v Maheshwari Ramasamy, 2011**

(5) CTC 503 opined:

'22. The Concept of equality before law means that among equals the law should be equal and should be equally administered, and that like should be treated alike. There must not be discrimination among equals unless there is reasonable classification. When something is to be done within the discretion of the authorities, it must be done according to the Rule of reasons and justice, and it should not be according to the whims of the authorities.'

(emphasis supplied)

16. Coming to the decision of the co-ordinate Bench in the case of **Ram Balak Singh** (*supra*), the Court would only observe that neither the date of superannuation of Ram Balak Singh nor the issue with regard to discrimination and the policy decision having come into effect only from 14.12.2016, with



regard to change in calculation of gratuity, were either raised before or considered by the learned Single Judge therein. Thus, **Ram Balak Singh** (*supra*) would not be applicable in the present case as this Court has specifically considered the issues which have been raised by learned counsel for the petitioners, which were neither canvassed nor decided in **Ram Balak Singh** (*supra*).

17. For the reasons recorded and discussions made hereinabove, the present application has to succeed and accordingly, stands allowed.

18. The WALMI/SCADA is directed to recalculate the payable gratuity to the petitioners in terms of the LIC formula sent in its communication to then SCADA. Upon doing so, whatever differential amount is required to be paid to the petitioners shall be paid to them within 12 weeks from today.

(Ahsanuddin Amanullah, J.)

P. Kumar /Anand Kr.

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