

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 16675 of 2011

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1. Bihar Fisheries Service Associ S/O Dr. Rang Nath Pandey Office At Fisheries Research Institute Campus, Mithapur, P.S.-Jakkanpur, Patna
 2. Manoj Kumar Pandey S/O Dr. Rang Nath Pandey General Secretary, Bihar Fisheries Service Association, Office At Fisheries Research Institute Mithapur, P.S.-Jakkanpur, Patna
 3. Dr. Jai Shankar Ojha S/O Dr. Kanhaiya Lal Ojha Executive Member, Bihar Fisheries Service Association, At Present Fisheries Extension Officer, Fisheries Research Institute, Mithapur, P.S.-Mithapur, Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR and ORS
2. The Principal Secretary Department Of General Administration, Govt. Of Bihar, Patna
3. The Principal Secretary Department Of Finance, Govt. Of Bihar, Patna
4. The Principal Secretary, Department Of Animal And Fish Resources, Govt. Of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Mrigank Mauli, Sr Advocate with
Mr Gyan Shankar, Advocate

For the Respondent/s : Mr Manikant Mishra, GP XXV
Mr Anil Kr Singh, AC to GP XXV

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date : 05-09-2022

Heard learned counsel for the petitioners and the respondents.

2 This writ petition was initially filed for quashing that portion of Resolution No 61 dated 21.01.2010 issued by the Finance Department, Government of Bihar whereby officers of the



Bihar Fisheries Service, i.e., the Fisheries Extension Officer, District Fisheries Officer, Assistant Director (Fisheries), Joint Director (Fisheries and Director (Fisheries) were given the grade pay which, as per the petitioners, was less than entitlement, claiming parity with the grade pay granted to some officers in other State services.

3 According to the petitioners, the posts in the Bihar Fisheries Service were granted grade pay lesser than entitlement based on certain mistakes committed by the Sixth Pay Committee in the process of fixation during Sixth Pay Revision. The Sixth Pay Committee has wrongly treated the Fisheries Service as a State Cadre contrary to the Notification dated 10.06.1970 issued by the Department of Agriculture and Animal Husbandry (Fisheries) which clearly contemplates the fisheries service to be State “service” and not “cadre”.

4 Another mistake committed by the Sixth Pay Committee is that it has assumed the post of District Fisheries Officer as basic cadre entry level post, though it is a 100% promotional post. The post of District Fisheries Officer is the promotional post of Fisheries Extension Officer and, therefore, the basic entry grade pay of Rs 4,800/- should be granted to the Fisheries Extension Officer. The members of the petitioners



service constitute a “service” so their entry level scale is required to be at par with other gazetted State service and above the basic grade pay and cadre level scale which is applicable to Fisheries Extension Officer. It is also submitted that the recommendations made by the Principal Secretary, Animal Husbandry and Fisheries Department on 31.05.2019 has been ignored by the Sixth Pay Committee. Fixation, therefore, in terms of the Notification dated 23.08.2007 is unsustainable.

5 During pendency of the writ petition, grievance of the petitioners, in so far as the grade pay for the post of Joint Director (Fisheries) and Director (Fisheries) is concerned, has been redressed by the authorities by issuance of Resolution dated 03.11.2011. The post of Deputy Director (Fisheries) has also been granted the claimed grade pay of Rs 6,600/- vide departmental order dated 16.08.2017. The grade pay has been granted notionally with effect from 01.01.2016 and actual benefits with effect from 01.04.2017, which the petitioners allege to be discriminatory. They claim that the benefit of this grade pay for the post of Deputy Director (Fisheries) also should be granted with effect from 03.11.2011. Similar grievance is raised with respect to claimed grade pay of Rs 5,400/- being granted to the post of District Fisheries Officer with effect from the same date. Another



grievance which remains is non-grant of entry and basic grade pay of Rs 4,800/- with Pay Band II to Fisheries Extension Officer which, as per the petitioners, is due since 75% of posts of Fisheries Extension Officer is filled up by way of direct recruitment and it is the only entry level post.

6 The learned State Counsel, referring to the stand of the State in the counter affidavit, submits that the petitioners are not members of a State service. They are members of State Cadre. To buttress his submission, he has referred to Notification dated 10.06.1970 issued by the Department of Agriculture and Animal Husbandry (Fisheries) (Annexure 2) whereby the Bihar Agriculture Service (Fisheries) Cadre was redesignated as Bihar Fisheries Service. He has also referred to the Animal Husbandry and Fisheries Service Recruitment Rules, 1993 (Annexure 3) and the Bihar Animal and Fish Resources (Fisheries) Service Recruitment Rules, 2007 to submit that petitioners are members of a state cadre which is obvious from plain reading of these notifications. Consistently, they have been designated and treated by these successive notifications as members of State Cadre. None of these notifications declared the petitioners to be a State service. Having said so, it is also submitted that after due consideration of the claim of the petitioners, the authorities had



granted the grade pay admissible to all the posts, for which grievance has been raised by way of this writ petition, except Fisheries Extension Officer since the post is a supervisory level post only and cannot be compared with any other entry level post in any State Service. In so far as the benefits of grade pay granted to Deputy Director (Fisheries) and District Fisheries Officer during pendency of the instant writ proceedings, it is submitted that after due consideration of cadre strength, the claimed grade pay of Rs 6,600/- to District Fisheries Officer have been granted notionally with effect from 01.01.2016 and actually with effect from 01.04.2017. There is no infirmity.

7 Prior to determination of the cadre strength, these posts were not entitled to the claimed grade pay. The petitioners, therefore, are not in a position to raise any grievance regarding grade pay being due and admissible from an earlier date (03.11.2011). It is also submitted by the learned State Counsel that the pay fixation regarding which the petitioners are raising a grievance was done by an expert body. This expert body (Pay Committee) is better placed to determine the pay scale after taking into consideration the various factors including cadre strength, equivalence of the post with posts existing in the Central Government, need based post/s duly notified by the State



Government, duties and work profile etc etc. The posts under the Fisheries Directorate are not State service and, therefore, the Pay Committee has rightly treated them as different from State service. Such issues ought not to be gone into by this Court exercising jurisdiction under Article 226 of the Constitution of India, in view of the determination having been done by expert body which, if interfered with, is likely to have an undesirable cascading effect.

8 Having considered the rival submissions, this Court would find that the stand of the respondents that the notifications dated 10.06.1970, 14.01.1993 and the Recruitment Rules of 2007 do not declare the Fisheries Services as a State service, and that it has only been redesignated as a State cadre under the Directorate, today is not of much significance at least in so far as the petitioners' claimed grade pay for the post of Director, Joint Director, Deputy Director and District Fisheries Officer are concerned. The petitioners, admittedly, have got the claimed grade pay.

9 Remaining claim now is only in respect of the date with effect from which grade pay has been granted to the Deputy Director (Fisheries) and District Fisheries Officer. Petitioners claim the grade pay with effect from 03.11.2011 whereas the State



respondents have tried to justify the non-grant of grade pay with effect from 03.11.2011.

10 The claim for grade pay with effect from 03.11.2011 to District Fisheries Officer and Deputy Director (Fisheries) is required to be considered by the respondents since similar claim in respect of Joint Director and Director has been allowed with effect from 03.11.2011. The petitioners' claim for parity with respect to the date, with effect from which the claimed grade pay is to be granted, is required to be looked into by Respondent No 4 by a reasoned and speaking order in accordance with law.

11 This Court, therefore, considers it appropriate that the claim for grant of pay with effect from 03.11.2011 is required to be considered by the respondents themselves. The petitioners may represent for grant of these benefits with effect from 03.11.2011 before Respondent No 4.

12 Needless to say that if such representation is filed within six weeks from today, Respondent No 4 would be required to dispose of the claim by a reasoned and speaking order.

13 In so far as grant of entry level grade pay to the Fisheries Extension Officer is concerned also, this Court would consider that since the petitioners would be approaching Respondent No 4, they may also raise the claim for grant of entry



level grade pay to the Fisheries Extension Officer. Respondent No 4 shall be required to consider the claim and dispose it of by reasoned and speaking order, having due regard to the fact that the claimed grade pay has been granted to all other posts, except Fisheries Extension Officer.

14 Writ petition is disposed of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	23.08.2022
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