

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.476 of 2019

In

Civil Writ Jurisdiction Case No.11995 of 2016

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1. The State of Bihar through the Chief Secretary, Department of Education, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
 3. The Director, Secondary Education, Government of Bihar, Patna.
 4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. The Bihar State + 2 Vocational Teachers Association through its Secretary Vidhu Mangal Singh having its registered office at Indrapuri Road NO.-7, P.S.-Rajeev Nagar, District-Patna.
2. Vidhu Mandal Singh, Son of Sri Fakir Chand Singh, Resident of Village Kurmuri, P.S.-Sikrahata, District-Bhojpur, presently posted in H.N.K. + 2 School, Ara, P.S.I-Nawad, District, Bhojpur, the Secretary, Bihar State + 2 Vocational Teachers Association.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Alok Ranjan, A.C. to AAG-5
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Satyam Shivam Sundaram, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-09-2023

1. The question which arose before the Writ Court in the writ petition filed by the petitioners, who are respondents herein, was whether the Laboratory Assistants in the Education Department were entitled to the revised pay-scale as per the 5th Pay Revision *de hors* a Graduation in Science with Diploma or



Certificate. The learned Single Judge on the basis of the specific recommendations in the Bihar Gazette with respect to 'Revision of scales of pay of State Government Employees' set aside the order of the year 2016, challenged in the writ petition, whereby the pay-scale of Laboratory Assistants was sought to be reduced.

2. Learned Government Advocate assailed the judgment specifically pointing out that the Finance Department has issued a clarification immediately after the notification of 1999, in the year 2000 specifically clarifying that only those persons with a Graduate qualification with Diploma or Certificate would be entitled to the enhanced pay. The others who were appointed, would have to continue with a lesser pay-scale which pay-scale is also revised and recommended by the Pay Fixation Committee. In fact, for similarly placed Lab Assistants in the Muzaffarpur Institute of Technology, the non-Graduates were conferred with only the benefit of the lesser pay-scale. There is hence no question of the Lab Assistants in the Education Department alone being conferred with a higher pay-scale.

3. Learned Senior Counsel appearing for the respondents in the appeal would, however, specifically point out that the higher pay-scale was granted to the Lab Assistants in



the Education Department specifically with the condition that they would not be entitled to further promotions unless they acquire the said qualification. Hence, it was a conscious decision taken by the Government which was published through the Gazette and this cannot be easily interfered with by the Finance Department, by a clarification. It is also submitted that after the 5th Pay Revision, there were two other Pay Revisions, the 6th and the 7th, in which the Lab Assistants in the Education Department were given a revision based on the higher scale of pay conferred by the 5th Pay Revision. It is also asserted that they were drawing the higher pay all along and many of these Lab Assistants have now superannuated. In any event, the decision taken in 1999 cannot be easily interfered with in the year 2016, that too by a clarification issued by the Finance Department, when the earlier decision was that of the Cabinet.

4. We first look at Annexure-3, which is a notification issued for revision of scale of pay of State Government Employees. When we look at the tabulation of the existing pay-scale and revised pay-scale, we see that under the Muzaffarpur Institute of Technology and College of Engineering, Bhagalpur, it provided two pay-scales for the Laboratory Assistants. The higher scale of Rs. 5,000-8,000/- for those recruited with B.Sc and Diploma/Certificate and otherwise the lower pay-scale of



Rs. 4500-7,000/-.

5. The higher pay-scale is given in the tabulation as the revised pay-scale and in the remarks column the requirement of Graduation as also the lower pay-scale otherwise, has been specified. In so far as the Education Department is concerned, only the higher pay-scale of Rs. 5000-8000/- is indicated as the revised pay-scale; without any specification of a lower pay-scale. This has to be reckoned based on the recital in Paragraph 2 of the notification, extracted hereunder:-

“... For cases where the Fitment Committee have not indicated any lower pay Scale, the existing incumbents, whether fulfilling the newly prescribed qualification or not, will draw their pay in the revised pay scale in accordance with the procedure laid down in the resolution. However, those who do not fulfil the newly prescribed conditions would not be eligible for further promotion unless they obtain the requisite qualifications. In respect of a few recommendations of the Fitment Committee as regards the pay scales, it has been decided to review them in consultation with the Fitment Committee. Annexure V lists these cases.”

Hence, it was provided that where the Fitment Committee has not indicated a lower pay-scale, the existing incumbents whether fulfilling the newly prescribed qualification or not, will draw their pay in the revised pay-scale; subject only to the condition that unless they fulfil the prescribed conditions, they



would not be eligible for further promotion. This specifically indicates that for the Education Department, as against the Laboratory Assistants, since no lower pay-scale is specified, the existing incumbents would be entitled to draw the pay at the higher pay-scale.

6. The clarification issued by the Finance Department is available at Annexure-A, the translated form of which is extracted hereunder:-

“Subject: Clarification regarding admissible Revised Pay Scale of Lab Assistants posted in different departments of the State w.e.f. 1.1.1996.

As directed, according to Resolution No 660 F (2), dated 8.2.1999 of the Finance Department, the approval for Revised Payscale of Lab Assistants posted in different departments of the state has been given w.e.f. 1.1.1996. Accordingly, the revised pay scale of Rs 5000- Rs 8000 has been approved to the lab assistants working in the present pay scale of 1,400-2,600, if recruited with B.Sc and diploma/certificate then scale to be admissible, otherwise, the same has been approved with the condition of pay scale Rs 4,500-7,000.

The State Government has received information that due to approval of the above conditional pay scale, there is a situation of confusion in different establishments of different departments.

In light of the recommendations received from Fitment Committee regarding the post in question, the conditions are being clarified as follows:

(a) The pay scale of Rs. 5000-8000 shall be admissible to Lab Assistants having the following qualifications:

(i) If the qualification for the appointment is fixed as Science graduate along with the Diploma/Certificate



in Laboratory Technique and the post holder possesses the required qualification and;

(ii) if the present post holder is working in the pay scale of Rs 1400-26000 and in this pay scale, 50% of the posts are filled by direct recruitment. If the postholder does not possess the eligibility of Dipoma/Certificate, then the increment of pay in the new pay scale shall not be admissible to him till the attainment of this eligibility.”

7. At the outset, it has to be noticed that this is just a communication issued by the Special Secretary to the Government of Bihar to all the Departmental Secretaries, which clarification is in direct conflict with the Gazette notification. The clarification hence is of no consequence in so far as the existing incumbents of a post against which the Fitment Committee, under the 5th Pay Revision, has not indicated a lower pay-scale. Though, there is prescribed a new set of qualifications, when there is no lower pay-scale indicated as against the post, then the existing incumbents would be entitled to draw the higher pay-scale, subject only to the restriction that they would not get any further promotion unless they acquire the newly prescribed qualification.

8. We also have to notice that despite the so-called clarification having come in 2000, the Government continued to pay the Laboratory Assistants in the Education Department as per the higher pay-scale. The attempt to reduce the pay-scale



based on an inconsequential clarification of 2000, came only in the year 2016.

9. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal.

10. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

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