

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.102 of 2019

In
Civil Writ Jurisdiction Case No.8675 of 2014

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Akbar Ali S/o Abdul Razzaq Resident of Village-Lakhnu Bigha,P.S.
Asthanwan,Dist.-Nalanda

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary,Department of Health,Govt. of Bihar,Patna
2. Principal Secretary, Department of Finance,Govt. of Bihar,Patna
3. Additional Secretary, Department of Finance,Govt. of Bihar,Patna
4. Director in Chief, Health Services,Govt. of Bihar, Patna.
5. State Immunization Officer, State Family Welfare Bureau,Department of Health, Govt. of Bihar,Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Banwari Sharma, Advocate
For the Respondent/s : Mr.Anil Kumar Verma, Ac to Aag 9

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-06-2024

Appellant has assailed the order of learned Single
Judge dated 07.08.2018 passed in CWJC No. 8675 of 2014.

Re:I.A. No. 01 of 2019

2. Heard I.A. No. 01 of 2019. For the reasons stated in
application read with the affidavit we are satisfied to condone the
delay of about 126 days in filing LPA No. 102 of 2019.

3. Accordingly, the I.A. No. 01 of 2019 stands allowed.



4. With the consent of the learned counsels for the respective parties matter is taken up for final disposal.

5. Core issue involved in the present *lis* is that appellant was holder of the post of Refrigerator Mechanic in the Health Department, Government of Bihar, Patna. On the other hand, in the Animal Husbandry and Fisheries Department, pay-scale for the post of Refrigerator Mechanic is Rs. 4500-7000. On the other hand, in the Health Department, Government of Bihar, Patna pay-scale is Rs. 4000-6000, therefore, there is pay anomaly in respect of identical post among the departments. Thus, appellant feeling aggrieved by the discrimination meted out insofar as assigning pay-scale to identical post. He has presented CWJC No. 8675 of 2014. Learned Single Judge has rejected the claim of the appellant, in Para 4 and 5 the learned Single Judge has stated as under:-

“4. The principles of law with regard to claim on the ground of equal pay for equal work have been laid down in the said judgment, which cannot be disputed or denied. Whether the petitioner’s case is covered by the said judgment is to be seen on the basis of the facts of the instant case. The Finance Department’s Resolution dated 08.02.1999 providing the revision of scale of pay to the State Government employees with effect from 01.01.1996 has granted the petitioner replacement scale of Rs. 4000-6000/-. At the time of grant of replacement scale petitioner was in the scale of 1200-1800/-.

5. The very same Resolution shows that at the time of prescribing the replacement



scale, the Refrigerator Mechanics in the Department of Animal Husbandry and Fisheries with whom petitioner is claiming parity were in the higher scale, i.e., Rs. 1400-2600/-. It is for this scale of Rs. 1400-2600/- that higher replacement scale of Rs. 4500-7000/- was made available to the Refrigerator Mechanics in the Department of Animal Husbandry and Fisheries under the Resolution of 1999.”

6. No doubt, there is a discrimination in pay-scale of Refrigerator Mechanic in the Health Department and Animal Husbandry and Fisheries Department, Government of Bihar. It is a policy decision and so also depends upon the nature of work and other factors in the department of Animal Husbandry and Fisheries Department and Health Department. Such issues cannot be adjudicated in the guise of judicial review as held by the Hon'ble Supreme Court in the case of **Puspa Rani vs. Union of India** reported in (2008) 9 SCC 242 and **P.U. Joshi vs. Accountant General** reported in (2003) 2 SCC 632. In Para 10 of **P.U. Joshi vs. Accountant General** it is held as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the



limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

7. In the light of principle laid down by the Hon'ble Supreme Court, this Court cannot rectify the pay anomaly and it is purely policy decision of the State Government. The State has to examine the nature of work and other issues including qualification. Hence, no interference is warranted insofar as order



of the learned Single Judge dated 07.08.2018 passed in CWJC No. 8675 of 2014.

8. Having regard to the fact that subject matter is related to policy matter of the State Government. Therefore, appellant is at liberty to approach the concerned authority/policy maker by submitting detailed representation.

9. With the above observations, the present LPA No. 102 of 2019 stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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