

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2756 of 2012

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BINOD KUMAR SINGH S/O Shri Bam Bahadur Singh R/O Janki Niwas, B
Area, Bangali Raod, Mithapur, P.S.- Jakkanpur, Town And District - Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR and New Secretariat, Vikash Bhawan, Patna
2. Director Of Agriculture, New Secretariat, Vikash Bhawan, Patna
3. Principal Secretary Finance Department, Government Of Bihar, Main Secretariat, Patna
4. The Bihar Public Service Commission, Through Its Chairman, 15-Bailey Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
For the BPSC	:	Mr. Sanjay Kumar, Advocate
For the State`	:	Mr. Md. Raisul Haque, SC-10

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-01-2024

The writ petition filed in the year 2012 essentially seeks for a higher pay scale on the date of appointment of the petitioner, which is 24.11.2000. The contention is also that similar persons were given the same benefit based on orders of this Court, to which the petitioner is also entitled to. The petitioner was appointed as a Statistical Enumerator in the pay-scale of Rs. 4000-6000/- by the Director of Agriculture, Patna by appointment order dated 23.11.2000 marked as Annexure-6 to the writ application. The petitioner joined the said post and



had been continuing therein and was also promoted to the higher post. The petitioner on joining, as per his own contention in the writ petition, found that there were other persons appointed to similar vacancies in the pay-scale of Rs 4000-6000/- (pre-revised 1200-1800/-) who were raising objection against their appointment to the post carrying a lower pay-scale. They were persons who were appointed pursuant to the selection carried out by Advertisement No. 6/85 for filling up equivalent posts of graduate level.

2. The Advertisement No. 6/85 led to the 2nd graduate level examination carried out by the Bihar Subordinate Service Selection Board. The said Board was dissolved in 1991 and the selection was carried out by the newly constituted Bihar Public Service Commission (for brevity "BPSC"). Similarly, the selection initiated pursuant to Advertisement No. 1/90 was also concluded by the BPSC, which was the 3rd graduate level examination. It is the contention of the petitioner that while appointments were made, the first appointments, of persons who were meritorious and ranked higher, were in the posts with the lower pay-scale, while the less meritorious appointed later, were to posts which have higher pay scales. It is this anomaly which is sought to be mitigated by the above writ petition; which



litigious issue, it is claimed, has a history.

3. The first case referred to was a judgment by a Division Bench in *Nagendra Sahni and Ors. v. State of Bihar & Ors.*, CWJC No. 8419 of 1992. The dispute was with respect to the pay-scales of Class III posts in three different departments of the Government of Bihar; the Agriculture Department, the Cooperative Department and the Labour Department. The posts were variously termed as Statistical Assistant, Senior Statistical Assistants, Statistical Investigator/ Junior Statistical Assistant in the respective departments. These were all equivalent posts and the 4th Pay Revision Committee recommended a pay-scale of Rs. 850 to 1360 in relation to various posts in Grade III, which was accepted by the State Government. For some of the posts which were in Grade II, as per the recommendation of the 4th Pay Revision Committee; the State Government fixed scale of pay at Rs. 785 to 1210. All these posts, 16 in number were filled up pursuant to one competitive examination and the graduates who were eligible to apply were so appointed contemporaneously in the various departments to the different posts. The pay revision committee's recommendation gave rise to a heart-burn to persons continuing in some of the services which were earlier treated equivalent. This led to a claim that all



the 16 posts should be given the same pay-scale of Rs. 850 to 1360. This issue agitated, substantially different from the present issue, was resolved in the aforecited decision. By the time the matter was heard by the Court, the 5th Pay Revision Committee was constituted which had recommended the pay-scale of Rs. 1500-2750 to the pre-revised scale of Rs. 850 to 1360. The Division Bench found that there is no reasonable nexus in having different scales of pay to 16 posts filled up through one recruitment who were all continuing in the same pay-scale before the 4th Pay Revision Commission. The Division Bench directed that every person appointed to one post or the other enumerated in Annexure-1 were to be granted the higher scale. The aforesaid judgment was passed on 22.09.1993 and the petitioner cannot have any claim that it is of identically situated persons since, he was not appointed to the service at that point of time.

4. Later, the candidates who were appointed pursuant to Advertisement No. 6/85 approached this Court on a totally different claim. As we noticed, the earlier judgment gave parity to the petitioners appointed and continued in the posts, which carried similar pay scale, and selected through a single recruitment.



5. In the present case, the issue that comes to fore, is that the meritorious candidates who were first appointed, were appointed to the posts carrying lesser scale of pay and the later ones were appointed to the subsequent vacancies reported by the various departments, in posts having higher scale of pay. The petitioners before this Court in CWJC No. 154 of 1994, the judgment of which is found at Annexure-12, were meritorious persons who were appointed in posts with the lower scale of pay. It was held so in Paragraph 7:

It is obvious that the post which the petitioners have now got on promotion, was the post to which they should have been ordinarily appointed when persons with lesser marks were appointed against such posts or equivalent posts in other departments. Hence, in order to undo the justice to the petitioners, we direct the respondent-authorities to notionally treat the petitioners as having been appointed in the post of Statistical Assistant (Agriculture) and to accordingly calculate the dues of all the monetary benefits which they have lost accordingly, and pay the same to the petitioners within a reasonable period and in any case within six months. It is made clear that the benefits will include – the benefit of seniority over persons appointed as Statistical Assistant (Agriculture) out of same transaction but having lesser marks than these petitioners. It is also made clear that this order may not be treated as a precedent and shall be applicable



only to the 6 petitioners who have waited for justice such long years after filing this writ petition in the year, 1994.

6. It was specifically mentioned by the Division Bench that the said order need not be treated as a precedent.

7. Still, later, in another writ petition filed by an individual, numbered as CWJC No. 7561 of 2002, judgment was passed which is found at Annexure-13. Therein also, the Division Bench finding that the petitioner is identically situated as the petitioners in CWJC No. 154 of 1994 allowed the prayer. CWJC No. 154 of 1994 was disposed of on 07.09.2010 and CWJC No. 7561 of 2002 on 08.09.2011, pursuant to which Annexure-14 series were passed upon which the petitioner woke up to his rights which he admits were available even at the time of his appointment in 2000.

8. The present writ petition when it came up before the Single Judge was directed to be posted before a Division Bench since CWJC No. 2638 of 2012, another writ petition seeking similar prayers were referred to a Division Bench.

9. We have called for the Judges Papers of CWJC No. 2638 of 2012 and perused it. Therein, the matter was disposed of finding that the grievance of the two petitioners stood redressed by order dated 26.11.2019. On a perusal of the



averments made in CWJC No. 2638 of 2012, we see that therein the two petitioners were persons who were appointed pursuant to Advertisement No. 6 of 85. The petitioner herein was appointed pursuant to Advertisement No. 1/90. It has to be pertinently observed that the petitioners in CWJC No. 154 of 1994, CWJC No. 7561 of 2002 and CWJC No. 2638 of 2012 were persons appointed pursuant to Advertisement No. 6/85 while the petitioner admittedly is a person appointed pursuant to Advertisement No. 1/90 and hence cannot be considered to be an identically situated person.

10. Even if the petitioner has an identical contention, it is too late in the day to ask the State to substantiate the absence of anomaly, by producing the appointments of Advertisement No. 1/90. In this context, we specifically notice that when CWJC No. 154 of 1994 was disposed of in the year 2010; despite the petitioners in the said case having approached within a reasonable period from their appointment, they were only granted notional promotion from the date of their appointment. Noticing the fact that the writ petition was pending from the year 1994, it was also made clear that the order would not be treated as a precedent. Even then, a Division Bench in CWJC No. 7561 of 2002 allowed the prayer of one identically



situated person. Later to that, another two persons identically situated having been appointed pursuant to Advertisement No. 6/85 were also allowed the said benefit. It has to be reiterated, the petitioner is not a person appointed as per the Advertisement No. 6 of 1985. It is also to be noticed that petitioner had specifically averred in this writ petition that after appointment, he noticed that there were writ petitions filed by Satya Prakash Verma and five other persons, which is the CWJC No. 154 of 1994. If the petitioner had a similar contention, the same should have been taken up immediately thereafter. The petitioner sat on the fence and slept over his rights, when the persons who diligently prosecuted their claim were allowed the benefit after very many long years; at which point alone the petitioner woke up and sought to ventilate his grievance.

11. We find absolutely no reason to invoke the extraordinary jurisdiction of this Court to enable a similar consideration to be made in the case of the petitioner, especially since he is not identically situated as the petitioners in the other referred writ petitions. The petitioner has invoked an extraordinary discretionary remedy which can be invoked only in extraordinary circumstances and even if so invoked, it would depend upon the discretion of the Court. It is trite said that none



would be entitled to a relief under Article 226 of the Constitution of India, merely on establishing a right to relief.

12. The petitioner, appointed in the year 2000 seeks parity of pay on the ground that there were many persons junior to him appointed to other posts, with higher pay scale, after twelve years. A list has been produced as is seen from Annexure-9, presumably, with respect to the appointments made along with the petitioner or subsequent to his appointment. There is no authentication of the same and it is too late for the State to be asked to counter the contention raised.

13. We find absolutely no reason to invoke the extraordinary jurisdiction and decline discretion.

14. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	
CAV DATE	09.01.2024
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