IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10884 of 2019

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1. Satish Kumar Singh Son of Late Tapeshwar Narayan Singh R/o Tapraj Kutir, Dr. Rajendra Prasad Lane, Sheikhpura, P.O.-Veterinary College, P.S. Shastri Nagar, District-Patna, the retired Section Officer, Cabinet Secretariat Department, Government of Bihar, Patna
2. Ganesh Dutta Jha S/o Late Sonelal Jha R/o House No. NY/86, behind Jhunjhun Mahal, Janta Road, New Yarpur, P.O.-G.P.O., P.S.-Gardanibag, District-Patna, the retired Joint Director (Administration), State Council of Education Research and Training, Mahendru, Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary Finance Department, Government of Bihar, Patna
3. The Secretary (Expenditure) Finance Department, Government of Bihar, Patna

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 7329 of 2018

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1. Braj Kishor Pacheriwala son of Late Raghuber Dayal Pacheriwala, resident of Flat No. 303, Rameshwaram Apartment, Mandal Compound, Boring Road, P.S.- Buddha Colony, District- Patna.
2. Tapan Kumar Chakravarty, son of Late Chandi Charan Chakravarty, resident of Flat No. 201, Keshav Kunj, Behind L.I.C. Building, Fraser Road, District-Patna.
3. Umesh Roy, son of Late Gulab Roy, resident of J- 142, P.C. Colony, Mohalla- Kankarbagh, District- Patna.
4. Ajay Kumar, son of Shri Oudhesh Prasad, resident of Flat No. 101, Suryananda Apartment, North of Hospito India, Buddha Colony, P.S.- Buddha Colony, District- Patna.
5. Girija Nand Das, son of Late Srinandan Lal Das, resident of Sri Kripa, 44 Ved Nagar, Rukanpura, Bailey Road, P.O.- B.V. College, P.S.- Rupaspur, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Finance Department, Bihar, Patna.
3. Principal Secretary, Commercial Taxes Department, Bihar, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 7625 of 2018

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RAJA RAM son of Late Dhaneshwar Ram, Resident of Mohalla- New Bhikha Chak, Anand Lal Marg, P.O. Anishabad, P.S. Gardanibag, District-Patna, the retired Deputy Secretary, Finance Department, Government of Bihar, Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
6. The Principal Secretary, Transport Department, Government of Bihar, Patna.
7. The Principal Secretary, Minority Welfare Department, Government of Bihar, Patna.
8. The Principal Secretary, Disaster Management Department, Government of Bihar, Patna.
9. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
10. The Principal Secretary, Home Police Department, Government of Bihar, Patna.
11. The Principal Secretary, Irrigation Department, Government of Bihar, Patna.
12. The Principal Secretary, Education Department, Government of Bihar, Patna.
13. The Principal Secretary, Vigilance Department, Government of Bihar, Patna.
14. The Principal Secretary, Law Department, Government of Bihar, Patna.
15. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
16. The Secretary, Bihar State Election Authority, Bihar, Patna.
17. The Principal Secretary, Registration Department, Government of Bihar, Patna.
18. The Principal Secretary, Health Department, Government of Bihar, Patna.
19. The Director General of Police, Bihar, Patna.
20. The Principal Secretary, Industries Department, Government of Bihar, Patna.
21. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.

22. The Principal Secretary, Cabinet Secretariat Department, Government of Bihar, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 13709 of 2018

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Syed Jamil Shaukat son of S.M. Sultan Ahmed Resident of Taj Enclave, Station Road, Phulwarisharif, P.O. and P.S. Phulwarisharif, District - Patna the retired Assistant General Administration Department, Government of Bihar, Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4801 of 2023

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Maheshwar Safi Son of Chhotkan Safi, Resident of Manju Villa, Khemnichak East, Sampatchak, P.S.-Ram Krishna Nagar, District-Patna, Bihar-800027.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secreary, Government of Bihar, Patna.
2. The Additional Secretary, Finance Department, Government of Bihar, Patna.
3. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
4. The Secretary, (Expenditure) Finance Department, Government of Bihar, Patna.
5. The Accountant General, Bihar, Mahalekhakar Bhawan, Beer Chand Patel Path, Patna.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 10884 of 2019)

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Ms. Anita Kumari, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

(In Civil Writ Jurisdiction Case No. 7329 of 2018)
For the Petitioner/s : Mr.Abhinav Srivastava, Advocate
For the Respondent/s : Mr.Anil Kr.Sinha-GA1

(In Civil Writ Jurisdiction Case No. 7625 of 2018)
For the Petitioner/s : Ms. Anita Kumari, Advocate
For the Respondent/s : Mr. Naman Nayak AC to AAG10

(In Civil Writ Jurisdiction Case No. 13709 of 2018)
For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate
For the Respondent/s : Mr. Anuj Kumar AC to GP-24

(In Civil Writ Jurisdiction Case No. 4801 of 2023)
For the Petitioner/s : Mr.Kumar Kaushik, Advocate
For the State : Mr.Md. Nadim Seraj (GP-5)
For the A.G. : Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-03-2024

The writ petitions filed by the Government employees, who retired between 01.01.2016 and 31.03.2017, project a limited cause of payment of Death cum Retirement Gratuity (hereinafter referred to as the 'DCRG' in short) at the higher rate subject to the higher limit prescribed as on 31.03.2017. The petitioners claim that there is hostile discrimination insofar as prescription of the date of 31.03.2017; enabling retirees subsequent to that date to get the benefit. The prescription of 31.03.2017, for payment of the higher benefits of DCRG, is without any intelligent differentia, is the short but compelling ground raised, to buttress which reliance is placed on a decision of the Hon'ble Supreme Court in ***Association of College & University Superannuated Teachers Vs. Union of India*** in ***Civil Appeal No. 908 of 2013*** delivered on 30.01.2013.

2. We have heard learned counsel for the petitioners, Sri. S.B.K Mangalam, Sri. Abhinav Srivastav & Sri. Kumar Kaushik as also Sri. P.K. Shahi, learned Advocate General for the State.

3. Learned Counsel for the petitioners specifically pointed to Rule-27 of the Bihar Pension Rules, which defines pension as, including gratuity. Gratuity on severance from employment is a one-time measure, and since it is included in the definition of pension, it is not a largesse and is a right entitled to the superannuating employees. The revision having been made effective from 01.01.2016, there is no rationale for not making the enhancement of gratuity also applicable from 01.01.2016. It was argued that the adoption of 01.04.2017 in Annexure-1 is discriminatory, insofar as it does not grant the enhanced DCRG from 01.01.2016, from which date the pension has been revised, though only notionally.

4. Learned Advocate General, while admitting that pension includes gratuity, specifies that both pension and gratuity as enhanced by the State Government would be

applicable only from 01.04.2017. The State Government is not bound by the recommendations of the 7th Central Pay Commission which had the date of effect, 01.01.2016. Only since the pay revision of the State Government employees were pending and the State Pay Commission had not published its recommendations, the State Government adopted 7th Central Pay Commission's recommendations, but, w.e.f 01.04.2017. It is pointed out that the revision of pay effected earlier at the time of 5th and 6th pay revision were similar and though the notional revision was made as on 01.01.1996 and 01.01.2006, the actual monetary benefits were paid only from 01.04.1997 and 01.04.2007. This is the consistent policy of the State Government which has been continued in the present instance at the time of 7th Pay Revision. The consistent policy followed by the Government reckons various factors including financial stringency. The State Government cannot be compared with the Union Government, who has massive resources; which the States lack. It is further pointed out that the application of the pay revision notionally from 01.01.2016 was a benefit conferred, subsequent to the adoption of the date of 01.04.2017. There can be no discrimination claimed on such benefit conferred on the persons, who got notional fixation of pension on the basis of the notional revision effected from 01.01.2016, which notional pay would be treated as the last pay drawn on the date of retirement, even when that date falls between 01.01.2016 and 31.03.2017. It is pointed out that the notional revision does not entitle a higher pension till 01.04.2017. A person retiring on 31.08.2016, would get notional fixation of pay as per the last pay drawn on 31.08.2016. However, the pensionary benefits would be extended only on the pre-revised pay till 31.03.2017. From 01.04.2017, the pension would also be enhanced based on the notional fixation, as per the revision effected notionally from 01.01.2016.

5. We have gone through the decision of the Hon'ble Supreme Court in the case of ***Association of College & University Superannuated Teachers*** (supra). Therein a decision was taken by the State, to pay enhanced retirement/gratuity to the employees including teachers appointed in educational institutions and Universities w.e.f 01.01.2006. As per the Government resolution dated 05.05.2009, the DCRG was enhanced from Rs. 3.5 lakhs to Rs. 5 lakhs. Three and a half months from the aforesaid decision, by a further Government resolution dated 21.08.2009 the DCRG was further enhanced. On the subsequent enhancement, immediately after the first, the

ceiling of DCRG was raised from Rs. 5 lakhs to Rs. 7 lakhs but the same was made effective only from 01.09.2009. This was the circumstance, in which the Hon'ble Supreme Court found that there was no tangible explanation before the High Court for fixing of 01.09.2009 as the cut-off date, for grant of benefit for further enhancement of gratuity. The two different cut-off dates specified in the Government resolutions did not have any rationale or intelligible differentia to discriminate the persons retiring prior to 01.09.2009 and after 01.09.2009.

6. Discrimination and classification cannot be found merely on a date being fixed, from which the pay revision is made applicable, which is periodic and also occurs based on very many financial aspects and is a mixed question of fact and law. Classification is bad only when there is hostile discrimination between equally placed groups of people. In ***Mohammad Shujat Ali & Ors. v. Union of India & Ors.; (1975) 3 SCC 76***, a Constitution Bench after referring to earlier decisions, including another Constitution Bench in ***State of Jammu & Kashmir Vs. Sri Triloki Nath Khosa & Ors.; (1974) 1 SCC 19*** held that '*life has relations not capable always of division into inflexible compartments. The moulds expand and shrink. The test of reasonable classification has to be applied in*

each case on its peculiar facts and circumstances'.(sic)

7. In both the above referred decisions, the classification was made on the basis of different educational qualification. Based on facts and circumstances, in the earlier decision, the classification was held bad and the later one held such classification to be not possible of easy interference by Courts, unless malafide, irrational, perverse or manifestly wrong. The principle applies equally insofar as fixing a date for grant of revision of pay, as coming out in the present case. Merely for reason of a notional fixation having been implemented, on the recommendation of the State Pay Commission, there cannot be any claim of actual monetary payment during the period when the notional fixation was allowed.

8. We are of the opinion that the facts are quite distinct and different in the present case, as we would presently demonstrate.

9. Annexure-2 produced in CWJC No. 7329 of 2018, is the resolution dated 23.05.2017, by which the recommendations of the 7^{th} Central Pay Commission were made applicable to the State Government employees; specifically for the reason of the State Commission having not published its recommendations.

The revision was made provisionally applicable from 01.04.2017. The enhancement in gratuity was also made as on 01.04.2017. Though the 7^{th} Central Pay Commission had made the revision and enhanced the gratuity as on 01.01.2016, the State Government made the revision effective only from 01.04.2017, both in pension and in the DCRG, when the revision was brought out on 23.05.2017.

10. The prescription of 01.04.2017 as the date on which the revision would be applicable, would not be discriminatory, when noticing that till that date, the last pay commission's report was effective i.e. 6^{th} Pay Commission Report. As we discern from the consistent policy argued by the learned Advocate General, we see that the revisions are made every 10 years. The 5^{th} Pay Revision was effective from 01.04.1997, the 6^{th} Pay Revision effective from 01.04.2007, and the 7^{th} Pay Commission's Report effective from 01.04.2017.

11. The claim of discrimination arose only on a further benefit being conferred on the employees and those retired between 01.01.2016 and 31.04.2017, by Annexure-3. Annexure-3, makes the sanction of revised pay and pension w.e.f., 01.01.2016 based on the State Pay Commission's recommendations. Hence, every employee retired or deceased

after 01.01.2016, shall be entitled for fixation of pension on the basis of the revision of salary made on 24.05.2017. The fixation was held to be notional and the monetary benefits would be payable only from 01.04.2017. When implementing such revision notionally, the State Government did retain its policy to have all monetary benefits disbursed only from 01.04.2017, as is discernible from the resolution dated 24.05.2017.

12. The resolution at Annexure-3 dated 20.10.2017 again produced in the same writ petition, was on the basis of the recommendations made by the State Pay Commission. The notional revision made effective from 01.01.2016 to the pensioners and the employees did not entail any monetary benefits for the said period by way of higher pension, higher salary or gratuity. The monetary benefits commenced from 01.04.2017. There can be no notional enhancement of gratuity since as rightly pointed out by the learned counsel for the petitioners, the same is a one-time measure.

13. The prescription of 01.04.2017 for revision of pay and pension as also gratuity, cannot be found to be discriminatory only because, subsequently the State Government thought it fit to revise the pension notionally from 01.01.2016. This was the additional benefit granted to the

petitioners and the claim of discrimination arose only, based on this. The notional benefit conferred insofar as pension and pay during the period of 01.01.2016 to 01.04.2017, does not inure insofar as DCRG paid; which is a one-time measure not capable of being enhanced notionally.

14. We find absolutely no reason to entertain these writ petitions, and they stand dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2024
Transmission Date	NA