

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.257 of 2022
In
Civil Writ Jurisdiction Case No.6028 of 2020

1. The State of Bihar through Principal Secretary, Finance Department, Bihar, Patna.
2. The Principal Secretary, Minor Irrigation Department, Bihar, Patna.
3. The Engineer in Chief, Minor Irrigation Department, Bihar, Patna.
4. The Co-ordinator-cum-Chief Engineer, Tube Well Project, Muzaffarpur.
5. The Executive Engineer, Tube Well Division, Motihari.

... .. Appellant/s

Versus

Hirdayanand Tiwari S/o Late Dhanush Tiwari Resident of Village- Ashok Pakari, P.S.- Pipra, District- East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajit Kumar GA-9
Mr. Vikash Jha A.C. To G.A.9
For the Respondent/s : Mr.Satish Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-09-2024

The State is aggrieved with the order of the learned Single Judge which declined to sustain the re-fixation of pay revision of the petitioner, effected while in service; attempted to be modified after retirement.

2. The learned Single Judge refused to accept the contention raised by the State Government that as on 01.01.1996 there were two types of posts of Electrician; one



carrying a lesser pay scale than the other. The writ petitioner who was alleged to be entitled only to the lower scale of pay, was inadvertently fixed at a higher pay scale resulting in the revision also being carried out in the higher pay scale; argued the State. It was found in the impugned order that the State Government did not produce any material to show that the writ petitioner was initially appointed in the lower pay scale; while Annexure-1 relied on by the writ petitioner was an extract of the Service Register clearly indicating that he was appointed in the higher pay scale of Rs. 1200-1800 which was revised as Rs. 4000-6000. Relying on the Service Register, the learned Single Judge set aside the re-fixation and rejected the contention of the State that there were two establishments within the organization; the work charged establishment and the regular establishment.

3. The learned Government Advocate after narrating the facts regarding the appointment and promotion, points out that the petitioner was first appointed in the work charged establishment. The work charged employees were taken into regular establishment, but their pay scales in the work charged establishment was preserved. In fixing the pay scale of the petitioner in the regular establishment an inadvertent omission occurred and it was fixed in the same scale of pay as that



available to the regularly employed Electricians. This was an anomaly which was rectified. There is no recovery of pay ordered by the Government and there would be only prospective revision of pension, making the modified pay fixation notional; so as to re-compute the last paid salary for the purpose of pension alone.

4. Learned Counsel for the respondent/writ petitioner, however, contended that he was continued in the regular pay scale on being taken into the regular establishment. There cannot be two pay scales for persons in the same establishment carrying on similar duties and charged with identical obligations & responsibilities. The re-fixation was also carried out after his retirement.

5. The petitioner's submission that the re-fixation was done after retirement is not correct since the original order modifying the fixation was dated 07.05.2010 which was challenged in CWJC No. 10325 of 2012. Therein not only was the fixation of revision of pay in the post of Electrician modified from Rs. 4000-6000 to Rs. 3050-4590, recovery was also ordered. The Government's contention that there was no recovery ordered; is also not correct since initially it was so ordered. While setting aside the recovery relying on the decision of the



Hon'ble Supreme Court in *State of Punjab & Ors Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334, the learned Single by decision dated 08.03.2019 in CWJC No. 10325 of 2012 directed reconsideration of the re-fixation made, since there was no clarity as to the contention regarding work charged and regular establishment and how the petitioner who was in the work charged establishment was fixed with the higher pay scale. The fresh consideration was made by the impugned order in the year 2019, since the earlier writ petition was disposed of on 08.03.2019; which was after the retirement of the appellant/petitioner.

6. Admittedly, the appellant was appointed in the work charged establishment as a Fuse-Man on 12.05.1970 and he was promoted as an Assistant Armature Winder and then Armature Winder. He was also granted time bound promotion in the post of Armature Winder. Subsequently, by Annexure-A dated 22.10.1984, produced in the supplementary affidavit filed on behalf of the appellant, the work charged employees were absorbed in the regular establishment. Their services were also regularized by Annexure-B dated 23.10.1987. The manner in which the posts in the work charged establishment were to be continued, is evident from Annexure-C resolution of the Finance



Department of the Government of Bihar dated 17.10.2013. Reliance is placed on these documents by the learned Government Advocate to contend that the work charged employees who were transposed to the regular establishment, were to be continued without adding such posts into the cadre of the regular establishment; also abolishing it on the retirement of such employees. It is the contention that the above provision would also indicate that the work charged employees when converted into the regular establishment continued in the same pay scale.

7. At the outset, it is trite that when an employee is promoted to a new cadre or regularized in the services; there cannot be any discrimination on the basis of the source from which the promotion was conducted or the regularization was made, especially when, in the promoted post or the regular post the employee continues with the very same responsibilities, obligations and duties as a person who was promoted or appointed from another source.

8. In the present case Annexure-A relates to adjustment of the work charged employees in the regular establishment of the State Government and granting the additional benefit of pension to such employees. Clause- (a) and (c) were specifically



referred by the learned Government Advocate, the translation of which is as follows:-

“(a) On converting the Work-charged employees into regular establishment, the respective posts of the Work-Charged establishment will be converted into regular establishment;

xxx

(c) On adjusting the Work-Charged employees in regular establishment, the amount provided in the ordinary unit for expenditure on their salary allowances will be transferred to the concerned budget head of the regular establishment.”

9. Clause-(a) specifically indicates that on conversion, the work charged employee would occupy the respective post in the regular establishment. Clause-(c) mandates that on such adjustment being made of work charged employees in the regular establishment, the amount provided in the ordinary unit for expenditure on their salary and allowances will be transferred to the concerned budget on the regular establishment. Clause-(c) cannot be interpreted to find that the work charged employee on conversion to the regular establishment will continue in the same scale of pay, he had, in the work charged establishment. The only direction in Clause-(c) is that such amounts kept apart for the salary and allowances in the work charged establishment, would be transferred to the regular establishment. This is a necessary consequence since the Government was attempting to ensure that the work charged



establishment is not continued and hence the budgetary allocation remaining in the work charged establishment had to be transferred to the regular establishment.

10. Annexure-B refers to regularization of service of the work charged employees appointed after 23.07.1975. It is specifically stated therein that the work charged employees have been discharging Government duties, with dedication for a long time. Annexure-B was in continuation of the conversion of the work charged employees to the regular establishment, ordered by Annexure-A. Annexure-B permitted all such employees who had five years continuous satisfactory service as on 21.10.1984 to be regularized on the conditions enumerated in Clauses (a) & (c), which are extracted hereinbelow:-

“(a) On conversion of the work-charged employees to the regular establishment, the concerned posts of work charged establishment will be converted into that of regular establishment.

xxx

(c) After taking the work-charged employees to the regular establishment, the amount under the heads provisioned in the maintenance unit for expenditure on their salaries/allowances will be transferred to the related budgetary head of the regular establishment.”

11. The above conditions are also similar to that in Annexure-A and does not in any manner indicate that



employees, on conversion into regular establishment will be continued on the earlier scale or their original scales of pay available in the work charged establishment.

12. On facts it is further to be noticed that after Annexure-A came into force on 22.10.1984, the petitioner who was working as an Electrician in the work charged establishment was converted into the regular establishment in the pay scale of Rs. 1200-1800; which is evidenced by the Service Register relied on by the learned Single Judge. On the 5th pay revision being implemented as on 01.01.1996 the pay scale of the petitioner who was continuing in the scale of Rs. 1200-1800/- was revised to Rs. 4000-6000/-. The contention of the State is that in the work charged establishment the petitioner was entitled to a lower pay scale of Rs. 950-1400 which scale, in the 5th pay revision, was revised only to Rs. 3050-4590.

13. We have already found that the petitioner was granted the higher pay scale when he was converted into the regular establishment. We find absolutely no reason to accept the argument of the learned Government Advocate that he was entitled to only the pay in the work charged establishment. We do not find the same to be a condition in either Annexure-A or B and even otherwise we have found that when a person is



appointed to a particular cadre, the source from which he was taken cannot be a reason to discriminate him from the other employees continuing in the very same cadre, who also have similar responsibilities and identical obligations.

14. Annexure-C is only with respect to the modification in the cut-off date fixed for regularization of the work charged employees due to the orders passed by the High Court, resulting in the cut-off date prescribed in Annexure-B being extended. This does not apply to the writ petitioner at all since he had been taken into the regular establishment as per Annexures-A and B; as per the cut-off as intended originally by the Government. Annexure-C further provided that in converting the work charged employees into the regular establishment if posts are not available in the regular establishment; then those posts which are in excess, on conversion from the work charged establishment would not be reckoned for determining the strength of the cadre and would automatically cease to exist after the retirement of the concerned employee. Again this would not indicate; that on conversion, the work charged employees would be treated differently from the employees of the regular establishment. If that were the case, only those persons who could be adjusted in the post available in the



regular establishment would get the higher pay scale; but the others who are allowed to continue in identical posts, which post will also stand abolished at the time of their retirement or severance from employment; would be treated differently from others; clearly making a case of discrimination. We do not think that the object of the various resolutions produced before us was to treat the work charged establishment employees differently after conversion into & regularization in the regular establishment.

15. We find absolutely no reason to interfere with the judgment of the learned Single Judge and for the additional reasons supplied by us, we dismiss the appeal leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

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