

Ashok Kumar Mishra and 16 ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-09-1999

Judge : Sanat Kumar Chattopadhyaya, J.

Appeal No. : C.W.J.C. No. 3443 of 1990

Appellant : Ashok Kumar Mishra and 16 ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Mr. Yadav

Disposition : Petition Allowed

Prior history : Sanat Kumar Chattopadhyaya, J. 1. As similar points of law are involved in these two cases, both have been heard together and this common judgment will govern both the cases. 2. The facts of the individual cases are to be set forth for prompt appreciation of the points. 3. The petitioners in C.W.J.C. No. 3443 of 1990 were appointed as Class III and Class IV employees of the Bihar State Agriculture Marketing Board, Bihar, Patna (hereinafter referred as the Board in short). Since the creation of

Judgement :

Sanat Kumar Chattopadhyaya, J.

1. As similar points of law are involved in these two cases, both have been heard together and this common judgment will govern both the cases.
2. The facts of the individual cases are to be set forth for prompt appreciation of the points.
3. The petitioners in C.W.J.C. No. 3443 of 1990 were appointed as Class III and Class IV employees of the Bihar State Agriculture Marketing Board, Bihar, Patna (hereinafter referred as the Board in short). Since the creation of the Board in the year 1972 scales of pay of the employees of the Board including the petitioners were revised in accordance with the recommendation of the 3rd and 4th Pay Revision Committee, which was accepted by the State Government in relation to its own employees. By order dated 11.8.1982 (Annexure-2) benefits of the said revised scales of pay were given to the petitioners and other employees of the Board. It is asserted that in the year 1985, the Board had resolved that its employees would also get the same dearness allowance, which would be increased by the State Government in respect of its own employees. This resolution is dated 9.8.1985 as contained in Annexure-4. There is no controversy that whenever dearness allowance was revised in respect of the State Government employees, the same was also revised for the employees of the Board. Subsequently the report of the 5th Pay Revision Committee was accepted by the State Government and revised pay scales were given to the State employees with effect from 1.1.1986. The Managing Director of the Board also in anticipation of the approval of the Board of Directors passed an order on 7.3.1990 for payment of revised scale of pay to the employees of the Board. However, in his said order a rider was placed that if the Administration Department, Public Enterprises Bureau does not agree with such grant of revised pay scale according to the report of the 5th Pay Revision Committee, the same will be recovered from the employees. A copy of the order of the Managing Director dated 7.3.90 has been annexed as Annexure-5. The order of the Managing Director aforesaid was also approved by the Board of Directors on 19.3.90 and with effect from 1.3.89, payment of salary in the revised scales of pay was being made to the petitioners and other employees of the Board. However, it is said, that since the month of March and April, 1990, the Public Enterprises Bureau (Respondent No. 4) started

interfering in the matter of grant of revised pay scale, etc. and asked the Chairman and Managing Director of the Board to keep in abeyance the decision of the Board dated 19.3.90, which had already been implemented and the petitioners and other employees were getting monetary benefits. The said order of the Bureau is Annexures-8 and 8/1. Pursuant to these directions of the Bureau the Managing Director on 18.5.1990 kept in abeyance the decision earlier taken by him as well as the Board of Directors for grant of revised scales of pay to the petitioners. It was also informed that steps should be taken for recovery of the amount already paid to the employees. This order is Annexure-9. Being aggrieved with this order, the present petitioners have impugned the same in this writ application.

4. Facts relate to C.W.J.C. No. 4291 of 1990, in short, are that the petitioner was appointed initially on the temporary post of the Legal Assistant under the Board on the pay-scale of Rs. 345-13-465-15-570 and subsequently, he was posted on promotion against the sanctioned post of Law Officer on the pay-scale of Rs. 2,200-75-2,800-100-4,000 per month, subject to, however, final approval by the Bureau of Public Enterprises. This promotion letter is Annexure-9 to the supplementary affidavit. It is asserted by the petitioner that since passing of the Annexure-9, he is still working on the said post continuously. At this stage, it is pertinent to point out that in the main writ application prayer has been made to pay him the scale of pay of the Legal Assistant i.e. the pay scale of Rs. 345-13-465-15-570 as grievance was made that even after appointment as legal Assistant, the same scale of pay was not given to him. There is no denial of the fact that subsequent to the filing of the writ application, the same scale of pay was allowed to the petitioner, but subsequently when through Annexure-9, the petitioner was promoted and posted against the sanctioned post of Law Officer in the pay scale of Rs. 2,200-4,000, the said pay scale was not paid. The petitioner by way of amendment petition made a further prayer to direct the respondents to grant the said pay scale. On 18.7.1996 amendment petition was filed but from the record, it does not appear that the said amendment petition was ever placed before the Bench for passing necessary orders.

5. Mr. Yadav very fairly submits that as because the brief has been transferred to him very recently, he has no knowledge as to whether any instruction was sought

for or not in this regard. However, he does not dispute the fact that this pay scale of Law Officer was not paid to the petitioner because that was subject to final approval by respondent-Bureau of Public Enterprises.

6. In the facts and circumstances of the case, the amendment petition is allowed and the prayer made in the said petition is being treated as the main Prayer in the writ petition itself.

7. From the aforesaid analysis of the fact, the main point for decision is as to whether the Board can take its own decision so far as the appointment, promotion and granting of certain pay scales to its employees or all these decisions of the Board are subject to final approval by the respondent-Bureau of Public Enterprises.

8. The point in controversy is now well settled by this Court in the case of Birendra Kumar Singh and Ors. v. The Bihar State Agricultural Marketing Board and Ors. reported in 1998 (2) PLJR 455, in which after noticing some other decisions of this Court, His Lordship has observed as follows:..Thus, in view of the pronouncements of this Court, it is clear that the Board is competent to take a final decision with regard to fixation and revision of the pay scale and the Public Bureau Enterprises which is a wing of the State has no say in the matter....

Having observed the same, His Lordship directed the Board to consider the case of the petitioners and take a final decision in the matter.

9. Mr. Yadav, learned Counsel for the respondent-Board, has, however, drawn my attention to Section 51 of the Bihar Agricultural Produce Markets Act, 1960, in support of his contention that in view of this provision the State Government may delegate any of its power or functions under this Act to the Board or any officer of the State Government not below the rank of a Class I Officer. Similarly, according to him, under this provision the State Government may issue, with a view to implement the provision of this Act, from time to time general or specific direction on policy matters to the Board, as it considers appropriate and the Board is bound to carry out such directions.

10. I am not in agreement with Mr. Yadav. So far as this provision is concerned, in my view, the State Government only may delegate some of its power to the Board or to some Class I Officers. It is true that the directions issued by the State Government in view of Sub-section (2) of Section 51 have to be followed by the Board but in the instant case there is no whisper that the State Government has issued any direction to the Board regarding upgradation of the pay scale of the petitioners. It is important to note that though these writ petitions are of 1990, till date no counter-affidavit has been filed on behalf of the Board to controvert the facts and points raised on behalf of the petitioners. Moreover, I am bound by the decision of the learned Single Judge and cannot differ with the same in the present facts and circumstances of the cases.

11. In the result, both the writ petitions are allowed and the Board is directed to consider the case of the petitioners and to take a final decision in the matter within four months from the date of production/receipt of a copy of this judgment. However, it is made clear that this Court is not expressing any opinion with regard to the claim of the petitioners and it is for the Board to take a final decision.