

Dilip Kumar Mehta and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jun-22-2005

Judge : Chandramauli Kr. Prasad, J.

Acts : Rajendra Agricultural University Act, 1971 - Sections 25(2), 29 and 32;
[Constitution of India](#) - Articles 14, 16 and 311

Appeal No. : Civil Writ Jurisdiction Case No. 8529 of 2003

Appellant : Dilip Kumar Mehta and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Ashok Kumar Singh, SC III and Prabhat Kumar Singh, JC to SC III

Advocate for Pet/Ap. : R.K. Dutt, Adv. for Rajendra Agricultural University Ram Balak Mahto, Sr. Adv. and Ajay, Adv.

Disposition : Appeal dismissed

Prior history : Chandramauli Kr. Prasad, J. 1. This application has been filed for quashing Clause-6 of resolution of the State Government in the department of Agriculture dated 11.7.2003 (Annexure 1), whereby the Routine Clerk, Assistant, Personal Assistant and Section Officer working in Rajendra Agricultural University have not been treated at par with the employees of the State Government in the Secretariat for the purpose of grant of scale of pay. 2. Facts lie in a narrow

compass. Petitioners are Routin

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing Clause-6 of resolution of the State Government in the department of Agriculture dated 11.7.2003 (Annexure 1), whereby the Routine Clerk, Assistant, Personal Assistant and Section Officer working in Rajendra Agricultural University have not been treated at par with the employees of the State Government in the Secretariat for the purpose of grant of scale of pay.

2. Facts lie in a narrow compass.

Petitioners are Routine Clerk, Assistant, Personal Assistant and Section Officer working in the Rajendra Agricultural University, hereinafter referred to as the University. The University was established by an Act of the Legislature of the State, namely, Rajendra Agricultural University Act, 1971. At the time of establishment of the University the ministerial staff like Routine Clerk, Assistant, Personal Assistant and Section Officer employed by the State Government and posted at Secretariat, were sent on deputation. Hence, the pay scale and service conditions of the employees, although working in University were kept at par with the Secretariat employees. The State Government by its letter dated 24th March 1975 reiterated that the pay scale and service conditions of the employees deputed to the University from the State Government shall be the same and they will continue to draw their pay and other allowance as admissible to the employees of the State Government. It is common ground that the scale of pay as admissible to the Routine Clerk, Assistant, Personal Assistant and Section Officer as admissible to the employees of the State Government in the Secretariat were given to such category of employees prior to the issuance of the impugned resolution. Whether such employees of the University were getting the scale of pay at par with the employees of the Secretariat with the approval of the State Government or not is disputed but the fact remains that they were getting salary in the scale of pay equivalent to the scale of pay of such category of employees

working in the Secretariat.

3. It is relevant here to state that by the impugned resolution all the Clerks working in the scale of pay of Rs. 975-1540 have been classified as Lower Division Clerk and the Assistant working in the scale of pay of Rs. 1200-1800 as Upper Division Clerk and granted salary in the scale of pay of Rs. 4000-6000. The nomenclature of the post of Section Officer has been changed to Office Superintendent in the scale of pay of Rs. 5500-9000 and the Personal Assistant classified as Stenographer Grade II in the scale of Rs. 5000-8000.

4. It is relevant here to state that prior to the grant of scale of pay on the recommendation of the pay Fitment Committee by resolution dated 11.7.2003 which was made effective from 1.1.1996, the scales of pay of Routine Clerk, Assistant, Personal Assistant and Section Officer were Rs. 975 - 1540, Rs. 1500-2750, Rs. 1500-2750 and Rs. 2000-3500 respectively and the pay scales admissible in the light of the resolution with effect from 1.1.1996 are Rs. 3050-4590, 4000-6000, Rs. 5000-8000 and Rs. 5500-9000 respectively. However the pay scales of Routine Clerk, Assistant, Personal Assistant and Section Officer in the Secretariat are Rs. 4000-6000, 5500-9000, Rs. 5500-9000 and Rs. 6500-10500 respectively.

5. It is the assertion of the petitioners that Routine Clerk, Assistant, Personal Assistant and Section Officer working in the University were given the same scale of pay and always treated at par with such categories of employees in the Secretariat, hence the action of the State Government in classifying and giving them different scales of pay than such categories of employees of the Secretariat by the impugned resolution is illegal and arbitrary.

6. So far as Assistants working in the University is concerned, it has been pointed out that by letter dated 13th of September, 1978 (Annexure-4) the Cadre of Lower Division Clerk and Upper Division Clerk have merged and now the State Government had again provided for Lower Division Clerk and Upper Division Clerk which is illegal.

7. It is common ground that except the employees of the University in question the employees of other Universities in the State of Bihar do not get salary in the same scale of pay as that of such categories of employees in the Secretariat and now the employees of the University in question are getting the salary equivalent to other employees of such categories in different Universities of the State of Bihar.

8. Separate counter affidavits have been filed by the State of Bihar and its functionaries as also the Rajendra Agricultural University. The former is contesting the claim of the petitioners whereas University in its counter affidavit has supported the case of the petitioners, Mr. R.K. Dutt, representing the University during the hearing had also supported the case of the petitioners.

9. Mr. Ram Balak Mahto, Senior Advocate appearing on behalf of the petitioners contends that paragraph 6 of the impugned resolution dated 11.6.2003 resolving not to treat the employees of the University at par with the employees of the Secretariat and granting them scale of pay lower than the employees of the Secretariat in sum and substances amounts to reversion in rank and, as such, the impugned action is hit by Article 311 of the [Constitution of India](#). I do not find any substance in the submission of Mr. Mahto. The Central Government constituted a Pay Revision Committee for recommending pay scales to different categories of its employees. After the Pay Revision Committee constituted by the Central Government gave its report, the State Government constituted Pay Revision Fitment Committee, which gave its recommendation. The report of the Fitment Committee was considered by the State Government and it classified the clerks working in the scale of pay of Rs. 975-1540 as Lower Division Clerk and provided them the scale of pay of Rs. 3050-4590. Further the post of Clerks and Assistants in the scale of pay of Rs. 1200-1800 were classified as Upper Division Clerk and given the scale of pay of Rs. 4000-6000. Section Officers in the scale of Rs. 2000-3500 have been classified as Office Superintendent and granted the scale of pay of Rs. 5500-9000 whereas Personal Assistants in the scale of Rs. 1500-2750 have been classified as Stenographer Grade II and given the scale of pay of Rs. 5000-8000. Thus the Routine Clerk, Assistant, Section Officer and the Personal Assistant have been given the higher scale of pay than what they were getting earlier but certainly they have not been given the scale of pay as has been given

to such categories of employees in the Secretariat. The question therefore, is as to whether not providing them the same scale of pay as that of such categories of employees in the Secretariat would amount to reversion? I am certainly of the opinion that this is not so. By the impugned resolution of the State Government their scale of pay having enhanced and, as such, by no stretch of imagination it can be said to be a case of reversion.

10. Mr. Mahto, then contends that once the petitioners were treated as employees of the Secretariat for the purpose of grant of scale of pay, later on, they cannot be discriminated. In support of the submission reliance has been placed on a decision of the Supreme Court in the case of E.P. Royappa v. State of Tamil Nadu, : (1974)ILLJ172SC and my attention has been drawn to the following passage from paragraph 85 of the judgment which reads as follows ;

'In fact equality and arbitrariness are sworn enemies; one belongs to the rule of the law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must but based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality, where the operative reason for State. action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.'

11. Standing Counsel No. III however contends that which category of employee shall get which scale of pay is the prerogative of the State Government and its action not to grant the employees of the University the same scale of pay as that

of the Secretariat employees cannot be said to be discriminatory as they belong to different class altogether. In support of the submission he has placed reliance on a decision of this Court in the case of Bihar Rajya Panchayat Sevak Sangh v. State of Bihar, 2000 (4) PLJR 337) and my attention has been drawn to paragraph 9 of the judgment which reads as follows :

'The mere fact that at some point of time the Panchayat Sevaks were getting the same pay scale as the Collectorate Assistants or Jan Sevaks is also of not much help to the petitioners because for valid reasons the Pay Revision Committee can always recommend different replacement scales for various posts which may have been earlier in the same pay scale or vice verse it may recommend, for good reasons, the same replacement scale for different posts which may have been earlier under different scales.'

12. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Mahto and the authority relied on in no way supports the case of the petitioners.

13. It is worthwhile mentioning here that the employees of various Universities spread over the length and breadth of the State of Bihar do not get the same scale of pay as that the employees of the Secretariat. It is for historical reason that the employees of the University in question were given the same scale of pay as that of the Secretariat employees, as at the time of establishment of the University the State Government employees were sent on deputation to the University and that continued for long time but this itself in my opinion, shall not make the employees of the University in question to be the employees of the State Government or for that matter entitled to the same scale of pay as that of the Secretariat employees. In my opinion, if the employees of this University is given the same scale of pay there shall be hardly any justification to deny the same scale of pay to the employees of other Universities. In my opinion the impugned decision does not suffer from the vice of discrimination and hence the decision of the Supreme Court in the case of E.P. Royappa, (supra) has no bearing at all in the present case. In fact the view which I have taken finds support from the judgment of this Court in the case of Bihar Rajya Panchayat Sevak Sangh (supra).

14. Mr. Mahto, submits that adoption of the pay scale as admissible to the employees of the Secretariat to that of the employees of the University does not amount to increase in the pay and hence no sanction of the State Government is necessary. He points out that the University in fact supports the case of the petitioners that they are entitled to the same scale of pay as that of the Secretariat employees and, as such, the University having adopted the same scale of pay, the impugned action of the State Government classifying the petitioners differently and giving them scale of pay other than the Secretariat employees is completely without jurisdiction. This argument has been noted only to keep the record straight and deserves to be rejected outright.

15. Section 29 of the Rajendra Agricultural University Act, hereinafter referred to as the Act, provides for different kind of funds for the University and Section 32 of the said Act, obliges the State Government for grant of lump sum amount to the University for various purposes including the expenditure of pay and allowance of the staff. This does not mean that the scale of pay which the petitioners were getting has to be revised in the same manner as that of the employees of the Secretariat. True it is that Section 32 of the Act, obliges the State Government to release grant not less than the estimated net expenditure of pay and allowance of the staff of the University but Section 25 (2) of the Act, which is a non-obstante clause clearly provides that no University shall increase the pay and allowance of its staff without prior sanction of the State Government. Here the State Government while according approval to the grant of pay scale to the employees of the University on the recommendation of the Pay Fitment Committee did not find it just and proper to give the University employees the same scale of pay as that of the Secretariat employees.

16. In my opinion by whatever method the scale of an employee of the University is increased, same requires sanction of the State Government. Any other view shall lead to a disastrous consequences. As stated earlier Section 32 of the Act obliges the State Government to grant such amount which is necessary to meet the expenditure of a pay and allowance to the University employees and in case the State Government does not have any control in regard to the pay scale admissible to the employees, the University may decide to give fanciful pay scale

to all its employees and compel the State Government to release the fund as its statutory obligation. Hence the Legislature, in my opinion, to avoid such contingency has put condition of prior sanction of the State Government for increase in the pay scale.

17. Mr. Mahto as also Mr. Dutt termed the impugned decision of the State Government to be irrational. They point out that for some of the posts in the University, the same scale of pay as admissible to the employees of the Secretariat have been provided and, as such, not providing the same scale of pay to the Routine Clerk, Assistant, Personal Assistant and Section Officer is absolutely irrational. I do not have the slightest hesitation in rejecting this submission of the learned counsel. Even at the cost of repetition I may state that for historical reason the Routine Clerk, Assistant, Personal Assistant and Section Officer were treated at par with the Secretariat employees as at the time, when the University was established employees of the Secretariat came on deputation to the University. Now with the passage of time appointments have been made in the University and that have been provided the same scale of pay as given to such categories of employees in other Universities. In my opinion, the factors which weighed with the State Government to treat the employees of the University having become extinct because of passage of time, the employees of this University have to be treated at par with employees of the other Universities. I am of the considered view that treating the employees of the University in question not at par with the other employees of the Universities of the State of Bihar and treating them at par with the Secretariat employees, shall be irrational.

18. It is well settled that issue pertaining to grant of scale of pay is a matter of policy and this Court in exercise of its writ jurisdiction shall not interfere with such policy unless the same is found to be absolutely arbitrary. Further classifying the employees in different category is primarily the duty of the State Government. Here the pay scales have not been fixed on fanciful or arbitrary ground, hence same does not call for interference by this Court in writ jurisdiction. The view which I have taken finds support from the decision of the Supreme Court in the case of Union of India and Ors. v. Makhan Chandra Roy, : (1997)IILLJ801SC in which it has been held as follows :

'It is difficult to appreciate this fine of reasoning which appealed to the Tribunal. When we turn to the Revision Pay Rules, we find in Schedule I, Part B, Item 12 which deals with all posts carrying present pay scales wherein the pay scale of Rs. 380-560 which was earlier available to the Respondent is mentioned and the revised pay scale as per Revised Pay Rules is stated to be Rs. 1320-2040. This pay scale is admittedly made available to the respondents.

But the Tribunal found out another pay scale mentioned in Part B of the Schedule to the Rules where in para IX dealing with bare medical staffs, Radiographers, X-ray Technicians and Pharmacists are referred to. Their earlier pay scale was Rs. 330-560 which was increased to Rs. 1350-2200. According to the Tribunal this pay scale should have been given to the respondents. It is difficult to appreciate was a Malaria Technician should be straightaway given pay scale of Radiographers or Pharmacists who are admittedly working in a different department and were doing entirely different type of work. What enhanced pay scale should be given to a particular employee is within the domain of the authorities themselves who appoint them and the Tribunal should not have ventured in this forbidden field.'

(Underlining mine)

19. All the submission made on behalf of the petitioners having no substance, I do not find any merit in the application and it is dismissed accordingly, but without any order as to cost.

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