The State of Bihar and ors. Vs. Bihar Rajya Ankechak Sangh, Through Its General Secretary, Sri Yamini Bhusan Pathak and ors.

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Court : Patna

Decided On : Nov-01-2006

Judge : Barin Ghosh and Ajay Kumar Tripathi, JJ.

Appeal No. : Letters Patent Appeal No. 351 of 1998

Appellant : The State of Bihar and ors.

Respondent : Bihar Rajya Ankechak Sangh, Through Its General Secretary, Sri Yamini Bhusan Pathak and ors.

Advocate for Pet/Ap. : Lalit Kishore, AAG III

Disposition : Appeal dismissed

Judgement :

Barin Ghosh and Ajay Kumar Tripathi, JJ.

1. The judgment under appeal is so well considered and elaborate, it is not necessary for us to indicate in detail the subject matter in issue. We would, however, try to highlight the submissions as were made before us by the learned Counsel appearing in support of the appeal.

2. Before, however, doing so, it is our duty to point out the basic minimum facts which are as follows:

On 18th December, 1989, the Government of Bihar in Finance Department passed a resolution and thereby accepted the replacement scales as recommended by the Fitment-cum-Pay Revision Committee and as indicated in Schedule I to the said resolution. Schedule I provided, amongst others, that the existing scale of Rs. 1000-1820 shall be replaced by the scale of Rs. 2000-3800. In addition to that it was provided that in relation to the existing scale of Rs. 1000-1820 there shall be a sub scale of Rs. 2200-4000. By the said resolution, the Government decided that the existing scales of pay for Gazetted and Non-Gazetted posts under the State Government should be revised as shown in Schedule II to the said resolution. In Schedule II to the said resolution, it was provided that the Deputy Controller of Accounts in Audit Section whose existing pay scale was Rs. 1000-1820 shall be entitled to the replacement scale of Rs. 2000-3800 i.e. the original replacement scale and not the sub scale, as provided in Schedule I to the said resolution.

3. In Clause 11 of the said resolution, it was provided that the pay scale for Super Time Selection Grade shall be the revised scale one lever immediately above the Senior Selection Grade revised scale. It was clarified that only the normal replacement scales shall be taken into consideration for any Selection Grade. It was clarified further that no sub scale at any level shall be admissible as the Selection Grade scale.

4. There is no dispute that Senior Auditor Grade I on normal promotion will occupy the post of Deputy Controller of Accounts. In the instant case, a large number of Senior Auditor Grade I, who did not get actual physical promotion to the post of Deputy Controller of Accounts, were accorded Senior Selection Grade as and by way of Second Time Bound Promotion. The object of Time Bound Promotion was to keep the Officer concerned at the same post at which he was working but to make him entitled to the next higher scale.

5. The matter pertaining to according of replacement scale of Rs. 2000-3800 to Deputy Controller of Accounts came up to be considered by the Pay Anomaly Removal Committee. It suggested that the Deputy Controller of Accounts, who

were in the existing scale of Rs. 1000-1820 and had been accorded replacement scale of Rs. 2000-3800, shall be entitled to the scale of Rs. 2200-4000. The Government accepted such suggestion by its resolution dated 8th February, 1996. As a result, those Senior Auditors Grade I who obtained such Second Time Bound promotion started getting their salaries in the scale of Rs, 2200-4000. Subsequently by the impugned order it was held out that they were not entitled to the scale of Rs. 2200-4000 but were entitled to only the scale of Rs. 2000-3800 i.e. the original replacement scale of Rs. 1000-1820, and that brought the writ petitioners before this Court.

6. The learned Counsel for the appellants submitted that the in terms of Clause 11 of the said resolution dated 18th December, 1989 the pay scale for Super Time Selection Grade shall be the revised scale one level immediately above the Senior Selection Grade revised scale and accordingly those Senior Auditors Grade I, who obtained Senior Selection Grade, could have the original revision, as was accepted in Schedule I to the said resolution, and not to the scale as has been applied to Deputy Controller of Accounts by the Pay Anomaly Removal Committee.

7. It is true that one scale above the revised Senior Selection Grade scale, i.e. the scale applicable to Senior Auditor Grade I, in terms of Schedule-I to the said resolution would be Rs. 2000-3800, but then that was not available in Schedule-II to the said resolution in so far as the writ petitioners were concerned in view of the decision of the Government dated 8th February, 1996. It must be kept in mind that one scale above shall mean one scale above as available in Schedule-II and not Schedule-I otherwise Clause 11 of the said resolution and, in particular, non-availability of sub scale does not make any sense.

8. In the event in Schedule II instead of the original replacement scale, the Deputy Controller of Accounts had been accorded the sub scale as was indicated in Schedule I, of course, it could be said by the appellant that a person who has obtained Senior Selection Grade is only entitled to the original replacement scale as was revised by Schedule I but not the sub scale as had been indicated therein and incorporated in Schedule II conciously. The Pay Anomaly Removal Committee

did not opine, nor the State Government at the time of acceptance of the recommendation of Pay Anomaly Removal Committee opined that the Deputy Controller of Accounts were entitled to sub scale, as was indicated in Schedule I to the said resolution, and not to the original replacement of the existing scale as had been indicated therein.

9. In those circumstances, the learned Writ Court rightly held that the scale one level immediately above to the scale applicable to Senior Auditor Grade-I became Rs. 2200-4000 and the scale of Rs. 2000-3800 stood altogether obliterated from Schedule II to the said resolution, but not on the basis of grant of a sub scale as was permissible originally. In those circumstances, there is no scope of interference. The appeal fails and the same is dismissed.