

Ramesh Prasad and ors. Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Sep-16-2003

Reported in : [2004(1)JCR29(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : Service Law; Bihar Service Code - Rule 103 and 103(2)

Appeal No. : CWJC No. 2681 of 1994(R)

Appellant : Ramesh Prasad and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Ritu Kumar, GP IV

Advocate for Pet/Ap. : V.P. Singh, Sr. Adv. and; Sat Prakash, Adv.

Disposition : Appeal allowed

Judgement :

Amareshwar Sahay, J.

1. These writ petitioners, by filing CWJC No. 3845 of 1993(R) had earlier moved before the Patna High Court, Ranchi Bench praying for a direction to the respondent-State to pay allowances to them admissible to the post of Incharge Headmaster.

2. Division Bench of the Patna High Court, Ranchi Bench, after having heard the parties, by order dated 5.1.1994 contained in Annexure-1 to the writ application disposed of the writ petition with the following directions :--

'Having regard to the nature of the grievance of the petitioners' we dispose of this writ petition with a direction to the District Education Officer, Gumla (respondent No. 4) to take' appropriate decision in respect of the grievance of the petitioners within three months from the date of receipt/production of a copy of this order. The District Education Officer, Gumla, will take approval of the competent authorities, if such approval period. Needless to say that necessary payments, including the arrears as well as the current, will be made to the petitioners in accordance with law within the aforesaid period.'

3. Pursuant to the above mentioned order of the Division Bench of the Patna High Court, the District Education Officer, Gumla vide his order dated 24.8.1994 contained in Annexure-6 to the present writ application, communicated to the petitioners rejecting their claims holding that they were not entitled for Officiating allowance as per Rule 103 of the Bihar Service Code.

4. The petitioners have challenged the said order of the District Education Officer, Gumla dated 24.8.1994 i.e., Annexure-6 rejecting their claim for payment of officiating allowance by filing the present writ application and have prayed for quashing of the order of the District Education Officer and for direction to the respondents for payment of their officiating allowances.

5. The Short facts which are not in dispute are as under :--

'The petitioner No. 1, Ramesh Prasad, who is an Assistant Teacher, was functioning as Officiating/In-charge Headmaster in his school pursuant to the order of the District Education Officer dated 15.4.1981 and is still continuing as such.

Similarly petitioner No. 2, Karam Dayal is functioning as officiating/In-charge Headmaster since 14.11.1993 pursuant to the order of the District Education Officer, Gumla.

Petitioner No. 3, Ram Naresh Tripathi worked as Officiating/Incharge Headmaster from 1.1.1984 to 3.10.1993 i.e., till regular Headmaster jointed in his school.'

6. It is stated by the petitioners that as the post of Headmaster is a promotional post and since they: were discharging powers, duties, works and responsibilities of Headmasters, therefore, as per Rules 89 and 103 of the Bihar Service Code they are entitled for payment of officiating allowance which would be 20% of their substantive pay.

7. It is further stated in this writ petition that after the order of Division Bench of the Patna High Court dated 5.1.1994 passed in CWJC 3845 of 1993 (R) filed by these petitioners, the District Education Officer (respondent No. 4), Gumla, wrote a letter dated 13.4.1994 (Annexure-3) to the Director, Secondary Education (respondent No. 2) requesting him to sanction fund amounting to Rs. 217972.00/- for payment to the petitioners, pursuant to the order dated 5.1.1994 passed in CWJC No. 3845 of 1993(R) but ultimately by communication contained in Annexure-6 to the writ application, the claims of the petitioner were wrongly, illegally and arbitrarily rejected by the District Education Officer, Gumla.

8. It is also stated by the writ petitioners that pursuant to the order of the Division Bench of the Patna High Court, Ranchi Bench passed in CWJC No. 2670 of 1983(R) similarly situated persons, who also worked as Officiating/Incharge Headmaster, were directed to be paid officiating allowance and they are being paid. The said order has been annexed as Annexure 5/A to the writ application.

9. The respondent No. 4 by filing counter affidavit has controverted the claim of the petitioners and has stated in the counter affidavit that under Rule 103(2)(vii) of the Bihar Service Code, the petitioners are not entitled to any such officiating allowance.

It has further been stated that in view of Annexure-B to the counter affidavit, the Director, Secondary Education, wrote a letter on 12.8.1994 to the District Education Officer, Gumla that under Rule 103 of the Bihar Service Code, and Memo of the Finance Department contained in memo No. PSR 4050/60/12866 dated 7.6.1996 and amended memo No. 14794 dated 30.12.1968, the claim for

officiating allowance was not admissible and therefore, the District Education Officer vide Annexure-6 rightly rejected the claim of the petitioners on the basis of the Rule 103(2)(vii) of the Bihar Service Code and the aforesaid issuing two memos issued by the Finance Department.

10. Mr. V.P. Singh learned Sr. Counsel for the petitioners has submitted that the action of the respondents, in not paying the admissible officiating allowance to the petitioner inspite of the order of the High Court, who were holding the post of officiating/Incharge Head Master for pretty long time is absolutely illegal and arbitrary because Rule 103(2)(vii) is not applicable in the facts and circumstances of this case, as the petitioners were not holding the lower or sub-ordinate post, rather they were holding higher promotional post i.e., post of the Headmaster and therefore, according to the Rule 103(2)(1) of the Bihar Service Code, they are entitled to the officiating allowance of 20% of their substantive pay.

11. For ready reference Rule 103(2)(i) and Rule 103(2)(vii) are quoted herein below:--

'2. In order to avoid irregular sanction of Additional pay, it is requested that the following point should be kept in view;

(i) In cases where Government servant takes full charge of more than one post (other than inferior or subordinate post), he may be allowed Additional Pay not exceeding 20% of his 'substantive pay' by the competent authority. In cases where it is proposed to sanction 20% of 'officiating pay' as distinct from 'substantive pay' the prior concurrence of Finance Department will be necessary.

(ii)

(iii)

(iv)

(v)

(vi)

(vii) Arrangement to hold additional charge of a lower or sub-ordinate post is permissible but no additional pay will be allowed to the Government servant concerned. Similarly, no additional pay is admissible to holders of supertime scale posts for combination of work relating to supertime scale post of equivalent or higher status.

(viii)

(ix)

12. From bare perusal of the above quoted Rule 103(2)(i) and (vii), it is clear that Rule 103(2) (vii) is not applicable in the case of the petitioner because they being the Assistant Teachers, were directed to hold the post of Officiating/Incharge Headmaster, which is a promotional and higher post and therefore, the order dated 24.8.1994 contained in Annexure-6 rejecting the claim of petitioners on the basis of Rule 103(2)(vii) is absolutely wrong and illegal.

13. In the case of Arun Kumar Sinha v. State of Bihar, reported in 2000 (4) PLJR 515 a Division Bench of the Patna High Court, relying on several other decisions, has held that it is the prerogative of the Government due to exigency of the work, an employee holding lower post can be directed to discharge the duties of a higher post, at the time of making such arrangements the seniority and other service conditions of such Government employee is not at all to be looked into and therefore to safeguard the interest of such employee under the Bihar Service Code, Rule 103 has already been prescribed to additional pay not exceeding 20% of the substantive pay to a Government employee.

14. Considering the rival contention of the parties and Rule 103 of the Bihar Service Code, and also decision of the Patna High Court in the case of Arun Kumar Sinha (supra), I hold that the petitioners are entitled for the officiating allowances of the Incharge Headmasters.

15. In the result this application is allowed and the order dated 24.8.1994 contained in Annexure-6 to the writ application passed by the District Education Officer, Gumla is hereby quashed.

The respondents are directed to pay the admissible officiating allowance to the petitioners within a period of three months from the date of the receipt/production of a copy of this order.

However, in the facts and circumstances of the case, there shall be no order as to costs.

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