

(2020) 11 PAT CK 0071

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 2549 Of 2016

Nagendra Bhagat

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Nov. 13, 2020**Acts Referred:**

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Chakradhari Sharan Singh, J**Bench:** Single Bench**Advocate:** Pramod Kumar Singh, Archana Meenakshee**Final Decision:** Dismissed

Judgement

1. It is a fundamental principle of service jurisprudence that the conditions of service of Government servants are governed by the rules or orders

issued by the appropriate Government. In the absence of rules, the right of a government servant is to be determined on the basis of orders, which

govern their service conditions. The Bihar Service Code, 1952 (hereinafter referred to as "the Code") define, inter alia, the conditions under

which salaries and other allowances (except T.A. and Pension) are earned by service under the State Government.

2. Keeping in mind the said legal principle and the provisions under the Code, the Court is required to examine legitimacy of the petitioner's claim

of salary of a Class-III employee, while substantively holding a Class-IV post under the Government.

3. I have heard Mr. Pramod Kumar Singh, learned counsel for the petitioner and Ms. Archana Meenakshee, learned Government Pleader No.6,

representing the State of Bihar.

4. It would be apt to take note of the facts first as pleaded in the writ application and in the counter affidavits filed on behalf of the respondents.

5. It is the petitioner's case that pursuant to notices inviting applications for appointment against Class-IV posts in Irrigation Department,

Government of Bihar, he had submitted his application and he was finally appointed by an order issued on 04.12.1981 by Chief Engineer (Irrigation),

Dehri Camp, Patna. In 1990, he made an application seeking his promotion to Class-III post. He again submitted his representation for promotion in

1991. Subsequently, the Executive Engineer, Water Resource Department, Daudnagar came out with an office order, asking the petitioner to do

khatayani work. It is the petitioner's case that khatayani work is performed by a Class-II employee and not by a Class-IV employee. It is

petitioner's further case that since he was made to discharge such functions, which are ordinarily performed by a Class-III employee, he was

entitled to salary admissible for a Class-III post. It is his further case that subsequently by letter dated 11.03.2010 issued by the Chief Engineer, Water

Resource Department, Aurangabad Zone, Aurangabad, he was asked to perform the duty of Revenue Collection, which duty also he duly discharged.

He again represented before the authorities claiming salary admissible to the said Class-III post against which he was discharging his duties.

Subsequent thereto, in 2013 when an incumbent to the post of Revenue Inspector was due to retire, the petitioner was asked to assume his charge by

an office order dated 08.08.2012 issued by the Executive Engineer (Respondent No.5). The petitioner claims that he continued to work on the said

post of Revenue Inspector till the date of his superannuation with effect from 30.08.2015. With the aforesaid plea, the petitioner claims that he is

entitled for pay admissible to a Class-III employee under the State Government on the principles of equal pay for equal work.

6. Two counter affidavits have been filed on behalf of the respondents, one of which has been sworn by the Additional Chief Secretary, Water

Resource Department, Government of Bihar. It has been stated in the counter affidavit that the petitioner and some other employees were deputed

from time to time to perform the duties of tax collection in accordance with Clause-4 of the resolution as contained in Memo No. 4000 dated

02.12.1993, wherein it was clearly mentioned that if some employees were literate and could issue "receipts" then the Department may utilize

their work performed by persons holding Class-III posts. It has been reiterated, however, that it was a stop gap arrangement in the interest of work

and for that there was no provision for payment of extra emolument to the employees. It has further been stated that the staffing pattern of the

Department was worked out and the cadre was re-structured from which it transpired that as against 355 Class-IV posts of Peon, there were 681

persons working as Peon, Night Guard, Karipal etc. There were thus, 326 employees extra against sanctioned Class -IV posts in accordance with the

staffing pattern. It was in that background a decision was taken that such employees who were literate and were able to issue receipts could be

engaged in the work of collection of tax/revenue. It was further mentioned that such employees who were not literate and who could not be adjusted

as Peon, their services shall be terminated after giving them notice. The said resolution of the State Government issued vide Memo No. 4000 dated

02.12.2013 has been brought on record by way of Annexure-A to the counter affidavit filed by respondent NO.5, the Executive Engineer, Irrigation

Division, Daudnagar. The petitioner does not dispute the fact that he was assigned the job of collection of tax in the light of the said resolution of the

Water Resource Department dated 02.12.1993. The said decision was apparently taken because more persons were found to be working against

Class-III posts than the post available under the staffing pattern.

7. In the background of the facts noted above, the sole question which has arisen is as to whether the petitioner can claim salary of a Class-III

employee because he had a chance to perform such jobs, which are performed by Class-III employees.

8. Mr. Pramod Kumar Singh, learned counsel appearing on behalf of the petitioner has vehemently argued that the petitioner cannot be denied the

salary admissible to a Class-III employee since admittedly the work which he had performed for the period in question were to be performed by a

Class-III employee. He has invoked principles of equal pay for equal work in support of his contention and has placed heavy reliance on a Supreme

Court's decision in case of Sabha Shankar Dubey Vs. Divisional Forest Officer (AIR 2019 SC 220). My attention has also been drawn to

unreported judgment of coordinate Bench of this Court dated 13.02.2012 passed in CWJC No.2031 of 1998 (Birendra Rao Vs. State of Bihar and

others), wherein the Court, noticing the provisions under Rule 103 of the Code held the petitioner of that case entitled to 20% additional pay of the

substantive pay of the post, which the petitioner of that case was holding. Another Division Bench decision of this Court in case of Chairman State

Power Holding Company Ltd. vs. Ganesh Lal, reported in 2017(4) PLJR 282 has been referred to by Mr. Singh.

9. As I have noted at the very outset, the terms and conditions of service of a Government servant is dependent upon the rules governing their service

conditions. This is not in dispute that the Code defines the conditions under which salaries and other allowances are earned by service under the State

Government. Rule 103 of the Code lays down the determination of pay of the Government servant in case he is asked to hold substantively, as a

temporary measure or to officiate in two or more independent posts at one time. Rule 103 of the Code, in my opinion, is at the centre of the issue for

the determination of the present case and, is, therefore, being reproduced herein below:-

103. The pay of a Government servant appointed by the State Government to hold substantively, as a temporary measure, or to officiate in, two or

more independent posts at one time shall be regulated as follows:-

(a) the highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that

post.

(b) for each other post he may draw such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the

State Government may fix; and

(c) If a compensatory allowance is attached to one or more of the posts he may draw such compensatory allowance as the State Government may fix

provided that such allowance shall not exceed the total of the compensatory allowance attached to all the posts.â€

Note-1.- The expression â€œindependent postsâ€ used in this rule means posts which are independent of one another i.e. posts the incumbent of one of which is not expected to do the duties of any otherâ€.

10. Interpretation of Rule 103 of the Code had fallen for consideration by a Division Bench of this Court in case of Md. Masood Yusuf Vs, State of

Bihar and others reported in 2012(4) PLJR 996. Taking into account the note below Rule 103 of the Code, the Division Bench on considering the said

provision, held in paragraph 19 as under:-

â€œ19. In order of claim benefit under Rule 103 of the Bihar Service Code an employee has to establish that he was holding two or more

â€œindependent postsâ€. The expression â€œindependent postsâ€ has been clarified in note 1 as quoted above. The State of Bihar vide Memo No.

1479F dated 30.12.1968 had issued a clarification on the grant of additional pay under Rule 103 of the Bihar Service Code. While clarifying the

position it has been specifically mentioned in the above mentioned letter that the additional post, duties of which are combined should not be on the

same establishment or office and should not fall in the line of normal promotion. Citing example, it says that the post of under Secretary/Deputy

Secretary, Deputy Directors, Deputy Commissioner, Accountants, Assistants and Clerks in the same office or establishment are not independent of

each other for the purpose of the rule. However, in the present case there is no whisper in either of the writ applications filed by Md. Masood Yusuf

and Md. Mojibur Rahman that the post of District Malaria Officer which they claimed to have held in officiating capacity was independent or the

duties of the Assistant Malaria Officer which they were holding substantively. For this reasons also, we find that the petitioners cannot claim benefit

of Rule 103 of the Bihar Service code to claim the pay admissible to the post of District Malaria Officer.â€

11. The said Division Bench judgment in case of Md. Masood Yusuf (supra), in my opinion, applies with full force in the present case. The condition

of service of principles of any service are governed by statutory rules and orders lawfully made in the absence of rules to cover the area which has

not been specifically covered by the Rules, as has been clearly held in case of Syed T.A. Naqshdandi and others vs. State of Jammu and Kashmir

reported in (2003) 9 SCC 592 (see para 8). The Supreme Court's decision in case of Sabha Shankar Dubey (supra) has no application in the

present set of facts. In Sabha Shankar Dubey (supra), the appellants were daily rated workers employed in Group-B posts. They had filed a writ

petition before the High Court of Allahabad, seeking regularization of their services, minimum of the pay scale available to their counter part and

directing them as being in continued service. Their claim seeking direction for regularization and minimum pay scale was rejected by the learned single

Judge of this Court holding that such direction could not be issued in exercise of power under Article 226 of the Constitution of India. Appeals

preferred before Division Bench of Allahabad High Court were also dismissed. When the order of the High Court was assailed before the Supreme

Court, the Supreme Court relaying on its earlier decision in case of State of U.P and others Vs. Putti Lal reported in (2006) 9 SCC 337 held that they

were entitled to minimum of pay scales as long as they continued in his service. The decision in case of Sabha Shankar Dubey (supra) relates to

payment of minimum scale to daily wagers.

12. The Division bench decision in case of Ganesh Lal (supra) has also no application in the present case which is governed by rules viz, Bihar Service

Code.

13. In the present case, the right of the petitioner to claim salary of higher post is to be examined in the background of service rules governing his

service conditions. It is well settled principle that judgments on service law are to be understood in the context of relevant service Rules [See. (2009) 5

SCC 545 (Nair Service Society Vs. Dr. T. Deermasthan and ors).

14. In my opinion, thus, in view of the Division Bench decision in case of Md. Masood Yusuf (supra), the relief which the petitioner is seeking cannot

be granted. The said Division Bench decision is subsequent in time to the decision of coordinate Bench of this Court in case of Birendra Rao (supra).

15. I, therefore, do not find any merit in this application, which is, accordingly, dismissed.