

**(2023) 01 PAT CK 0020**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 12122 Of 2012

Bihar State Labour Enforcement  
Officers Association Bihar

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision:** Jan. 16, 2023

**Hon'ble Judges:** Prabhat Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Arun Kumar Sinha, Kumar Pankaj

**Final Decision:** Dismissed

### **Judgement**

1. Writ petition has been filed for quashing resolution contained in Memo No. 9803 dated 21.10.2011 (Annexure 9 to the writ petition) by which direction has been issued for fixation of the pay of members of petitioners' association, i.e., Labour Enforcement Officers, in lower pay scale of Rs.5000-8000 in place of present pay scale of Rs.5500-9000 with retrospective effect. Prayer has also been made for commanding the respondents not to interfere in any way in present pay scale of Rs.5500/- to 9000 and to re-fix the same in lower pay scale of Rs.5000/- to 8000.

2. Short facts giving rise to the present writ petition is that earlier there were 16 different class III posts in the State of Bihar in its different Departments in different pay scales and appointments on the posts of Labour Enforcement Officers (Labour Inspectors at the relevant time) were being done separately by the Government. However, in 1981 on the basis of recommendations of 4th pay Revision Committee, a common pay scale of Rs.850/- to 1360 was allowed the certain graduate standard posts of the said class III posts including posts of Labour Inspector and some other graduate standard Class III posts i.e., Senior Statistical Assistants, Statistical Assistants, Investigator, Senior Auditor Grade II etc, were allowed pay scale of Rs.785/- to 1210 only. Later on, after creation of Bihar State Subordinate Selection Board, it was decided by the State Government to make appointments on all the aforesaid 16 graduate standard class III posts of its different Departments through a Combined Competitive Examination known as "Graduate Standard Examination" and first such examination was held in 1982 and appointments on the said class III posts of different departments were done. However, as the persons appointed on the posts on Senior statistical Assistants, Statistical Assistants, Investigator, Senior Auditor Grade II etc. were allowed pay scale of Rs. 785/- to 1210 only attached to the post, they raised a grievance on the ground that as the 16 class III posts of different departments were equivalent and their appointments were on the basis of same competitive examination, they were entitled to the same pay scale of Rs 850/- to 1360. On their representations, matter was referred to the 4th pay revision anomaly committee and said committee after

considering the facts and circumstances existing at the relevant time allowed pay scale of Rs.850/- to 1360 to the posts of Senior Statistical Assistants, Statistical Assistants, Investigator, Senior Auditor Grade II also.

3. Further case of the petitioners is that in 1985, again an Advertisement No. 6 of 1985 (Annexure 1 to the writ petition) was published by the Bihar State Subordinate Selection Board for appointments on 172 posts of Statistical Department and other post of different Departments, including posts of Labour Inspectors, in the pay scale of Rs.850/- to 1360 and posts were filled up in this pay scale. It is further stated that after acceptance of 4th pay revision committee recommendations by the State Government, revised pay scale of Rs.850/- to 1360 became Rs.1500/- to 2750. But on the basis of agreement dated 9.11.1989 held between the State Government and Bihar State Employees Federation again, again said 10 posts including posts of Labour Inspector were allowed pay scale of Rs.1600/- to 2780 and rest 6 posts i.e., Senior Statistical Assistants, Statistical Assistants, Investigator, Senior Auditor Grade II, Senior Audit Officer and Graduate Assistants were allowed revised pay scale of Rs.1500/- to 2750 only.

4. Writ petitioners further submits that holders of these six posts again raised their grievances in this regard and the matter was referred to the 5th pay revision anomaly committee but the alleged discrepancy in the pay scales was not acceded to by the committee. Thereafter, the aggrieved parties filed C.W.J.C.No. 8419/1992 which was allowed by the Division Bench vide order dated 22.9.1993 with a direction to the State Government to grant pay scale of Rs.1600/- to 2780 to the holders of above said six posts also. Against the said order, State filed SLP No.4555/1994 which was dismissed by the Hon'ble Apex Court vide order dated 27.10.1994 and then holders of above said six posts were again allowed pay scale of Rs.1600/- to 2780. It is also the case of the petitioners that after implementation of recommendations of pay revision committee, pay scale of Rs.5500/- to 9000 was given to the Labour Enforcement Officers and pay scale of Rs.5000/- to 8000 was given to other 15 posts. However, holders of these 15 posts raised a grievance regarding grant of lesser pay scales before the Fitment appellate committee which recommended for reducing the pay scale of the Labour Enforcement Officers from Rs.5500 to 9000 to Rs.5000/- to 8000. Thereafter, some of the employees of other 15 posts filed C.W.J.C.No. 14243/2004 and other analogous cases for grant of similar pay scale of Rs.5500/- to 9000 as allowed to the Labour Enforcement Officers since 1.4.1997. Said writ petition was allowed vide order dated 13.10.2006 with a direction to the State Government to grant same pay scale of Rs.5500/- to 9000 to the holders of above said 15 posts also. Order dated 13.10.2006 was challenged by the State Government in LPA No.234 of 2007 which was allowed vide order dated 30.8.2010. Pursuant to the order 30.8.2010, authorities issued/published notice in the daily news paper dated 10.11.2010 (Annexure 8) to the Labour Enforcement Officers with respect to implementation of scale of Rs.5000/- to 8000 to them in place of Rs.5500/- to 9000.

5. As the notice was materially affecting the right of the members of petitioners' association, the petitioners filed representation on 30.11.2010 regarding their entitlement of pay scale of Rs.5500/- to 9000. Petitioners also filed Civil Review No. 349/2010, 43/2011 and 47/2011 against LPA order dated 30.8.2010. However, during pendency of the review petition, vide circular dated 21.10.2011, order for fixation of petitioners pay scale was issued in the pay scale of Rs.5000/- to 8000 by the State authorities. Petitioners challenged said circular dated 21.10.2011 before the Hon'ble Apex court in Writ petition (Civil) No.119 of 2012 which was dismissed as withdrawn vide order dated 30.4.2012. Meanwhile, civil review applications were also disposed of vide orders 1.2.2012 and 28.3.2012 respectively with liberty to the petitioners to file writ

petition.

6. It is further averred in the writ petition that the parties of C.W.J.C.No. 14243/2004 and analogous cases as well as LPA No.234 of 2007 and analogous cases had obtained the judgment and order dated 30.8.2010 after suppressing the material facts and without producing the complete report of the Fitment appellate committee, as also the judgment and order dated 30.8.2010 to the effect through which direction was issued to the State Government to select between one of the two pay scales of Rs. 5000/- to 8000/-or Rs.5500/- to 9000/-, without taking note of the conditions mentioned in the direction of the Fitment Appellate Committee regarding reappraisal of all the posts in question for consideration and fixation of the different pay scales for the different posts as contained in para 2.19 of its report, was not applicable to the members of petitioners association, specially when observation of this Court in the judgment and order to select between one of the two pay scales was issued on the sole ground that the Fitment appellate committee in its report had recommended pay scale of Rs.5000/- to 8000/- to different supervisory level posts being recruited from the same competitive examinations.

7. Petitioners have also filed IA No.4742/2012 for quashing letter bearing No.5/RL-40-41/12/LS-2605 dated 12.7.2012 (Annexure 13), by which direction for downgrading the pay scale of members of petitioners association and for recovery of so-called excess payments of salary made after 21.10.2011, has been issued. IA No.3 of 2022 has been filed by the petitioners for issuance of a direction for making re-fixation of pay of the petitioners in the pay scale of Rs.5500/- to 9000 instead of Rs.5000-8000 during pendency of the writ petition.

8. Learned counsel for the petitioners, while assailing circular dated 21.10.2011 submits that action of the respondents dehors the rules which is wholly illegal and arbitrary in nature. He submits that that the aforesaid circular has been issued in light of direction given by the Division Bench of this Court in LPA no.234 of 2007 or in the writ petition bearing C.W.J.C.No. 14243 of 2004 from which the said LPA was arising out. He submits that as a matter of fact in these cases, neither any Labour Enforcement Officers of the Labour Department nor their associations were parties. Further more, said circular has been issued without taking note of the conditions mentioned in the direction of the Fitment Appellate Committee regarding reappraisal of all the posts in question for consideration and fixation of the different pay scales for the different posts as contained in para 2.19 of its report, which was not applicable to the members of petitioners association.

9. Learned counsel for the State files counter affidavit. It is stated that the State Government vide resolution dated 21.10.2011 took resolution dated 21.10.2011 to reduce the pay scale of Labour Enforcement Officers from Rs.5500-9000 to Rs.5000-8000 w.e.f. 1.1.1996 in the light of column 2.18, 27.4 & 27.5 (Annexure 6 to the writ petition) of the Fitment Appellate Committee Report and in compliance of order dated 30.8.2010, passed in LPA No. 234 of 2007 (the State of Bihar & others Vs. Sunil Kumar & others and analogous cases) by which the LPA Court disposed of the appeals directing the respondents concerned to decide a common pay scale for all 16 similar posts of Supervisory Grade Services in the light of recommendations of the Fitment Appellate Committee. Being aggrieved by order dated 30.8.2010, passed in LPA No. 234/2007 & analogous cases, petitioners preferred Civil Review Nos. 349 of 2010, 43 of 2011 and 47 of 2011 which were finally dismissed as withdrawn with certain liberty vide orders dated 1.2.2012 & 28.3.2012. LPA order dated 21.10.2011 was also challenged before the Hon'ble Apex Court vide Writ petition (Civil) No. 119/2012 which was dismissed as not pressed.

10. Learned counsel for the State further submits that in light of observations and directions of the LPA order dated 30.8.2010, passed in LPA No. 234/2007 & analogous cases, Government got took a policy decision vide impugned resolution contained in 21.10.2011 to provide pay scale of Rs.5000-8000 to all sixteen supervisory grade posts to avoid any discrimination in which there is no illegality or infirmity. Besides this, the Fitment Appellate Committee, on consideration of objections of all stake holders and all aspects of the matter, recommended one pay scale for all the sixteen supervisory grade posts including Labour Enforcement Officers i.e., Rs.5000-8000/- for which they are legally entitled as per norms of Pay Revision Committee.

11. Having heard learned counsel for the petitioners, the State and on perusal of the materials available on the record, this Court does not find any merit in the submission of petitioners. In this case, pursuant to order and decision of this Court, passed in LPA No. 234/2012 and other analogous cases and after considering objections and representations filed on behalf of the parties, respondents took a policy decision vide impugned resolution contained in letter dated 21.10.2011 to provide pay scale of Rs.5000/- 8000 to all sixteen supervisor grade posts to avoid any discrimination. As such, the impugned resolution is justified and no interference is required by this Court.

12. The writ petition is devoid of merit and is accordingly dismissed.