

Sanjay Sinha and Others and Praveen Kumar and Another Vs The State of Bihar and Others

Court: Jharkhand High Court

Date of Decision: March 20, 2009

Acts Referred: Constitution of India, 1950 " Article 12

Citation: (2009) 121 FLR 531 : (2009) 2 JCR 467 : (2009) 3 LLJ 743

Hon'ble Judges: D.G.R. Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

Prayer in these writ applications as made by the petitioners is for a direction to the respondent SAIL to grant the scale

of pay of Rs. 3100 - 5150/- in the E-II Grade of officers to the petitioners from the date the petitioners were appointed to the post of Safety

Inspectors/Safety Officers under the Respondent Bokaro Steel Plant, Bokaro Steel City, Bokaro(BSL).

2. Facts of the petitioners' case in brief is that the State Government by notification dated 13.02.1989 (Annexure-5) had notified 26 posts of

Safety Officers in the Respondent Bokaro Steel Plant(BSL). The decision of the State Government was communicated by the Chief Inspector of

Factories to the Management of the Bokaro Steel Plant(BSL). While doing so, the Chief Inspector of Factories, in exercise of its power under

Rule 62B(2) of the Bihar Factories Rules, 1950 had also intimated that relaxation in the qualification of requisite experience would also be granted

to deserving candidates who were found professionally competent. A direction was issued by the Chief Inspector of Factories to the Management

of the Bokaro Steel Plant (BSL) to submit applications for grant of exemption and also to obtain the exemption before making appointment of

Safety Officers.

In response, the respondent BSL invited names of eligible candidates from the Employment Exchange. The process of selection for appointment of

Safety Officers was undertaken and completed and after approval of the names by the Chief Inspector of Factories in terms of the provisions of

Rule 62B(2) of the Bihar Factories Rules, appointment of four of the present petitioners as Safety officers under the BSL was made. Subsequently,

by adopting the same procedure, five other petitioners were also appointed on the post of Safety Officers.

3. After their appointment, a question arose as to whether the Safety Officers appointed under the BSL hold the requisite qualifications. The matter

was taken up in a writ application vide C.W.J.C. No. 152 of 1994(R) before the Patna High Court, Ranchi Bench. The Court obtained a report of

inquiry from the Chief Inspector of Factories on this issue. The report submitted by the Chief Inspector of Factories confirmed that the petitioners

are qualified Safety Officers. In respect of the petitioners named at Sl. No. 29 to 39 of the report, it was stated that they have passed Diploma in

Industrial Safety which is recognized by the State Government. They were thereafter designated as Safety Inspectors under the BSL.

4. The grievance of the petitioners is that merely by designating them as Factory Inspectors, the Management of the respondent BSL has been

denying them the pay scale of Safety Officers. In spite of their repeated demands from the very beginning and in spite of the letters of

recommendation issued by the Inspector of Factories/Deputy Chief Inspector of Factories, the respondent Management of the BSL had failed to

remove the pay anomaly and has not been paying the scale of pay equivalent to the scale of pay of the officers of corresponding posts.

5. Shri A. K. Mehta, learned Counsel for the petitioner would submit that the denial of the scale of pay to the petitioners equal to the scale of

officers holding posts corresponding to the rank of the petitioners, is illegal arbitrary and discriminatory. Learned Counsel explains that Rule

62B(1) of the Bihar Factories Rule, 1950 defines ""Safety Officers"" and means any officer by whatever designation known, possessing the

qualification prescribed in the Rules. Such qualifications of Safety Officers has been prescribed in Rule 62B(2) and the same rule provides that the

Chief Inspector of Factories may grant exemption of the requirements of Sub-rule (2) if suitable persons possessing necessary qualifications and

experience are not available for appointment. Sub-rule (3) of Rule 62(B) lays down the conditions of service of Safety Officers and Clause (b) of

Sub-rule (3) of Rule 62B provides that the Safety Officers be given appropriate status to enable them to discharge their functions effectively.

Clause (c) of Rule 62B(3) provides that the Scale of pay and allowances to be granted to the Safety Officers including Chief Safety Officers shall

be the same as those of the other officers of corresponding status in the factory.

Learned Counsel submits further that by order dated 06.03.1987, the respondent BSL has described the category of officers working in the BSL,

in three groups namely Group A, B and C. By office order dated 12.10.1990 (Annexure-11), the SAIL had revised the scale of pay of the

Executives. As per the pay revision, the earlier scale of pay of E-II Grade Executives was revised from Rs. 1500-2340/- to Rs. 3100-5150/-. The

contention of the learned Counsel is that since the petitioners have been acknowledged to be Safety Officers working in the BSL, they are entitled

to receive the same salary as being paid to the officers of same status, namely, in the E-II Grade Executives.

Learned Counsel submits further that the BSL is a "State" under Article 12 of the Constitution of India and as such the employment under the

Government is a matter of Status and not of contract. Since under the statutory provisions under Rule 62B(3)(b) of the Bihar Factory Rules, the

status of Chief Safety Officers as well as Safety Officers has been defined, the principles of the provision applies squarely to the petitioners and as

such the respondents are duty bound to provide the status to the petitioners and the corresponding scale of pay attached to the officers in terms of

Sub-Rule 3(c) of Rule 68. To buttress his argument, learned Counsel refers in this context to the judgement of the Supreme Court in the case of

Dinesh Chandra Sangma Vs. State of Assam and Others, and in the case of Government of Andhra Pradesh and others Vs. Syed Yousuddin

Ahmed, . Referring to yet another decision of the Supreme Court in the case of Mohinder Singh Vs. State of Haryana and Others, learned Counsel

argues that the Apex Court has explained the meaning of the term officer and has held that the officer is higher to the rank of employee. Learned

Counsel argues that in the light of the aforesaid judgement, the status of the petitioners cannot be in the non-executive grade (workman). They have

to be guided only in accordance with the provisions of Rule 62B(3)(b)&(c) for the purpose of status as well as scale of pay. It is further argued that

the legal right cannot be waived either by conduct or by consent as has been held by the Supreme Court in the case of Secretary-cum-Chief

Engineer, Chandigarh Vs. Hari Om Sharma and Others, . Learned Counsel explains further that in the instant case, the petitioners have been

consistently raising their grievance claiming proper pay fixation and removal of the pay anomaly and the respondent Management of BSL cannot

deny the right of the petitioner on the plea of Waiver, Acquiescence or even Estoppel.

6. A counter affidavit has been filed on behalf of the respondent Management of the BSL, wherein the entire claim of the petitioners has been

denied and disputed. Shri Ananda Sen, learned Counsel for the respondent BSL would argue that as it would appear from the writ petition, the

petitioners have been claiming the executive scale of E-II Grade which, according to them, is the their status equivalent to the status of the

executives of E-II Grade.

Learned Counsel explains that it is not disputed that the petitioners were appointed as Safety Inspectors in the year 1990 in the scale of pay of Rs.

1550 - 53 - 1921 - 60 - 2341/-. While fixing their pay scales as indicated in their respective appointment letters, it was nowhere declared or

stated that the petitioners are posted in any Executive Grade or E-II Grade. The scale which was made applicable and paid to the petitioner at the

time of their appointment was of L-VI Grade. Prior to 01.01.1992, the pay scale of L-VI Grade was Rs. 1550-53-1921-60-2341/-. Upon

revision of the scale with effect from 01.01.1992, the revised scale stood at Rs. 2390-81-2957-90-2587/-. While this was so, the scale of pay of

the executive of E-II Grade in the year 1991 was Rs. 3700 to 5990/-. Learned Counsel explains that the above facts amply demonstrate that at

the time of their appointments, the scale of pay of the officers of E-II Grade and the scale of pay of those under L-VI Grade was totally different

and not the same and as such, the petitioners cannot claim that their initial appointment was in the E-II Grade of the Executives.

Learned Counsel argues further that the terms and conditions of the service of the petitioners would be governed by the contract of employment.

Under the service rules of the Company, a person must hold a post next below the post for which the permission is being sought for promotion to

the higher grade. The initial appointment of the petitioners was in the L-VI Grade. Before claiming E-II Grade, the person must serve below the

said E-II Grade for a stipulated time period as prescribed in the rules of the Respondent Company.

In normal course, the petitioners can be promoted to the Executive Grade as and when they become eligible. The petitioners having not even

entered into the lowest category of the executive cadre, they cannot claim parity in the pay scale of the E-II Grade officers.

Learned Counsel explains further that the status to be accorded as per Rule 62B(3) of the Factory Rules and the term ""corresponding status"" as

appearing therein means the corresponding status of the persons in the L-VI Grade of the other departments. As such, according the status for the

purpose of rules does not automatically place the petitioners in the Executive Cadre in general hierarchy of the Company and does not entitle the

petitioners to the salary and allowances etc. of the Executive Cadre. To buttress his argument, learned Counsel refers to and relies upon the

judgement of the Supreme Court in the case of B.H.E.L. and Another Vs. B.K. Vijay and Others, .

7. From the rival submissions, the admitted facts which emerge, are as follows:

(i) The petitioners were appointed some time in the year 1990 under the respondent BSL after inviting their names from the Employment

Exchange. Such appointment was made by relaxing the qualification in respect of the experience, under exemption granted by the Chief Inspector

of Factories under the provisions of Rule 62B of the Bihar Factory Rules.

(ii) At the time of their appointment, the petitioners were designated as Factory Inspectors and their scale of pay was fixed at Rs. 1550-53-1921-

60-2341/- which the petitioners had accepted and on revision with effect from 01.01.1992, it was fixed at Rs. 2390-81-2957-90-2587/-.

(iii) As per chart (Annexure-3) submitted by the respondent BSL in respect of the pay structure of Executives under it, the scale of pay of

executives of E-II Grade prior to 01.01.1991 was Rs. 3100- 130-3750-140-5150/- and upon revision with effect from 01.01.1991, it was fixed

at Rs. 3700-140-4400-150-5990/-. The above facts are undisputed. The contention of the petitioners that at the time of their initial appointment,

their scale of pay was equivalent to that of the executives of E-II Grade, does not appear to be correct.

8. The petitioners appear to have laid much stress on the provisions of Rule 62B(2)(b) of the Factory Rules claiming status thereby at par with the

officers of the Executive cadre and that too with the officers of the E-II Grade.

9. From the submissions of the learned Counsel for the petitioners as also from the provisions under the Bihar Factory Rules, Safety Officer is

appointed for the purpose of the Factories Act only and under the provisions of Rule 62(B) of the Factory Rules, he has to be given the status of

departmental head of the Senior Executive in the factory. As has been explained in the same rules, such status is conferred because he would be

posted under the Chief Executive of the factory and would report only to him and in matters relating to safety aspects, the other officers would be

bound by his directions.

The question is whether a person who may be entitled for a particular status for the purpose of Factories Act, can claim parity with the status of

other officers irrespective of the terms of the contract of his employment. An analogous question would arise as to whether the petitioners would

be governed under the contract of their employment or by the statute under the Factory Act ?

An identical issue came up for consideration before the Supreme Court in the case of BHEL v. B.K.Vijay (Supra). After defining the expression

Status"" by reference to its Lexicon meaning and referring to its earlier judgement in the case of Indian Petrochemicals Corpn. Ltd. and Another

Vs. Shramik Sena and Others, , the Supreme Court has observed as follows:

Only because a person is given a particular status, the same would not mean that his other terms and conditions of service would not be governed

by the contract of employment or other statute(s) operating in the field.

10. In the instant case, admittedly at the time of their initial appointments the petitioners were designated as Factory Inspectors which, in the light of

the nature of service rendered by them and in the light of the exemptions in respect of their qualification by the Chief Inspector of Factories, would

be the status of Safety Officers. The petitioners had acknowledged, for all practical purposes, that they would be governed by the contract of

employment under the respondent BSL. They had also accepted the scale of pay which was fixed for them and the grade and scale of L-VI as

granted to them. As has been demonstrated by the counsel for the respondents, the initial salary paid to the petitioners was not that of the E-II

Grade of the Executive Officers. Rather, it was fixed at a lower scale.

11. As has been observed in the case of BHEL v. B.K.Vijay (Supra), it is one thing to say that under the Factory Act, a status is conferred for the

purposes thereof but it would be another thing to say that pay, allowances and other benefits are not to be paid in terms of the contract of

employment or the statute operating in the field. Furthermore, as per the chart of standard Executive designation of the respondent BSL, the E-II

Grade is a grade for Senior Executives. It also indicates that before a person is placed in the next higher grade, he has to be in the next below post

for the number of years mentioned as per rules. Even if the status was conferred as per the Factory Act upon the petitioners and for the purposes

of the rules there under, the petitioners" cannot claim to be placed in the Executive cadre in general hierarchy of the respondent Company nor can

they claim entitlement for equal salary and allowances of the Executive cadre. The nature of status and corresponding pay scales of the petitioner

has to be reckoned only with the grade in which they were inducted in service.

12. Learned Counsel for the petitioner would want to distinguish the judgement in the case of BHEL(Supra) on the basis of the facts of the case in

as much as the aforesaid judgement of the Supreme Court relates to a claim of the petitioner therein for his promotion to the status of a Senior

Executive.

13. The ratio in essence, as laid down in the judgement in the case of BHEL(Supra) case is in respect of the implication of the term ""status"" which a

person working as a Safety Officer, may be given for the purpose of the Factory Act. It is in this context that the dispute raised by the writ

petitioner therein that he cannot be governed by the terms and conditions of his employment and would have to be governed only by the statute

which provides for granting of status and pay scale corresponding to the status of other officers under the employer, has been discussed and settled

by the Apex Court declaring that the grant of a particular status for the purpose of the particular Act does not mean that the employee would not

be governed by the terms and conditions of the contract of his employment. The judgement is therefore, very much relevant and also applicable to

the facts of the present case.

14. The judgements in the case of Dinesh Chandra Sangma (Supra) and Government of A.P. and Ors. (Supra) only emphasize that under Rule

62B(3)(b), which defines the status of Chief Safety Officer and Safety Officers, once a person is appointed to a post of office, the government

servant acquires the rights and status governed by the statute or statutory rules and in terms of which the status and scale of pay of such person is

to be governed by the statutory provisions contained in the aforesaid rules. These judgements do not go any further to declare that such persons

have to be equated with any particular category of employees working under the employer. On the other hand, in terms of the decision in the case

of BHEL (Supra), the petitioners shall have to be guided in accordance with the terms of the contract of their employment and their claim for

executive grade in the general hierarchy shall have to be guided only in accordance with the rules set by the employer. Admittedly, at the time of

their initial appointment, the petitioners were placed in the highest grade of L-VI which they had accepted in terms of their contract of employment.

The avenues of promotion to the executive cadre has not been closed to them though such promotions can be earned on the basis of certain length

of service and experience and in accordance with the rules prescribed by the employer. To reiterate, the status for the purposes of the rules under

the Factory Act does not automatically place the petitioners in the Senior Executive Cadre in the general hierarchy of the respondent Company nor

does it entitle the petitioners to claim salary and allowances etc. of the Senior Executive Cadre.

15. In the light of the above discussions, I find no merit in these writ applications and the same are dismissed.