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Krishna Kumar Vs The State of Bihar and Others

CWJC No. 2686 of 2004

Court: Patna High Court

Date of Decision: July 12, 2010

Citation: (2011) 129 FLR 723 : (2011) 1 PLJR 512

Hon'ble Judges: Ajay Kr. Tripathi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.
Heard learned Counsel for the parties.

2. Father of the Petitioner who was working as an Amin in the Consolidation Office, Obera Circle which falls under the district of Aurangabad had

died-in-harness. Petitioner approached the District Compassionate Establishment Committee for his appointment on compassionate basis on the

ground that he had valid education and degree to be appointed on the post of a clerk. The case of the Petitioner was considered by the District

Compassionate Establishment Committee alongwith some others and the recommendation made is Annexure-1 dated 23.8.2000. The pay scale

indicated by the Committee was Rs. 4,000 to 6,000/- so far the Petitioner is concerned.

3. It is the case of the Petitioner that despite the recommendation of the Compassionate Establishment Committee Respondents are giving him

lower pay scale of Rs. 3,050-4,500/-. This has been challenged by the Petitioner in the present writ application to be unfair and arbitrary. He

wants a direction upon the Respondents to give him a pay scale of Rs. 4,000-6,000/-. In support of such a relief learned Counsel representing the

Petitioner submits that the recommendation of the District Compassionate Establishment Committee is binding upon the Respondents. Since

already a recommendation had been made on 23.8.2000 a subsequent policy decision of the State bifurcating the cadre of Assistant into Lower

Division Clerk with lower pay scale and Upper Division Clerk with another pay scale notified on 20th December, 2000 has no application to the

Petitioner. The Respondents have illegally, if not irrationally applied the said notification which is Annexure-B to the counter affidavit filed on behalf

of the State to deny the benefit of higher pay scale to the Petitioner.

4. The stand of the State in the counter affidavit filed in this case is that the Petitioner joined on 29.12.2000 and when he joined, the post of

Assistant stood bifurcated and it could not be filled up. Government of Bihar, Department of Finance had already circulated its decision dated 20th

December, 2000 that appointment will have to be made on the post of Lower Division Clerk which carries a pay scale of Rs. 3,050-4,500/- and

the post of Upper Division Clerk which is promotional post will carry a pay scale of Rs. 4,000-6,000/-. The stand of the State therefore is that the

Petitioner can only be appointed on the post of Lower Division Clerk and he cannot be given a pay scale of promotional post, when he entered the

service first time. The recommendation of the District Compassionate Establishment Committee is only a recommendation for appointment and the

pay scale and other benefits which an employee is supposed to get is dependent on the circular and the rules or any notification issued by the State

specially the Department of Finance.

5. In response to the above submission learned Counsel representing the Petitioner submits that the date of his joining has no consequence as it

must co-relate to the date of recommendation and on the date of recommendation there was no circular contained in Annexure-B dated

20.12.2000. He further submits that in some other cases this Court has allowed pay scale of the higher level of Rs. 4,000-6,000/- where

advertisements were made for appointment by Bihar Public Service Commission and the final appointment can be made much later than the date of

advertisement. In those cases the Court opined that those persons cannot be appointed on the lower post because they have been appointed on

the basis of the advertisement which was issued much earlier.

6. It is further argued on behalf of the Petitioner that letter of appointment contained in Annexure-2 which is dated 12.1.2001 also indicates that the

decision dated 26.12.2000 taken by the District Establishment Committee indicates that the post on which the Petitioner had to be appointed as

Assistant and that should settle the issue.

7. Submission of the Petitioner has to be decided and adjudicated upon on the basis of the circular dated 20th December, 2000 contained in

Annexure-B. After reading Annexure-2 it is clear that the District Establishment Committee was totally oblivious of Annexure-B because

Annexure-B came into effect on 20th December, 2000. The District Establishment Committee made its recommendation for appointment to the

post of clerk on 26.12.2000 and the date of appointment is dated 12.1.2001. The decision of Establishment Committee and the letter of

appointment contained in Annexure-2 are squarely in the teeth of the decision of the State Government dated 20th December, 2000. Since it was

a fresh appointment which had been made and recommended after bifurcation of the cadre which has already been notified, the Petitioner could

only be given a post of Lower Division Clerk and not the higher pay scale of Upper Division Clerk which is a promotional post.

8. The statement has also been made by the State in the counter affidavit that the Service Book which was opened in the case of the Petitioner has

indicated his pay scale of Lower Division Clerk to which he has been appointed. His claim now that the recommendation of the District

Compassionate Appointment Committee shall prevail over the Government decision is unacceptable.

9. This Court has no hesitation in recording that the District Compassionate Appointment Committee is only a recommending body. The final

decision has to be made under the Government rules and circulars and that had been made according to the prevalent circular and rules. Mistake

committed by persons down below shall not bind the Government. Obviously after bifurcation of the post of Assistant no appointment on the post

of Assistant (Upper Division Clerk) could be made. Whether the recommendation made by the District Establishment Committee was due to lack

of knowledge or mischief cannot be certified in absence of further details in this regard. But the Court does certify that the pay scale which is being

given to the Petitioner is in accordance with what is available to the post on which he has been appointed and has to be in the light of circular dated

20th December, 2000 contained in Annexure-B to the counter affidavit.

10. This writ application has no merit and it is dismissed.