
Sri Awadh Kishore Singh Vs The Bihar State Electricity Board and Others

CWJC No. 9237 of 2011

Court: Patna High Court

Date of Decision: Aug. 17, 2011

Acts Referred:

Constitution of India, 1950 – Article 14, 16

Citation: (2012) 1 PLJR 145

Hon'ble Judges: Kishore K. Mandal, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Kishore K. Mandal, J.

Heard learned counsel for the petitioner and learned counsel for the respondent Bihar State Electricity Board.

2. Petitioner assails the order passed by the respondent Joint Secretary communicated to him under Memo No. 979 dated 20.4.2011 (Annexure-

5).

3. Setting of facts leading to the application are as under:--

Petitioner was serving as Bill Clerk in the Bihar State Electricity Board (for short "the Board"). On 4.7.1981, he was granted Selection Grade with

12% additional pay benefit. On 16.7.1982, he was promoted as Accounts Assistant. On completion of 3 years from the date of grant of Selection

Grade petitioner was once again given benefit of fixation of pay with 12% additional benefit of pay. By order dated 14.9.2010, the respondent

cancelled the aforesaid grant of 12% additional pay on completion of 3 years of promotion as Selection Grade Bill Clerk. The said order was

challenged by the petitioner in C.W.J.C. No. 17256 of 2010. After hearing the parties, this Court set aside the aforesaid order dated 14.9.2010

and remitted the matter back for fresh consideration by an order dated 2.11.2010 (Annexure-3) relevant part whereof reads as under:--

5. As the order dated 14.9.2010, Annexure-2 reducing the pay of the petitioner with retrospective effect i.e. 16.7.1982 has been passed by the

Joint Secretary of the Board without giving him opportunity of being heard, the same is set aside with direction to the petitioner to appear before

the Joint Secretary alongwith a copy of this order and thereafter the Joint Secretary should hear the petitioner and pass fresh order in accordance

with law, as early as possible, in any case within one month from the date of receipt of this order by the Joint Secretary. Petitioner shall be at

liberty to request the Joint Secretary to pass interim order staying the recovery, in compliance of the order dated 14.9.2010, Annexure-2.

4. The petitioner, in the light of the said order filed detailed representation which was considered in the light of said order and rejected by an order

contained in Annexure-5 which is under challenge.

5. Learned counsel for the petitioner submits that the grant of 12% additional pay was made available to the petitioner on completion of 3 years

from the date when he was considered for selection grade with 12% additional pay benefit. It is contended that the said grant was in accordance

with the circular/standing order of the respondent Board as contained in office order No. 1045/73/4562/EB dated 19.11.1974 read in the light of

the circular of the Board dated 7.5.1983 as clarified by yet another circular bearing No. 660 dated 9.9.1993. It is the stand of the petitioner that

the aforesaid issue has been considered by a Bench of this Court in C.W.J.C. No. 18367 of 2010 and this Court upheld grant of such double

benefit of additional pay in the light of circular dated 7.5.1983 as clarified by Circular No. 660 dated 9.9.1993. Learned counsel emphasized that

the respondent Board had permitted/granted him the benefit of addition of 12% of the pay on completion of three years of his promotion on

4.7.1981 to the Selection Grade with 12% additional benefit. The substantive promotion granted to him on 16.7.1982 to the post of Accounts

Assistant, in the submission of the petitioner, will not disentitle him from getting the benefit as was granted to him w.e.f. 4.7.1984.

6. Learned counsel for the respondent Board, on the other hand, submits that in the light of circular of the Board dated 7.5.1983, an employee

who got substantive/regular promotion within 3 years of grant of promotion to the Selection Grade with 12% additional pay would not be entitled

to the double benefit of addition of 12% of pay.

7. I have heard the parties and perused the materials on record. In my view, the issues raised in the present application was/were substantially

raised in C.W.J.C. No. 18367 of 2010. A learned Judge of this Court considered in extenso the effect of the circulars issued by the respondent

Board on the subject on which reliance have been placed by the parties in this case. It appears therefrom that the objection raised by the learned

counsel for the respondent Board was also raised and considered by the Court. On a consideration of the relevant circulars of the Board issued on

the subject including the circulars/standing orders issued in the years 1974, 1976 and 1983 read in the light of the clarificatory circular No. 660

dated 9.9. 1983, this Court found and held as under:--

In my view, the clarificatory circular dated 9.9.1983 would lead to the conclusion that the grant of benefit of fixation of pay on promotion under the

Standing Order No. 125 dated 7.5.1983 has to be made in accordance with the Board's Office Order No. 4562 dated 19.11.1974 and thus the

salutary principle laid down in the Office Order dated 19.11.1974 should also be applied so that if an employee has received promotion before

7.5.1983, as in the case of the petitioner who had received promotion to the post of Accounts Assistant in 1980, then he ought to be granted

double pay fixation benefit from 7.5.1983 so that he would be entitled to the benefit of the re-fixation of the pay on the higher post by adding 12%

subject to maximum Rs. 150/- to the pay he would have drawn on the lower post on that date. The application of the said principle is not only in

keeping with the different circulars of the Board but also in accord with the principle of equality under Articles 14 and 16 of the Constitution.

8. Having heard the parties and on going through the materials on records, this Court relying on the ratio laid down in C.W.J.C. No. 18367 of

2010, allows the writ petition. The order contained in Annexure-5 is quashed and set aside. The respondents are directed to re-fix the pay of the

petitioner by giving him double pay fixation benefit w.e.f. 4.7.1984.

9. Mr. Amar Nath Singh, learned counsel for the petitioner, at this stage, submits that the authorities have recovered the benefit granted to him

w.e.f. 4.7.1984. Learned counsel for the respondent Board states that part of the monetary benefit granted to the petitioner w.e.f. 4.7.1984 have

been deducted. In that view of the matter, this Court further directs that the monetary benefit granted to the petitioner w.e.f. 4.7.1984 which have

been deducted from the salary of the petitioner shall be refunded/paid to the petitioner within five weeks from the date of receipt/production of a

copy of this order. The respondent shall re-fix the pay-scale of the petitioner as per the present order within the aforesaid time and pay the arrears

accruing, if any, on that count.