

IN THE HIGH COURT OF JUDICATURE AT PATNA

The State of Bihar & Ors.

vs.

Jagdish Prasad Sinha & Ors.

Letters Patent Appeal No. 420 of 2022

In

Civil Writ Jurisdiction Case No. 7583 of 2021

11 April 2023

(Hon'ble The Chief Justice & Hon'ble Mr. Justice Madhuresh Prasad)

Issue for Consideration

Whether judgment and order passed in Civil Writ Jurisdiction Case No. 7583 of 2021 by learned Single Judge is correct or not?

Headnotes

Bihar Agricultural and Rural Area Development Agency Act, 1978—Section 39(2)(c)—Pay-scale benefits—employees of Gandak Area Development Agency (GADA), having retired from various technical and administrative posts, sought retrospective application of 5th and 6th Pay Commission benefits—benefits had been granted—writ petitioners claimed parity with State Government employees, citing internal resolutions of agency and long-standing practice of applying government service rules to staff of agency.

Held: salary and pay-scales are part of “conditions of services” under Section 39(2)(c) of the Act, 1978—conditions must be prescribed by the Board of agency with prior approval of the State Government and published in the Official Gazette—if a right exists, a person can approach a writ Court for issuance of any directions for enforcement of the right—directions of the learned Single Judge for paying the benefits retrospectively to the petitioners, cannot be sustained—order of learned Single Judge set aside—appeal allowed. **(Paras 7 to 12)**

Case Law Cited

Nisha Priya Bhatia vs. Union of India and Anr., **(2020) 13 SCC 56**; Oriental Bank of Commerce vs. Sunder Lal Jain & Anr., **(2008) 2 SCC 280—Relied Upon.**

List of Acts

Bihar Agricultural and Rural Area Development Agency Act, 1978.

List of Keywords

Pay-scale benefits; employee; administrative posts; salary.

Case Arising From

From judgment and order passed in Civil Writ Jurisdiction Case No. 7583 of 2021 by learned Single Judge.

Appearances for Parties

For the Appellants: Mr. Vinay Kirti Singh, Sr. Advocate; Mr. Binay Kumar Pandey, AC to GA2.

For the Respondents: Mr. Uma Shankar Prasad, Sr. Advocate.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.420 of 2022
In
Civil Writ Jurisdiction Case No.7583 of 2021

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1. The State of Bihar through the Secretary, Water Resources Department Old Secretariat, Sinchai Bhawan, Government of Bihar, Patna.
 2. The Secretary, Water Resources Department, Old Secretariat, Sinchai Bhawan, Government of Bihar, Patna.
 3. The Principal Secretary, Department of Finance, New Secretariat, Government of Bihar, Patna.
 4. The Director, Water and Land Management Institute (WALMI), Phulwarisharif, Patna.
 5. The Deputy Secretary, Command Area Development Directorate, Water Resources Department, Old Secretariat, Sinchai Bhawan, Bihar, Patna.
 6. The Superintending Engineer, Command Area Development Circle, Combined Building, Muzaffarpur.

... .. Appellant/s

Versus

1. Jagdish Prasad Sinha S/o Late Indra Lal Singh, R/o Village- Chinia Bela, P.S.- Punpun, Distt- Patna. Superannuated from the post of Surveyor cum In- Charge Junior Engineer, Investigation and Planning Division, Gandak Area Development Agency Chhapra.
2. Chandeshwar Prasad Yadav, S/o Late Ganga Prasad Yadav, R/o Village- Habbipur, Post- Jatdumari, P.S.- Punpun, Distt.- Patna. Superannuated from the post of Surveyor, Investigation and Planning Division, Gandak Area Development Agency Motihari, East Champaran.
3. Nageshwar Yadav, S/o Late Deoki Prasad Yadav, R/o Village- Habbipur, Post- Jatdumari, P.S.- Punpun, Distt.- Patna. Superannuated from the post of Surveyor, Investigation and Planning Division, Gandak Area Development Agency Chapara Division, Saran.
4. Surendra Prasad Singh, S/o Late Ram Nagina Singh, R/o Vill and Post- Dariyapur, P.S. Parsa Bazar, Distt- Patna. Superannuated from the post of Surveyor, Investigation and Planning Division, Gandak Area Development Agency, Siwan.
5. Radha Pandey, S/o Late Baleshwar Pandey, R/o Village and Post- Dariyapur, P.S.- Parsa Bazar, Distt.- Patna. Superannuated from the post of Treasurer Guard, form the office of Investigation and Planning Division, Gandak Area Development Agency, Muzaffarpur.
6. Om Prakash Singh, S/o Late Sidheshwar Singh, R/o Mohalla- Noormohiuddinpur (Shivnagar Road No. 2), Post- Punpun, P.S. Parsa Bazar, Distt- Patna. Superannuated from the post of Junior Engineer, form the office of Investigation and Planning Division, Gandak Area Development Agency, Bettiah, West Champaran.
7. Mostt Chinta Devi W/o Late Prem Sao @ Prem Kumar Gupta, R/o Mohalla- Noormohiuddinpur (Shivnagar Road No.2), Post- Punpun, P.S.- Parsa Bazar, Distt- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vinay Kirti Singh, Sr. Advocate



Mr. Binay Kumar Pandey, AC to GA2

For the Respondent/s : Mr. Uma Shankar Prasad, Sr. Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)**

Date : 11-04-2023

The writ petitioners were employees of Gandak Area Development Agency (for short 'GADA'). They were granted pay scale benefits under 5th pay revision with effect from 01.01.2009 and 6th pay revision with effect from 01.04.2012. Claiming the said benefits and consequences thereof with effect from January 2002 and April 2007 respectively, they filed the writ petition. The same has been allowed, hence the State of Bihar has preferred the instant Letters Patent Appeal against the order of the writ Court dated 13.04.2022.

2. Learned senior counsel appearing on behalf of the appellants submits that the order under appeal is unsustainable for the fact that directions have been issued to grant the 5th and 6th pay benefits to the petitioner with effect from 01.01.2002 to 31.12.2008 and 01.04.2007 to 31.03.2012, even though there is no decision of the Board extending benefits of 5th and 6th pay from the dates with effect from which it has been granted.

3. The Court's attention has been drawn to the Bihar



Agricultural and Rural Area Development Agency Act, 1978 (hereinafter referred to as '1978 Act'). The same specifies the regulation making power of the Board. Section 39(2)(c) specifies the power of the Board to make regulations providing for appointments, promotions and conditions of services of officers and servants of the agency, but "with the previous approval of the State Government". According to him, there is no decision preceded by approval of the State Government for granting benefits of 5th and 6th pay scale with effect from the dates, as claimed by the petitioner. Findings of the Hon'ble Single Judge, therefore, that the 5th and 6th pay scale were due to the petitioner from the dates claimed by them under any policy evolved by the State Government or any statutory decision, are without any basis.

4. Learned senior counsel representing the private respondents, however, submits that the disciplinary control and appeal rules of the State Government have been made applicable to the petitioners. They have since inception of the GADA been treated at par with government servants. It is also submitted that the Board of GADA has also taken resolution/s that till such time service conditions approved by the Board are put in place, the employees of GADA (petitioners) will be



governed by the government rules and extended service condition benefits applicable to the government servants. He, therefore, submits that the order of Hon'ble Single Judge extending 5th and 6th pay benefits with effect from the dates applicable to the government servants is just and due to the writ petitioners/respondents.

5. On consideration of rival submissions, this Court would find that the applicability of the 1978 Act to the GADA and its employees is not in dispute. Sections 39 of the 1978 Act reads as follows:

"39. Power to make Regulations

(1) The Board may, with the previous approval of the State Government make Regulations not inconsistent with the provisions of this act of the rules made there under, for carrying out its functions under this ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such Regulations may provide for all or any of the following matters, namely:-

(a) procedure for conduct of business at the meetings of the Board and the Executive committee;

(b) Functions, powers and duties of officers and



servants of the Agency;

(c) appointments, promotions and conditions of services of officers and servants of the Agency;

(d) manner in which charges, rates, dues etc shall be fixed and recovered;

(e) punishments for breach of any regulations;

(f) manner of preparation and publication of plans programmes, etc.

(3) such regulations shall be published in the official Gazette and the regulations shall have effect from the date of such publication;

(4) The provisions of sub-section (3) of Section 38 shall apply to all such regulations made by the Board."

6. The Act, therefore, is unambiguous in its intent that the conditions of service of officers and servants of the GADA may be prescribed by the Board by making regulations, but "with the previous approval of the State Government".

7. It is by now settled as is apparent from the decision of the Apex Court in the case of **Nisha Priya Bhatia vs. Union of India and Anr.** reported in **(2020)13 SCC 56** that salary and pay scales are part of "conditions of services" as mentioned in Section 39(2)(c) of the 1978 Act. In paragraph No. 41 of the



decision in the case of **Nisha Priya Bhatia** (supra) the Apex Court has dealt with the expression “condition of service” in the following words:-

“41.The phrase “conditions of service” is not a phrase of mathematical precision and is to be understood with its wide import. The natural, logical and grammatical meaning of the phrase “conditions of service” would encompass wide range of conditions relating to salary, time period of payment, pay scales, dearness allowance, suspension and even termination of service.....”

8. It is, thus, clear that the officers and servants of the Agency can claim pay scales only as prescribed by the Board with previous approval of the State Government. In absence of any such prescription, to grant revised scale of pay w.e.f. from a particular date, the officers and servants of the GADA cannot claim any right for grant of the same.

9. It is also by now a settled proposition of law that only if a right exists, a person can approach a writ Court for issuance of any directions for enforcement of the right. The Court in this connection would refer to para 12 of decision of the Hon'ble Apex Court in the case of **Oriental Bank of Commerce -versus- Sunder Lal Jain & Anr.** reported in (2008) 2 SCC 280,



extracted below:-

"12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145 : AIR 1977 SC 2149] after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah [AIR 1966 SC 334] , Rai Shivendra Bahadur (Dr.) v. Nalanda College [AIR 1962 SC 1210] and Umakant Saran (Dr.) v. State of Bihar [(1973) 1 SCC 485 : AIR 1973 SC 964] this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case [(1977) 4 SCC 145 : AIR 1977 SC 2149] , SCC pp. 152-53)

"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. ... In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant Bank to declare their account as NPA from 31-3-2000 and apply RBI Guidelines to their case."

10. There being no such right based on any decision of the Board of GADA with previous approval of the State



Government for grant of 5th and 6th pay scales for the period 01.01.2002 to 31.12.2008 and 01.04.2007 to 31.03.2012 respectively, directions of the Hon’ble Single Judge for paying the same to the petitioners, cannot be sustained.

11. We, therefore, set-aside the order dated 13.04.2022 passed by the Hon’ble Single Judge.

12. L.P.A. is allowed and the writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sumit/-

AFR/NAFR	AFR
CAV DATE	NA
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