

SUPREME COURT OF INDIA

Bihar State Beverages Corporation Ltd.

Vs.

Naresh Kumar Mishra

C.A.No.1468-69 of 2019

(L.Nageshwarao and M.R.Shah,JJ.,)

05.02.2019

JUDGMENT

M.R.Shah,J.,

SLP(C)No.29890-29891of 2017

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court of Judicature at Patna dated 19.7.2017 in Letters Patent Appeal No. 162 of 2016 in CWJC No. 9760 of 2012 and in Letters patent Appeal No. 568 of 2016 in CWJC No. 3224 of 12, by which the Division Bench has allowed the said Letters Patent Appeals and has set aside the order passed by the learned Single Judge passed in CWJC No. 9760 of 2012 and CWJC No. 3224 of 2012 dismissing the said writ petitions and, consequently, allowing the petitions by holding that the respective original Writ Petitioners - Respondents herein, the employees of the Appellant - Bihar State Beverages Corporation Limited (hereinafter referred to as the "Corporation") are entitled to the 6th Pay Revision, the Appellant Corporation has preferred the present Appeals.
3. That all the original Writ Petitioners are working with the Appellant Corporation on different posts since 2006. That the Appellant Corporation came into existence in view of the decision of the State Government in the year 2006 when it was incorporated as a Government Company in terms of Section 617 of the Companies Act with its main objective being to improve the excise revenue of the Government of Bihar. It appears that a decision was taken not to make any appointment in the Corporation by direct recruitment, but to bring the employees by way of contract/deputation from amongst the employees of the other Board and Corporation and also from retired employees of the Board and/or Corporation of the State or the Central Government. Therefore, as such, there is not a single employee working with the Corporation appointed by the Corporation by way of direct recruit. The Appellant Corporation issued an Advertisement on 18.8.2006 for making appointment by way of contract/deputation of the employees of other Board and

Corporation and also from the retired employees of the Board and/or Corporation of the State or Central Government. Such appointment was to be made on the post of Manager, Accounts Officer, Accountant, Assistant Accountant, Depot Manager etc. The advertisement also prescribed pay scale which was then prevalent in the State Government as per the recommendation of the 5th Pay Revision Committee. The respective original Writ Petitioners in both the writ petitions were the employees of the Bihar State Corporation Coordinating Unit (BISCOMAUN); Bihar State Pharmaceutical and Chemical Development Corporation; Bihar State Handloom and Handicraft Development Corporation; Sone Command Area Development Agency; Land Mortgage Bank; Pandaul Co-operative Spinning Mills Ltd., as the case may be. That, all of them applied pursuant to the aforesaid advertisement. All of them were selected on various posts in the Corporation.

3.1 It appears that the employees working with the Corporation were denied the benefit of the pay scale as per the recommendations of the 6th Pay Revision Committee. It appears that, as such, the Board of Directors of the Corporation in its meeting dated 18.5.2010 resolved that the employees appointed on deputation/contract would be granted revised pay scale. However, the Finance Department raised an objection against grant of revision of pay scale as per the 6th Pay Revision Committee to the employees on deputation and/or contract basis working with the Appellant Corporation and advised the Corporation to grant the benefit of 6th Pay Revision Committee only to the employees of the Corporation and not the employees working in the Corporation on deputation. It appears that, thereafter, the Board of the Corporation in its meeting passed a resolution on 27.3.2012 (as per the Corporation, the said resolution was passed in the light of the letter dated 30.11.2011 of the State Government) and it was resolved that all those employees working with the Appellant Corporation on deputation shall be paid the pay scale payable in their parent Corporation and deputation allowance.

3.2 Therefore, the original Writ Petitioners preferred the aforesaid writ petitions before the High Court for an appropriate direction to the Corporation to grant them the pay scale of 6th Pay Revision Committee with effect from 1.1.2006 notionally and financial benefit with effect from 1.4.2007. In CWJC No. 9760 of 2012, one additional prayer was made for quashing of the resolution of the Board of Directors dated 27.3.2012.

4. That the learned Single Judge though found that if the resolution dated 27.3.2012 is implemented, in that case, there will be disparity in the payment of salary to the original writ petitioners and other employees of the Corporation working on deputation and doing the same nature of work for the same post, dismissed both the petitions on the ground that if the original Writ Petitioners who are on deputation are given the pay scale of the 6th Pay Revision Committee, the other employees working in the parent Corporation would be getting the less salary as their respective parent Corporations/Boards have not implemented and/or granted the benefit of the 6th Pay Revision Committee. By dismissing the writ petitions, learned Single Judge also considered Rule 282 and 283 of the Bihar Service Code. However, while dismissing the petitions, the learned Single Judge gave the liberty to the writ petitioners to file the individual representation explaining the disparity in the

matter of payment of their salary viz-a-viz their counter-part working on the same post and doing the same nature of work and directed the Corporation to take an appropriate decision. Learned Single Judge also observed that if such decision is in favour of the Writ Petitioners, then the said decision shall be given effect from 15.5.2012, the date on which the Corporation's decision dated 27.3.2012 was implemented.

4.1 Feeling aggrieved and dissatisfied with the judgment and order of the learned Single Judge dismissing the writ petitions, the original Writ Petitioners preferred the aforesaid Letters Patent Appeal No. 112 of 2016 and Letters Patent Appeal No. 568 of 2016. That, by impugned common judgment and order, the Division Bench has allowed both the Letters Patent Appeals and quashed and set aside the common judgment and order passed by the learned Single Judge and consequently the resolution of the Corporation dated 27.3.2012 and directed the Corporation to follow the "Principle of Equal wages for equal work" in the matter of grant of pay scale. The Division Bench also directed the Corporation to pay the revision of pay scales in terms of the 6th Pay Revision Committee and resolution of the Board of Directors dated 18.5.2010.

4.2 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench, the Bihar State Beverages Corporation Ltd. and others have preferred the present appeals.

5. Learned counsel appearing on behalf of the Appellant Corporation has vehemently submitted that, in the facts and circumstances of the case, the Division Bench of the High Court has erred in quashing and setting aside the resolution of the Corporation dated 27.3.2012, as well as has materially erred in directing the Appellant Corporation to grant pay scale to the Respondents in terms of 6th Pay Revision Committee. It is vehemently submitted by the learned counsel appearing on behalf of the Appellant Corporation that while passing the impugned judgment and order and granting the reliefs, the Division Bench has not properly appreciated and/or considered the provisions contained under Rule 282 and 283 of the Bihar Service Code. It is submitted that, therefore, the impugned judgment and order passed by the Division Bench of the High Court is thus contrary to the statutory provisions, more particularly, Rule 282 and 283 of the Bihar Service Code. It is submitted that considering Rule 282 and 283 it was decided to pay salaries to the Respondents herein in the scale which they are/were getting in their parent organizations. It is submitted that, therefore, the Resolution dated 27.3.2012 cannot be said to be either discriminatory and/or violative of Articles 14 and 16 of the Constitution of India.

5.1 It is further submitted by the learned counsel appearing on behalf of the Appellant Corporation that, as such, the Appellant Corporation had not fixed any scale for any post before engaging any of the Respondents. It is submitted that the only standard fixed by the Corporation was the pay scale received by them in their parent organization and as all the Respondents are from different Boards/Organizations, they cannot claim parity in the pay scale from the Corporation, since the Corporation does not have permanent employees of its own and the Respondents have not even been absorbed by the Appellant Corporation.

5.2 It is further submitted by the learned counsel appearing on behalf of the Appellant Corporation that, even otherwise, the Division Bench of the High Court has materially erred in granting the reliefs by applying the “Principle of equal pay for equal work”. It is submitted that as the Respondents are “not equal” to the State Government employees nor employees of the Appellant Corporation and, therefore, the “Principle of equal pay for equal work” shall not be applicable. It is submitted that as held by this Court in State of Haryana v. Charanjeet Singh (2006) 9 SCC 321, the “Principle of equal pay for equal work” cannot apply unless there is a complete and wholesale identity between two groups.

5.3 It is further submitted by the learned counsel appearing on behalf of the Appellant Corporation that the High Court has failed to appreciate and consider the fact that the Appellant Corporation has a separate legal entity and must always be treated as a foreign service.

5.4 It is further submitted that none of the Respondents - original Writ Petitioners were appointed on permanent basis with the Appellant Corporation and had their lien still continuing with the parent organization and all are working with the Appellant Corporation either on deputation or on contract basis. It is submitted that none of the parent organizations of the respective Respondents has yet implemented the 6 th PRC. It is submitted that, therefore, as the Respondents were working with the Appellant Corporation on deputation and/or on contract basis, shall not be entitled to the pay scale as per the 6 th PRC. It is submitted that, therefore, the High Court has materially erred in directing the Appellant Corporation to pay/grant pay scale to the Respondents in terms of the 6 th PRC.

5.5 Making the above submissions, it is prayed to allow the present Appeals.

6. Both these appeals are vehemently opposed by the learned counsel appearing on behalf of the original Writ Petitioners.

6.1 It is vehemently submitted by the learned counsel appearing on behalf of the Respondents herein - original Writ Petitioners that the impugned judgment and order passed by the Division Bench of the High Court is absolutely in line with Rule 282 and 283 of the Bihar Service Code, which permits the organization in which a Government employee is sent on deputation to offer and pay more benefits/salary to the extent of 25%. It is submitted that, even otherwise, Rule 282 and 293 of the Bihar Service Code shall not be applicable as none of the Respondents was an employee of the Government.

6.2 It is further submitted by the learned counsel appearing on behalf of the Respondents herein that, even otherwise, on the “Principle of Equal Pay for Equal Work” and having found that there cannot be any separate pay scale for the employees of the Corporation doing the same/similar work. It is submitted that, as such, even the learned Single Judge also specifically observed that there is a disparity in the pay scale amongst the employees of the Corporation itself and,

therefore, even the learned Single Judge also allowed/permitted the original Writ Petitioners to make a representation to the Corporation.

6.3 It is further submitted by the learned counsel appearing on behalf of the Respondents herein that at the time when the advertisement was issued inviting the applications, in the advertisement itself, specific pay scales against the respective posts were mentioned. It is submitted that, thereafter, to pay anything less than what was stated in the advertisement would be changing the conditions of service, which is not permissible.

6.4 It is submitted that, therefore, having specifically found that there shall be disparity in the pay scale amongst the employees of the Corporation, the same shall be violative of Article 14 of the Constitution of India, even applying the “Principle of Equal Pay for Equal Work”, the High Court has rightly quashed and set aside the Resolution dated 27.3.2012.

6.4 Now, so far as the impugned judgment and order passed by the Division Bench of the High Court directing the Appellant Corporation to grant the pay scale to the Respondents as per the 6th PRC is concerned, it is submitted that, as such, the Corporation itself in the year 2010 took a conscious decision to adopt and grant the benefit of 6th PRC to the employees of the Corporation. However, it was on the advice of the Finance Department, the Corporation did not grant the benefit. It is submitted that the Finance Department advised that the benefit of 6th PRC can be given to the permanent employees of the Corporation and may not be given to the employees who are on deputation or on contract basis. It is submitted that it is an admitted position that there is not a single employee working in the Corporation who is appointed on permanent basis and the entire staff/employees of the Corporation are either on deputation or contract basis who are/were employees of other Boards/Corporations. It is submitted that, therefore, the Division Bench of the High Court has rightly observed that such an advice of the Finance Department is a non-application of mind. It is submitted that, therefore, the High Court has rightly granted the relief and has rightly directed the Appellant Corporation to pay the pay scale as per the 6th PRC as per their own decision in 2010.

6.5 Making the above submissions, it is prayed to dismiss the present appeals.

7. Heard learned counsel appearing on behalf of the parties at length.

7.1 At the outset, it is required to be noted that by impugned judgment and order the Division Bench of the High Court has directed the Appellant Corporation to grant the benefit of pay scale to the Respondents herein - original Writ Petitioners as per the 6th PRC, as per the decision of the Corporation itself in 2010. By the impugned judgment and order, the High Court has also quashed and set aside the resolution of the Corporation dated 27.3.2012, by which it was resolved to pay the salary to the employees of the Corporation as is being paid to the employees working in the parent organizations.

8. Now, so far as the quashing and setting aside the resolution dated 27.3.2012 by which the Corporation resolved to pay salary to the employees of the Corporation as is being paid in the parent Board/parent organization is concerned, it is required to be noted that it is not in dispute that the respective original Writ Petitioners are on deputation from different Boards/Organizations. Therefore, if the resolution dated 27.3.2012 is permitted to be implemented, in that case, there shall be disparity in the pay scale/salary of the employees of the Corporation doing the same/similar work. There may be different pay scales/salaries in the respective parent organizations. However, when they are working with the Corporation and doing the similar work, they have to be paid the salary which is paid to other employees doing the same/similar work. It is not in dispute that the employees working on different posts in the Corporation are doing the same/similar work. Therefore, the Division Bench of the High Court has rightly applied the 'Principle of Equal Pay for Equal Work' and has rightly quashed and set aside the resolution dated 27.3.2012.

8.1 Challenge to the resolution dated 27.3.2012 is also required to be considered from another angle. At the time of advertisement and inviting the applications, the employees were offered the specific pay scales against respective posts. It appears that the pay scale which was offered and thereafter paid by it till the resolution dated 27.3.2012 was at par with the pay scale paid to the Government employees as per the 5th PRC. Therefore, thereafter, to pay any salary/pay scale lesser than what was offered at the time of inviting the applications would be changing the conditions of service, which is not permissible.

8.2 Now, so far as the reliance placed upon Rule 282 and 283 of the Bihar Service Code by the Appellant Corporation is concerned, even on considering Rule 282 and 283 of the Bihar Service Code, it cannot be said that the person sent on deputation cannot be paid any more salary/emoluments than what was paid to the Government servant while working with the Government. Rule 283 reads as under:

“Rule 283: (a)The pay which a Government servant is to receive in foreign service shall be precisely specified in the order sanctioning his transfer. If it is intended that he shall receive any remuneration, or enjoy any concession of pecuniary value, in addition to pay proper, the exact nature of such remuneration, or concession shall be similarly specified; and no Government servant shall be permitted to receive any remuneration or to enjoy any concession which is not to be so specified.

(b)In determining an appropriate rate of pay, the authority sanctioning a transfer to foreign service, shall take into account the value of any concessions which the Government servant may be permitted to enjoy, such as -

(i) The payment by the foreign employer of contributing towards, leave salary and pension;

(ii) the grant of free residential accommodation and any benefit or advantages connected therewith; and

(iii) the grant of traveling allowance at special rates, and the use of tents, conveyances, animals etc., belonging to the foreign employer.

(c) The terms granted to a Government servant who is transferred to foreign service shall not be so greatly in excess of remuneration which he would receive in Government service, as to render foreign service appreciably more attractive than Government service.

(d) No order of transfer to foreign service shall be issued by the State Government without previous consultation with the Finance Department.

(e) In cases where the power to sanction such transfer has been delegated to a subordinate authority, the initial pay of the Government servant transferred shall not, without the special orders of the State Government, exceed by more than 25 percent, the substantive pay last drawn by him in Government service and no concessions in addition to pay shall be sanctioned except the following:- (i) the payment by the foreign employer of contributions towards leave salary and pensions; and (ii) the grant of travelling allowance on the scale prescribed in the Bihar Travelling Allowance Rules.”

8.3 On fair reading of Rule 283(c) and Rule 283(e), it can be seen that it is permissible for the foreign service to pay something more than what the employees were getting in the parent department. Therefore, the interpretation on behalf of the Corporation on reading Rule 283 that the employee sent on deputation to a foreign service has to be paid the same salary/pay scale which he was getting in the parent department, cannot be accepted. Therefore, reliance placed on Rule 282 and 283 of the Bihar Service Code while passing the resolution dated 27.3.2012 was absolutely either misplaced and/or on mis-interpretation and, therefore, the same is rightly set aside by the High Court. We are in complete agreement with the view taken by the Division Bench in quashing the resolution dated 27.3.2012.

9. Now, so far as the impugned judgment and order passed by the High Court directing the Appellant Corporation to grant pay scale to the Respondents herein - original Writ Petitioners as per the 6th PRC is concerned, it is required to be noted that, as such, the Appellant Corporation itself took a conscious decision in the year 2010 to grant the benefit of 6th PRC to the employees working with the Corporation. However, on the advice of the Finance Department that the Corporation may grant the benefit of 6th PRC to their permanent employees and not to the employees on deputation, the Corporation thereafter took a decision not to grant the benefit of the pay scale as per the 6th PRC. As rightly held by the Division Bench of the High Court, the advice by the Finance Department was non-application of mind, inasmuch so far as the Corporation is concerned, there is not a single employee appointed by the Corporation on permanent basis and the entire staff is either on deputation or on contract basis from other Boards/organizations. Therefore, the Division Bench of the High Court has rightly directed the Appellant Corporation to grant the pay scale to the Respondents - original Writ Petitioners as per the 6th PRC. However, at the same time, it is to be clarified that they will get the pay scale as per the 6th PRC so long as

they continue to work with the Appellant Corporation and as and when they are repatriated, in that case, they shall be governed by the pay scale paid to the employees in the parent Board/Organization.

10. In view of the above submissions and for the reasons stated hereinabove, both the present Appeals fail and they deserve to be dismissed and are accordingly dismissed. However, it is clarified that the original Writ Petitioners shall be entitled to the pay scale as recommended by the 6th PRC so long as they work in the Appellant Corporation and as and when and in case they are repatriated to their parent Board/Organization they shall be governed by the pay scales paid to the employees of the concerned parent Board/Organization. No costs.