



Right to Salary/Earned wages of Public Servants: An overview

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Abstract

The expression “salary” means “fixed payment made periodically to an employee as compensation for regular work”. The “wages” means “a compensation given to a hired person for services rendered”. The expression “wages” and “salary” bear almost the same meaning. Every employee has right to get fair and just emoluments and thus non-payment of reasonable salary would amount to violation Article 21 of Constitution of India. The plea of invalidity of appointment cannot be taken by the state or employer denying salary for services rendered. Even illegally appointed person is entitled to his salary prior to the date of termination. The employee may claim interest on arrears of salary as a matter of right under Article 14, 19 and 21 of constitution.

Keywords: salary, wages, rights

1. Introduction

According to the legal glossary, the expression “wages” means “a compensation or remuneration given to a hired person for his or her services”^[1]. The expression “salary” means, “fixed payment made periodically to a person as compensation for regular work (now usually for non-manual work)”^[2]. The words “wages” and “salary” by and large thus bear almost the same meaning^[3], and both are the integral and intrinsic part of human rights, “Pay” is also almost synonymous to the word “salary”. The words “pay” and “pay scale”, as per service jurisprudence, are conceptually different. “Pay” is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him against the services done. There are different types of pay like ‘substantive pay’, ‘special pay’, ‘Additional pay’, ‘personal pay’, ‘presumptive pay’ etc.

The ‘pay’ of an employee does not remain static and this is almost universal rule in Public Services. An employee starts with a particular pay (called ‘initial pay’) and thereafter increase with the increments as well as pay revisions. The increments are usually automatic unless they have been withheld as a punishment^[4]. But sometimes increments are also linked with efficiency in service and this is achieved by intersecting an efficiency bar at certain point of the pay scale. A pay scale has different stages starting with initial pay and ending with a ceiling, each stage in the scale is commonly referred to as basic pay^[5].

A ‘pay scale’ has basically three elements. The first is the minimum pay or initial pay in the pay scale. The second is the periodical increment. The third is the maximum pay in the pay scale. An employee starts with the initial pay in the pay scale and gets periodical increase (i.e. increments) and reaches the maximum or ceiling in the pay scale. Each stage in the pay scale starting from the initial pay and ending with the ceiling in the pay scale, when applied to an employee is referred to “basic pay” of the employee. Whenever the Government revises the pay scales, a fitment exercise takes place as per principle of fitment (formula) provided in the rules governing the revision of pay so that the “basic pay” in the old scale is converted into a “basic pay” in the revised pay scale^[6].

In order to be entitled to draw a particular pay scale, the employee must fulfil the eligibility conditions whether by way of qualification or otherwise^[7]. However entitlement cannot be denied by reason of super-imposition of an eligibility criteria by an authority not authorized to do so^[8]. Reduction of pay scale cannot be made without compliance of natural justice^[9]. Deputationists and regular employees performing same duties are entitled to the same pay scale^[10].

2. Increments in pay scale

An employee advances from the lower point of scale to the higher by periodical increases and these additions in pay scale are called the “increments”. Thus, it is often stated that increment occurs in the same pay scale, whereas a promotion is from one scale to higher scale^[11]. The concept of ‘promotion’ includes ‘promotion to a higher pay scale’ in the same or higher post^[12]. Generally increment takes effect from the anniversary of the date of appointment^[13]. Mere acquisition of educational qualification for a post will not result in entitlement to the higher pay applicable to that post without being appointed to that post^[14].

The granting or withholding of increments is mostly governed by statutory rules. Withholding of increments without holding a proper enquiry is bad in law^[15]. Since the regulation permitted grant of extraordinary leave without pay in order to accept “invitation” to a teaching job in foreign University, the refusal to grant increment based on objection of state cannot be held to be arbitrary^[16].

3. Right to Salary/Wages

The state cannot deprive anyone of the previous and valuable right to live with human dignity and thus non-payment of just and fair wages/salary violates Article 23 of Constitution of India and such non-payment/denial of pay would amount to taking work by force^[17]. Non-payment of salary would also amount to violative of Article 21 of the Constitution^[18]. There can be no withholding or withdrawal of pay without an opportunity of hearing to the employee concerned, and without a proper disciplinary enquiry^[19].

The employee must be paid fair and just emolument because

non-grant of just and fair emolument to employees amounts to taking forced labour which is prohibited in law ^[20]. The Hon'ble Division Bench of Patna High Court in 'A.K. Ojha-V-State of Bihar' ^[21], held; *"4. Article 21 of the Constitution is a guarantee to life and liberty. Right to life means something more than survival or animal existence. It includes the right to live with human dignity. It includes all those aspects of life which go to make a man's life meaningful, complete and worth living. It includes in its ambit the right of a person to receive equitable and fair emoluments from his employer"*.

Another Bench of Hon'ble Patna High Court in 'Balo Rai-V-State of Bihar' ^[22], also held that the right to get "a proper pay scale" can no longer be denied having regard to the ever expanding sweep of Article 21 of Constitution and thus the matter of pay scale has to be tested on the anvil of "Social justice" which is the live fibre of our society today. The Hon'ble High Court held; *"36. The horizon of Articles 14 and 21 has been widened by various judgements of the Apex Court. Any action of the state which is unfair and unjust falls foul of the guarantee of Article 14. Principles of natural justice is also considered a facet of the guarantee of Article 14. The right of the petitioner to get 'a proper pay scale' can no longer be denied having regard to the ever expanding sweep of Article 21. The matter of pay of workers has to be 'tested on the anvil of 'social justice' which is the live fibre of our society today"*.

As the social justice demands, the Supreme Court has held that the wages of the piece-rated workman should be increased on line with the increased wages of time-rated workmen. The state cannot deny to casual worker at least the minimum pay scale as payable to the regular employees even though the government may not be compelled to extend all the benefits enjoyed by a regularly remitted employee and such denial amounts to exploitation ^[23]. Rule of 'no work, no pay' is not applicable in case employee was kept out of work by authorities for no fault of the employee. Payment of wages less than prescribed minimum wages amounts to forced labour ^[24].

4. Plea of invalidity of appointment to deny salary/earned wages

Some employer are often seen prejudicially denying salary or earned wages on the ground that initial entry into service of employee was some-how irregular or illegal. The Hon'ble Patna High Court in 'Nayan Kumar Munsu-V-V.C., B.N. Mandal University' ^[25], held that the plea of invalidity of appointment and similar disputes relating to the nature of appointment and engagement of employee cannot be raised for the purpose of payment of earned wages. The Hon'ble Division Bench of Patna High Court in 'Gautam Kumar Chaudhary-V-The State of Bihar' ^[26], held that even in the case of illegal appointment, the person is entitled for payment of salary for the period he has worked. The another Bench of Patna High Court in 'Ishrat Parveen-V-State of Bihar' ^[27], held that the employee cannot be denied salary for the period she has worked even if her appointment was found illegal on the ground of not fulfilling the age eligibility. Similar views were expressed by Hon'ble Patna High Court in 'Indradeo Kumar Singh-V-The State of Bihar' ^[28], also.

Salary of an employee cannot be withheld for longer period suspecting illegality or forgery and lodging FIR will also not suffice to withhold salary ^[29].

Salary of an employee cannot be withheld in absence of suspension or departmental proceeding even if facing criminal charges ^[30].

A Government servant has an enforceable right to salary in respect of his period of duty. The Hon'ble Supreme Court has held in 'Centre Electricity Supply of Odisha-V-Dhobei Sahoo' that "denial of pay for the service tantamount to forced labour which is impermissible when an appointment is admitted and incumbent functions in the post and neither suspended nor removed from service, he is entitled to get salary for it is his legal right and it is duty of the employer to pay it as per terms and condition of the appointment ^[31].

When an employee, whose services were terminated illegally, is reinstated in service, he is entitled to full wages during the period of his illegal termination unless he was gainfully employed elsewhere during the enforced idleness ^[32]. Any employee working on higher post in officiating capacity is entitled to the pay scale of such higher post ^[33].

Salary of a Government employee cannot be withheld for sufficiently a longer period on the plea of audit objection in absence of a departmental proceeding ^[34]. An employee cannot be prevented from working and denied salary on the ground of illegality of his appointment without arriving logical conclusion through the departmental enquiry ^[35].

Salary cannot be denied on the ground that the employee disobeyed the transfer order but record was showing that he was never relieved from the college. The Patna High Court held that in absence of any departmental proceeding taken against the employee, it would be presumed that he has been allowed to work in the college-in-question and thus he would be entitled for his salary ^[36]. The employee cannot be denied benefit of back-wages on the ground that he has not worked if he was illegally kept out of work ^[37]; or his illegal transfer has been set aside by the court; or no relieving letter was served to the transferred nor any disciplinary proceeding initiated for transfer order ^[38].

An employee can claim interest on arrears of salary even in absence of statutory rules relying upon Article 14, 19 and 21 of the Constitution ^[39]. A person deprived of the use of money to which he is legitimately entitled, has a right to be compensated for deprivation whether call interest or compensation ^[40].

Salary cannot be withheld pending enquiry regarding genuineness of appointment ^[41]; or without disciplinary proceeding only on the basis of audit objection ^[42].

The plea of invalidity of an appointment cannot be raised after several years of regular services (i.e.10-15 yrs) ^[43]. The authorities cannot raise the plea of illegality of initial appointment after belated stage of over 16 years of services as it would be opposed to the principle of equity ^[44]. If a person is appointed pursuant to selection process without prescribed minimum qualification and he continues in services such appointment is irregular, not illegal, and thus when he achieves the qualification while in udaycontinuing in service, he is entitled to regularization from the date of obtaining the qualification ^[45]. Termination of services after 10 years of services on allegation of illegality is bad in law ^[46].

5. Conclusion

An employee in public service has right to salary in respect of his period of duty. If the employee has taken work from him, the employee concerned is entitled to payment of remuneration and the state or employer is bound to pay. The

plea of invalidity of appointment cannot be taken by the employee at the time of payment of salary for the services rendered. The right to get fair emolument is now a part of right to life and liberty enshrined under Article 21 of Constitution. Non-payment of due salary is a continuous wrong and thus the claim cannot be rejected on the ground of delay and latches.

6. References

1. Sec. 2(rr), Industrial Disputes Act.
2. Legal Glossory, Published by Ministry of Law, Justice and Company Affairs, Govt. of India, New Delhi, 2001
3. Madhav-V-State of M.P.; AIR 1962 SC 908.
4. See: Rule II (iv), Central Civil Services Classification, Control and Appeal Rules, 1965.
5. State Bank of India-V-K.P. Subbaiah; AIR 2003 SC 3016; (2013) 11 SCC 646.
6. Col. B.J. Akkara (Retd.)-V-Govt. of India; (2006) 11 SCC 709.
7. Gurpal Tuli-V-State of Punjab; AIR 1984 SC 1901.
8. State of Maharastra-V-Asso. of Maharastra Education Service, Class II Officers, AIR 1974 SC 2184.
9. Vidya Sagar Mishra-V-Union of India; Teaching & Non teaching Staff Association-V-State of Bihar; 1994 (1) BLJ 732.
10. M.P. Singh-V-Union of India; (1987) 1 SCC 592.
11. State Bank of India-V-Presiding Officer, Central Govt. Lab. Court; AIR 1972 SC 2189.
12. Union of India-V-S.S Ramade; (1995) 4 SCC 462.
13. Ibid.
14. State of Haryana-V-Kamal Singh Saharwat; AIR 1966 SC 1654.
15. Gordhanbhai Ambalal Patel-V-State of Gujrat; 1992(1) SLR 536 (Guj.)
16. Vice-Chancellor, M.D. University-V-Johan Singh; (2007) 5 SCC 77.
17. Awadh Kishore Sharma-V-Chandra Mohan Jha; 1995 (2) PLJR 632.
18. Jarnail Singh-V-Khalso High School, Ambala City; 2005(5) SLR 158 (P&H) (DB); Awadh Kishore Sharma-V-State of Bihar; 2011(2) PLJR 1043.
19. Munna Ram-V-U.O.I; 2005(2) SLR 136 (Del.) (DB).
20. Ram Pati Mishra-V-State of Bihar; 2001(3) PLJR 462.
21. A.K. Ojha-V-The State of Bihar; 199(2) PLJR 163 (Para 21) (DB).
22. Balo Rai-V-State of Bihar; 1996(2) PLJR 139 (Para 36).
23. Daily Rated Casual Labour in P & T-V-Union of India; AIR 1987 SC 2340.
24. Sanjit Roy-V-State of Rajasthan; AIR 1982 SC 1473.
25. Nayan Kumar Munsri-V-V.C., B.N. Mandal University; 2000(2) PLJR 775.
26. Gautam Kumar Chaudhary-V-The State of Bihar; 2009(1) PLJR 589.
27. Ishrat Parveen-V-The State of Bihar; 2011(4) PLJR 836.
28. Indradeo Kumar Singh-V-The State of Bihar; 1993(2) PLJR 394.
29. Prem Kumar Pandit-V-State of Bihar; 2005(4) PLJR 169.
30. Basudeo Singh-V-State of Bihar; 2003(2) PLJR 638.
31. Central Electricity Supply of Odisa-V-Dhobei Sahoo; AIR 2014 SC 283.
32. Indrawati Devi-V-The State of Bihar; 2007(2) PLJR 661 (DB).
33. Jitendra-V-State of Bihar; 2010 (4) PLJR 419.
34. Dr. Arjun Jha-V-State of Bihar; 2000 (3) PLJR 240.
35. Shiv Nandan Mahto-V-State of Bihar; (2011) 11 SCC 626.
36. Radha Kumari-V-State of Bihar; 2002 (3) PLJR 794 (DB)
37. Lakhan Lal Sharma-V-State of Bihar; 2005(3) PLJR 135.
38. Devendra Kumar Singh-V-State of Bihar; 2005(3) PLJR 119.
39. S.K. Dua-V-State of Haryana; AIR 2008 SC 1077.
40. Secretary, Irrigation Deptt. Of Govt. of Orissa-V-Secretary; AIR 1992 SC 732.
41. Ram Pati Mishra-V-State of Bihar; 2001(3) PLJR 462.
42. Lakhan Lal Sharma-V-State of Bihar; 2005(3) BBCJ 505.
43. Sanjay Rai -V- State of Bihar, 2003 (1) PLJR 159.
44. Veena kumari Jha -V – State of Bihar,2002(2)PLJR601.
45. Uday kumarSingh -V– State of Bihar, 2004(3) PLJR675, Ram Swarup v state of Haryana, (1979)1SCC168,Budhhi Nath Chaudhari -V- (2001)3 PLJR 32.
46. Shanta Bendit Subrice Barta- V-Stat of Bihar, 2001(2), PLJR 583.