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Minutes of the meeting dated 05-03-2024 of the Bihar Human Rights Commission, Bihar, Patna held at 11.30 A.M. (1) Sh. Ananta Manohar Badar, Chairperson present (2) Sh. Ujjwal Kumar Dubey, Member present (3) Sh. Shashi Shekher Sharma, Member Absent.

Agenda number -1

To consider the application of the contract employee of the Commission regarding their salary / honorarium.

Resolution

The subject matter is discussed at length. The contract employee of the Commission had filed an application on 27-11-2023. Their grievance is regarding reduction of their honorarium. They placed reliance on communication 13-01-2020/10-1-2020 issued by the Home Department, Govt. of Bihar mentioning there in that letter no. 3/M-42/2019GAD-9534 dt.17-07-2019 " के अनुपालन के संबंध में कोई बंधेज नहीं है।" Along with their representation they have placed on the record communication letter no. 03/2018/2653 dated 02-04-2018 of the Home Deptt., Govt. of Bihar there by prescribing Honorarium/Salary of the employees of the Bihar Human Rights Commission engaged on the contract basis. As per this communication, the Authorized Committee of the State Government had fixed salary of the contract employees of the



37 BHRC at Rs. 24,080/- and that at Rs.21,780/- for the drivers and office attendant respectively. The employees have also contended that the communication letter 3/M-42/2019सा0प्र0 9534 dated 17-07-2019 of the General Administration Department, Govt. of Bihar whereby the Committee constituted by the State Government for its own employees recommended for unification of salary/honorarium, being of general nature and applicable to the employees of the State Government is not applicable to the contract employees of this Commission.

2. Upon receipt of said application, the Chairperson had directed placement thereof in the meeting of the Commission for appropriate decision. The Commission in its meeting had referred this issue for examination and recommendation to the Two Members Committee comprising of the Additional Director General of Police, BHRC and the Registrar, BHRC. The said committee has submitted its report dated 01-03-2024. That is how the matter is placed before the Commission for taking decision on the application of the contract employees.

3. Considered the record regarding the representation/ application and the report thereon. The Secretary of Commission which is an Executive Officer is present to assist the Commission on this issue. The Commission has perused the detailed office note submitted on this aspect by the office. Unfortunately we are unable to concur with and

accept the objections raised in the office note for rejecting the application. The Secretary of the Commission has submitted that the word “बंधेज” found in the communication has opposite meaning and it implies that the Commission is bounded to accept and implement the recommendation of the State Government found in communication dated 17-07-2019 of the General Administration Department Govt. of Bihar. He contended the earlier order dated 02-04-2018 of the Home Department Govt. of Bihar is modified by the communication dated 17-07-2019 of the General Administration Department Govt. of Bihar and it is binding on the BHRC. He justified his act of reduction of the honorarium of the contract employees of the BHRC

4. At this juncture it is opposite to refer Section 27 of the Protection of Human Rights Act, 1993. It reads as under:-

Section 27. “Officers and other staff of the State Commission-(1)

The State Government shall make available to the Commission--

- (a) An officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission, and**
- (b) Such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.**

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(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government”.

5. Thus statutory provision found in Sec 27(3) is to the effect that the salary allowances and conditions of service of the staff with the Commission shall be such as may be prescribed by the State Government. What is prescribed by the State Government can be found in the communication dated 02-04-2018 issued by the Home Department of the State Government. Perusal of this communication unequivocally shows this communication is expressly applicable to the employee/staff working with the BHRC. This is special decision overrides all general communications /decisions issued prior to this communication. Similarly until and unless special order is issued making that order fixing the salary by the State Government binding on the Commission, general orders of any authority/committee cannot override this special communication fixing the honorarium/salary dated 02-04-2018 which is expressly applicable to the contract employees/staffs of the BHRC. To crown this all, bare perusal of the provision the Protection of Human Rights Act,



1993 makes it clear that the Commission is autonomous body subordinate to none but the statutory provisions of the Protection of Human Rights Act, 1993 creating it. The State Government has limited role only of prescribing the salaries allowances and condition of service of the employees, so far as this issue is concerned. To our mind this prescription of salary by the State Government can be done only by resolution of the State Government made by the following Rules of business. Decision of Committee constituted by the State Government for its own employees Government is not ipso facto applicable to the BHRC.

6. The interpretation sought to be given to the word "बंधेज" by the office is completely absurd, perverse and out of context.

7. It is undisputed position that the Commission has not ordered for reduction of salary/honorarium payable to the contract employees which was being paid to them by virtue of the communication dated 02-04-2018 of the Home Department fixing the quantum of honorarium. The Communication dated 17-07-2019 of the General Administrative Department, Govt. of Bihar is not applicable to the employees /contract workers of the BHRC until and unless it adopted by the Commission by passing resolution to the effect. Communication dated 17-07-2019 is only governing the issue of contract workers engage by the State Government and its department. Leaving aside the



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competency of the General Administration Department, Govt. of Bihar to issue direction to the BHRC without getting the resolution by the cabinet of the State on such issue, even if, communication dated 17-07-2019 is perused, then also it becomes crystal clear that it is not mentioned therein that it shall govern the honorarium payable to the contract employees of the BHRC. The communication dt. 17.07.2019 of the GAD is the general Communication of the State Government applicable to its employees and not under Section 27(3) of the Protection of Human Rights Act, 1993. It cannot override special provision made by the State Government regarding fixation of honorarium/salary to the contract workers of the BHRC by order dt. 02-04-2018 of the Home Department.

8. Upon being ask, the Secretary of the Commission has fairly stated that while reducing the honorarium/ salary of the contract employees of the BHRC as per letter of the General Administration Department dated 17-07-2019 , the action was taken at the level of the Secretary itself and there is no approval thereto either by the Chairperson, BHRC or the BHRC. We remind the Secretary as well as the entire employees of the BHRC that the Secretary is only the Chief Executive Officer of the State Commission and has to function under control of the Chairperson while exercise of all administrative and financial powers of the Commission. The Secretary has no powers to



exercise financial and administrative matters without getting approval of the Chairperson of the BHRC as per mandate of Sec.21 of the Protection of Human Rights Act, 1993. Thus the action of reduction of honorarium of the contract employees without there being any orders from either the Chairperson or by the BHRC is completely null and void ab initio. It is outside the jurisdiction of the Secretary of the BHRC. The action of reduction of honorarium of the contract employees by the Secretary, BHRC without getting approval of the Chairperson is without jurisdiction and as such non-est. The Commission resolves and directs that such illegal act should not be repeated in future.

9. The matter needs to be seen from another angle also. It is well said that rules of the game cannot be changed after start of the game. Service jurisprudence mandates that service conditions of the employees cannot be altered to their prejudice because adverse action apart from causing legal injury results in denying advantage enjoyed by the employee before such actions, in pursuant to the service conditions agreed upon by the both the parties at the time of entering into the contract of the employment. This the act of reduction of honorarium of the contract employees as found in the instance case is violative of the service law as same is not supported by the orders of the BHRC and is made without following the due process of law. Ultimately the contract employees are employees of the Commission and the service condition



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can be altered only under express orders of the BHRC and not by any Officer of the BHRC. Such as the Secretary.

10. In the light of these reasoning and discussion, by accepting the report, the Commission, unanimously resolves that the action of reduction of honorarium/ salary of the contract employees of the BHRC made by office orders including order dated 17-07-2019 issued by the Secretary of BHRC deserves to be held and declared null and void ab initio. All such orders are non-est and deserves to be ignored and the office of the Commission is directed to ignore them while effecting payment of honorarium/salary. Consequently the employees of the BHRC shall be continued to be paid honorarium/salary as prescribed by the State Government vide its order no.2653 dt. 02-04-2018 of the Home Department at the rate of Rs. 24,080/- and Rs. 21,780/- per month to the drivers and office attendants respectively. The arrears if any, to which these employees are entitled because of the resolution which we have pass now shall be paid within one month from the date of resolution.

Agenda No.2

To consider buff-sheet of Hon'ble Member Sh. Ujjwal Kumar Dubey regarding retention of electronic items at depreciated cost.

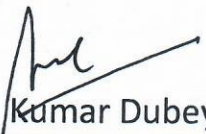
Resolution

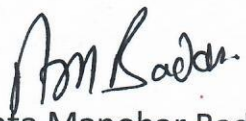
Sh. Dubey the Hon'ble Member rescued from participating in the decision making process of this subject. Sh. Shashi Shekhar Sharma,

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Hon'ble Member is absent today. Hence upon considering the matter thoroughly, it is resolved that the article which are purchased for the office use cannot be allowed to be retained by the Chairperson or Member of the Commission by payment of depreciated cost. However, the Mobile phone and Air pods purchased by the Commission for its Chairperson or Member does not form the articles of the office use. Mobile phones are required to be carried for using it and its use is not limited to the four walls the office of the Commission. Hence, essentially these two articles are articles of personal/ residential use.

Hence it is decided to allow Sh. Dubey Hon'ble Member, BHRC to retain the same and to purchase the same at depreciated cost at the rate which is applied by the Hon'ble High Court of Patna while allowing the Hon'ble Judges to retain these items. The request for retaining other items is not considered presently. The office to take necessary steps for changing ownership details of the retained Mobile Phone. The I-Pad shall be returned by Sh. Dubey on expiry of term of his office.


(Ujjwal Kumar Dubey)
Member


(Ananta Manohar Badar)
Chairperson