

(2017) 01 JH CK 0136
In the Jharkhand High Court
Case No : 1059 of 2015

Amit Kumar

APPELLANT

Vs

The State of Jharkhand & ANR.

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 01 JH CK 0136

Hon'ble Judges : Pramath Patnaik

Bench : SINGLE BENCH

Advocate : Indrani Sen Choudhary, ?A. Allam, ?Nehala Sharmin, ?Anil Kumar, ?
Ashutosh Kr. Singh, Chandana Kumari

Final Decision : Dismissed

Judgement

1. In the accompanied writ application, the petitioner has, inter alia, prayed for quashing the impugned order dated 23.05.2014 (Annexure-9), rejecting the representation of the petitioner on the ground of delay and further prayer has been made for quashing the order dated 06.11.2012 (Annexure-5) fixing the petitioner's pay in the lower scale and for a direction for correct fixation of pension and arrears of salary with 10 per cent interest for delayed payment.

2. The brief facts, as averred in the writ application, is that initially the petitioner joined in the year 1974 and was absorbed directly in the University service against the post of the Associate Professor.

Consequent upon the pay fixation, his pay was fixed by the University vide Memo dated 20th March, 1987 in the U.G.C. selection grade scale of Rs.1200-1900 w.e.f. 01.04.1975 and he retired in the said scale with effect from 30.04.1989 on attaining the age of superannuation i.e. 62 years. The notification of the 04th Pay Revision came into effect on 31.03.1990 vide letter No. 3234, giving the benefit of pay revision with effect from 01.01.1986. The 05th Pay Revision was also effective from 01.01.1996 and the 06th Pay Revision was effective from

01.01.2006 as is evident from Annexure-4 and 4/A to the writ petition. The pension of the petitioner was fixed taking into consideration the subsequent pay revision as per the Officer order dated 06.11.2012 and in the said office order, pre-revised pay-scale of Rs.3000-5000/- has been wrongly fixed, therefore, the petitioner submitted representation to the Respondent No.1 on 15.03.2013 requesting for fixation of his pay in the scale of pay of Rs.3,700-67,000/-. Copy of the representation of the petitioner was also sent to the office of the Chancellor of the University and in pursuance to the representation, the Vice-chancellor, Respondent No. 1 constituted a Committee vide Office order dated 12.11.2013 to consider the case of the petitioner and the Committee submitted its report, specifically observing that the petitioner may be allowed the scale of Rs.3,700-5700/- with effect from 01.01.1986 and subsequent revisions with effect from 01.01.1996 and 01.01.2006 respectively as wrong fixation has been done. The report of the Committee has been annexed as Annexure-8/a to the writ petition and without considering the said report, the respondent no. 1 rejected the representation for grant of revised pension to the petitioner vide order dated 23.05.2014, which was communicated by the Respondent no. 2 on the ground of delay, which is impugned in this writ petition. Also the order dated 06.11.2012 (Annexure-5) has been challenged on the ground of total non-consideration of the letter dated 31.03.1990 (Annexure-3), in which it has been specifically stated by the Agriculture Department, Govt. of Bihar that the scale of pay of Rs.3,000-5,000/- is not applicable in the Agriculture University.

Being aggrieved by the aforesaid impugned order, the writ petitioner, left with no other alternative, has been constrained to approach this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner submits that the petitioner, who retired as an Associate Professor, cannot be deprived of his legitimate dues and arrears of salary accrued on the revised pay on the ground of delay without any cogent and justifiable reasons. Learned counsel for the petitioner further submits that the decision of the Respondent No. 1 in rejecting the representation for grant of revised pension could not have been done on the ground of delay because the legitimate right of the petitioner has been extinguished and throttled on the pretext of technicalities of delay, which defeats the purpose of rendering substantive justice.

4. Controverting the averments made in the writ application, a counter affidavit has been filed on behalf of the Respondent nos. 1 to 3.

5. Learned senior counsel for the respondents has reiterated the submissions made in the counter affidavit.

6. In the counter affidavit, it has been, inter alia, submitted that the petitioner has retired on 30.04.1989 as an Associate Professor (Reader) from the Birsā Agricultural University. After about 23 years of retirement, he has started giving

representation, when pension of the petitioner has been fixed in the year 1990 itself and he was drawing the said pension without any demur. It has been stated in the counter affidavit that the respondents have issued an option in the letter as contained in Letter No. 994, dated 22.03.1991 asking the employees of the rank of Associate Professor that if such employees choose to retire at the age of 60 years, his pay against the post of Associate Professor pursuant to 04th Pay Revision shall be Rs.3,700-5,700/- and he shall retire at the age of 60 years but if the employee of the rank of Associate Professor opt to retire at the age of 62 years, then his salary for the post of Associate Professor in the 04th pay Revision shall be Rs.3,000-5,000/-. The petitioner opted to retire at the age of 62 years. So as per the letter no. 994, dated 22.03.1991, he was paid the scale of Rs.3,000-5,000/- against the post of Associate Professor and he

continued at the age of 62 years when he retired on 30.04.1989. So it was the option of the petitioner due to which the pay-scale of the petitioner was fixed at Rs.3,000-5,000/- in the 04th Pay Revision and not in the pay-scale of Rs. 3,700/- -Rs.5,700/-. Moreover, due to Pensioner's Samaj (i.e. pensioner's Union), the petitioner started giving representation after 23 years of his retirement i.e. the first representation, was given in the year 2012 and thereafter, in the year 2013 and because of the option exercised by the petitioner, his salary was fixed at Rs.3,000-5,000/- against the post of Associate Professor, in which the petitioner retired. So, his representation was rejected vide letter no. 623, dated 23.08.2015. Photo-copy of the option, as contained in Letter no. 994, dated 22.03.1991 has been annexed as Annexure-B to the counter affidavit and another letter was also issued on 17.05.1991 regarding asking for option of the petitioner, which goes to show that he was paid Rs.3,000-5,000/- due to his option of retiring age, as evident from Annexure-C to the counter affidavit. Therefore, on the basis of the letters as contained in Annexure-B and C, pension of the petitioner has been fixed in the year 1991 and subsequently, it was reiterated on 02.11.2012, as per Annexure-E to the counter affidavit. While salary of the petitioner was fixed on 12.07.1991, as contained in Memo No. 494, some arrears were also accrued to the petitioner, which was released to the petitioner vide Memo No. 494, Dated 12.07.1991, which shows that the pay-scale of the petitioner was fixed in the scale of Rs.3,000-5,000/- as evident from the order dated 12.07.1991 vide Annexure-F to the counter affidavit.

7. After bestowing my anxious consideration to the rivalized submissions and on perusal of the records, I am of the considered view that the rejection of the claim of the petitioner vide Order dated 23.05.2014 vide Annexure-9 does not suffer from any illegality or infirmity, so as to warrant any interference by this Court due to the following facts : -

(i) As borne out from Annexure-B and C to the counter affidavit, as per the option exercised by the petitioner of retiring age upto 62 years, the pay-scale of the petitioner was fixed at

Rs.3,000-5,000/-, the petitioner continued to receive the pension as per the pay-

scale on the date of retirement without any demur for 23 years after 23 years of retirement. There has been inordinate delay by the petitioner to protest for revised pay-scale and rightly the respondent-authorities have rejected the representation on the ground of delay.

(ii) Apart from that, Annexure-B to the counter affidavit i.e. the letter dated 22.03.1991 shows that the pay-scale of Rs.3,000-5,000/- was admissible to the petitioner since he opted to continue till 62 years, therefore, at this distant time, the prayer of the petitioner for revised pay-scale and consequential revision of pension cannot be acceded to on the ground of gross laches and negligence and delay. The view of this Court gets fortified by the decision of the Hon''ble Apex Court rendered in the case of C. Jacob Vs. Director of Geology and Mining and Another reported in (2008) 10 SCC 115 as well as in the case of Union of India and others Vs. M.K. Sarkar reported in (2010) 2 SCC 59.

8. In view of the reasons stated in the foregoing paragraphs, the writ petition, sans merit, is hereby dismissed.