
(2019) 08 JH CK 0108
In the Jharkhand High Court
Case No : Writ Petition (S) No. 301 Of 2019

Bachchu Prasad Sinha

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Citation : (2019) 08 JH CK 0108

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Saurav Arun, Ujjawal Sinha, Chaitali Ch. Sinha

Final Decision : Allowed

Judgement

1. Heard the parties.

2. Petitioner has approached this Court with a prayer for quashing the letter contained in memo No. 1242 dated 13.04.2018 (Annexure-1), issued by respondent No. 2, by which the increment granted to the petitioner w.e.f. 27.06.1987 to 31.07.2017 has been cancelled and the benefits granted to the petitioner w.e.f. 09.08.1999 has been withdrawn and the pay-scale of the petitioner has been fixed in the basic grade due to non-passing of Hindi Noting and Drafting Examination. Petitioner has also prayed for quashing the recovery order dated 13.04.2018 (Annexure-1/1). It has also been prayed to immediately and forthwith pay the retiral benefits to the petitioner such as, P.F. Leave Encashment, Group Insurance, etc.

3. The factual exposition as has been delineated in the writ petition is that the petitioner joined his services on 27.06.1986 to the post of Pharmacist in pursuance to memo No. 896 dated 26.06.1986. Thereafter, he has been performing his duty to the full satisfaction of all concerned and has retired from the said post on 31.07.2017. It is the further case of the petitioner that he joined the post of Pharmacist in the pay-scale of Rs.680-965 and subsequently, the same was revised to Rs.1320-2040. Thereafter, the petitioner was granted

revised pay-scale of Rs.4500-7000 w.e.f. 01.01.1996 and was granted the benefits of 1st ACP w.e.f. 09.08.1999. Thereafter, after implementation of 6th pay revision, the pay-scale of the petitioner was again revised and fixed in the scale of Rs.9300-34800 (G.P. 4200) w.e.f. 01.01.2006. It is the specific case of the petitioner that as he has not cleared the Hindi Noting and Drafting Examination during his entire service period, the respondent No. 3, after retirement of the petitioner, has issued a direction to cancel the enhanced pay-scale granted to the petitioner and has also directed for recovery of the excess payment made to the petitioner. In light of the said direction, the enhanced pay-scale granted to the petitioner for the period from 27.06.1987 to 31.07.2017 has been cancelled and accordingly, his pay-scale has been fixed in the basic grade, which is evident from letter dated 13.04.2018, issued by respondent No. 2. Consequently, the recovery order has also been issued by respondent No. 2 on 13.04.2018.

Challenging the aforesaid malafide action of the respondents in fixing the pay-scale of the petitioner in the basic grade and also issuing order for recovery of the excess payments made, the petitioner has preferred this writ application.

4. Mr. Saurav Arun, learned counsel appearing for the petitioner strenuously urges that it is only after retirement of the petitioner, the impugned orders have been passed, which is not tenable in the eyes of law, in view of catena of decisions of Hon'ble Apex Court as well as of this Court. Learned counsel very fairly submits that admittedly the petitioner belongs to Class-III cadre and has been extended the benefits of ACP on 09.08.1999 and 01.01.2006, which has been accepted all along his service career by the respondent-State. Learned counsel further argues that the benefits which has been accepted by the respondent-State as well as by the petitioner, cannot be withdrawn without even following the cardinal principles of natural justice. Learned counsel places heavy reliance on the Constitutional Bench judgment of Hon'ble Apex Court in case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. [(2014) 4 SCC 334] and also in case of Kusheshwar Nath Pandey Vs. State of Bihar & Ors., reported in (2013) 12 SCC 508. It has further been contended that the notification by which the respondent-authorities were bent upon to recover the amount on the ground that the petitioner has not cleared the Hindi Noting and Drafting Examination has already been taken into consideration by this Court in case of Mrs. Papiya Mukherjee & Ors. Vs. State of Jharkhand & Ors., vide order dated 19.03.2015 passed in W.P.(S). No. 1560 of 2014 and as such, in no way the respondents can be permitted to recover the amount and as such, a direction be given to the respondent-authorities to disburse the recovered amount as well as to pass orders for fixation of his pension and also to pay all the retiral benefits.

5. Per contra, counter-affidavit has been filed. Mrs. Chaitali Ch. Sinha, learned counsel appearing for the respondent-State, vehemently opposes the contention of the learned counsel for the petitioner. Learned counsel submits that since the petitioner has not cleared the Hindi Noting and Drafting Examination during his

entire service tenure, he is not entitled for enhanced pay-scale and the recovery is fully justified in view of Annexure-A to the counter-affidavit. Learned counsel further submits that in view of Sankalp vide memo No. 131 dated 18.05.2017, respondents have passed the reasoned order that the exemption from passing the Hindi Noting and Drafting Examination is only applicable with respect to Nursing cadre and since the petitioner was appointed to the post of Pharmacist, it is desirable to pass the said examination. Learned counsel further argues that the resolution dated 18.05.2017 has not been challenged by the petitioner in the instant writ application and as such, there is no illegality in the impugned orders. In view of the aforesaid facts, the writ petition is fit to be dismissed outrightly.

6. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered opinion that the case of the petitioner needs consideration. Admittedly, the petitioner is a Class-III employee and has retired from the post of Pharmacist.

The Hon'ble Apex Court in its landmark judgment in case of State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors. (supra), has held as under :-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. The issue regarding passing of Hindi Noting and Drafting Examination of the employees in view of notification dated 03.11.2014, fell for consideration before this Court in case of Mrs. Papiya Mukherjee & Ors. Vs. State of Jharkhand & Ors. (supra) and this Court, after hearing the counsel for the parties, was pleased to quash the notification itself. The State has filed counter-affidavit and tried to

impress upon the Court that only 10 posts have been excluded from passing the Hindi Noting and Drafting examination and the petitioner has not been included in the said notification. From a bare perusal of the notification brought on record by way of Annexure-'A' to the counter-affidavit, it is clear that the same is regarding Nursing cadre. It is surprising that even after repeated orders of this Court, the State has not come-out with any notification to the effect that the pharmacists along with 17 other cadres, which were part of the aforesaid notification and which was subsequently quashed by this Court, have been exempted from passing of the Hindi Noting and Drafting Examination. Admittedly, the petitioner has received the amount which was due to him in the year 1989 and 2006 by way of ACP. It is a well settled law that any order visiting civil consequences cannot be passed without affording opportunity of hearing to the employee. In the instant case, from the records of the case, it is crystal clear that the order of recovery was passed without affording opportunity to the petitioner to be heard.

8. In view of admitted facts and in view of the propositions laid down by the Hon'ble Apex Court, the order of recovery and reduction in pay-scale of the petitioner dated 13.04.2018 (Annexures-1 and 1/1) are hereby quashed and set aside.

9. As a cumulative effect of the aforesaid observations, rules, guidelines, judicial pronouncements and legal propositions of law, I hereby direct the respondents to pay the recovered amount, if any, within a period of eight weeks from the date of receipt/ production of a copy of this order and further to disburse the entire retiral benefits to the petitioner and also to pass orders for fixation of pension of the petitioner within a period of twelve weeks from the date of receipt/ production of a copy of this order.

10. As a sequitur aforesaid observations and directions, the writ petition stands allowed.