

(2013) 04 JH CK 0172
In the Jharkhand High Court
Case No : WP (S) No. 5132 of 2005

Banchha Ram Chakrawarti	Vs	APPELLANT
The Jharkhand State Electricity Board and Others		RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 4 JLJR 521

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : M.M. Pal, Mrs. Mahua Palit and Mrs. Hemanta Chakraborty, for the Appellant; A.K. Pandey and Rohit, for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 30.12.2003 whereby the order of punishment dated 15.5.2000 has been affirmed by respondent No. 2 and the petitioner has been granted Second Time-bound Pay-Scale with effect from 1.4.1997, the petitioner has approached this Court by filing the present writ petition. Further prayers for payment of increment, arrears of salary on account of grant of Second Time-bound Pay-Scale, payment of salary during the suspension period etc. have also been made in the writ petition. The brief facts of the case are that, the petitioner was appointed on the post of Assistant Storekeeper on 23.9.1975. The petitioner was placed under suspension with effect from 30.3.1993 for the alleged misconduct of unauthorized occupation of Quarter No. F/173 at Patratu Thermal Power Station beyond the permissible period. The suspension of the petitioner was revoked by order dated 27.7.1993. A charge-memo was issued to the petitioner on 9.2.1999 for unauthorized occupation of the official accommodation between the period 31.1.1989 and 21.6.1993. By order dated 15.5.2000, the alleged misconduct was held to be proved and the following punishments were imposed upon the petitioner:--

- (i) Stoppage of increment for one year (Non-cumulative),
- (ii) Nothing except subsistence allowance to be paid during the period of

suspension, however, the period of suspension to be counted for retiral benefits, and

(iii) A censor to be recorded in the Annual Character Roll of the petitioner.

2. The petitioner moved the High Court in C.W.J.C. No. 2143 of 2001 because in view of order of penalty dated 15.5.2000, his case for Second Time-bound Pay-Scale was not considered by the authorities. The said writ petition was disposed of by order dated 6.6.2001 with liberty to the petitioner to prefer representation. The petitioner accordingly, submitted his representation to the Bihar State Electricity Board and he was granted Second Time-bound Pay-Scale with effect from 23.9.1993. However, the petitioner was not paid arrears of salary and by order dated 16.1.2002, recovery of excess payment was ordered on the ground that the petitioner had not passed the Hindi Noting and Drafting Examination. The petitioner again moved the High Court in W.P. (S) No. 2035 of 2002 which was disposed of by order dated 4.2.2003 quashing orders dated 3.9.2001 and 20.9.2001 which were passed by the Bihar State Electricity Board after the creation of the State of Jharkhand. The Jharkhand State Electricity Board was directed to consider the representation of the petitioner afresh. By order dated 30.12.2003, the representation of the petitioner was disposed of by ordering that no recovery of excess payment on account of increment of pay paid to the petitioner would be made and the petitioner would be granted benefit of Second Time-bound Pay-Scale with effect from 1.4.1997.

3. A counter-affidavit has been filed on behalf of the Jharkhand State Electricity Board stating that the petitioner while he was posted at P.T.P.S., Patratu committed gross misconduct and a departmental proceeding was initiated against him in which the charges were found proved. Since the penalty order dated 15.5.2000 was never quashed by the Hon'ble High Court, an entry in the Annual Confidential Roll of the petitioner was made in view of the punishment of censor and therefore, the petitioner was not eligible for grant of Second Time-bound Pay-Scale for the next three years.

4. A supplementary affidavit has been filed by the petitioner contending that the order dated 15.5.2000 inflicting three-fold punishment on the petitioner was illegal and arbitrary and it amounts to double jeopardy. The petitioner was never given any notice for vacating the quarter, rather, initially usual rent was realised from the petitioner and thereafter, house rent at the market rate and penal rent were also recovered from the petitioner and therefore, the penalty order dated 15.5.2000 could not have been passed against the petitioner.

5. Heard learned counsel appearing for the parties and perused the documents on record.

6. The learned senior counsel Mrs. M.M. Pal appearing for the petitioner has contended that the impugned order dated 30.12.2003 granting Second Time-bound Pay-Scale (Super Selection Grade) to the petitioner with effect from 1.4.1997 has been passed in view of the penalty order dated 15.5.2000 however,

the respondent No. 2 failed to understand that by order dated 5.4.2003, the orders passed by the Bihar State Electricity Board, were quashed on the ground of lack of jurisdiction. The learned senior counsel has further contended that in view of the realisation of house rent from the petitioner, the penalty order dated 15.5.2000 which has been passed only on the basis of the alleged unauthorized retention of the official accommodation is arbitrary. The petitioner had written letters to the Board for retaining the official accommodation because his children were studying there. The period of unauthorized retention of the office accommodation is between 31.1.1989 and 21.6.1993 whereas the charge-memo was issued to the petitioner on 9.2.1999 and the penalty order has been passed on 15.5.2000. The proceeding against the petitioner for unauthorized retention of the official accommodation was motivated and actuated with malice.

7. On the other hand, the learned counsel appearing for the respondent-Board has submitted that the penalty order dated 15.5.2000 was not quashed by the Hon'ble High Court in its order dated 4.2.2003. In view of the punishment of censor awarded by order dated 15.5.2000 to the petitioner, the petitioner could not have been given promotion for three years. The impugned order dated 30.12.2003 does not suffer from any error and therefore, no interference is called for by this Court in the present case.

8. A perusal of the documents on record clearly indicates that house rent for occupation of the official quarter was deducted from the salary of the petitioner, month to month as per the Board's Rules. Copies of letters dated 19.1.1996 and 19.2.1996 have been brought on record by the petitioner which would disclose that no notice for vacating the house was issued to the petitioner by that time. The period of unauthorized retention of the official accommodation is from 31.9.1989 to 20.6.1993. The petitioner has been charged house rent at market rate as well as Rs. 12,435/- has also been recovered from the petitioner as penal rent. The petitioner had submitted representation for retaining the official accommodation because his children were studying there. It is thus clear that the departmental proceeding which was initiated by order dated 9.2.1999 against the petitioner for unauthorized occupation of the official quarter, was motivated. The finding recorded under the departmental proceeding also appears to be not substantiated by any material evidence. The petitioner had moved the High Court in W.P. (S) No. 2035 of 2002 as by order dated 16.1.2002 recovery of the excess amount paid to the petitioner was ordered. In the proceeding of W.P. (S) No. 2035 of 2002, when it was brought to the notice of the Court that orders dated 3.9.2001 and 20.9.2001 were passed by the Bihar State Electricity Board after the creation of the State of Jharkhand, those orders were quashed by the High Court and the respondent-Board was directed to dispose of the representation of the petitioner afresh. The order dated 4.2.2003 was passed on the ground that the Bihar State Electricity Board had no jurisdiction to pass an order with respect to an employee who is posted in the State of Jharkhand after the creation of the new State. It appears that by the impugned order dated 30.12.2003 the order with respect to recovery of the excess amount paid to the petitioner has been

withdrawn however, date of grant of Second Time-bound Pay-Scale with effect from 23.9.1993 has been shifted to 1.4.1997 only on the ground that a punishment of censor has been entered in the Annual Confidential Roll of the petitioner in view of penalty order dated 15.5.2000. The petitioner had superannuated from service with effect from 31.10.2003. I am of the considered opinion that since the order of recovery of excess amount paid to the petitioner has been withdrawn, the date of grant of Second Time-bound Pay-Scale could not have been shifted from 23.9.1993 to 1.4.1997. In view of the aforesaid discussion, the impugned order dated 30.12.2003 is hereby quashed and the writ petition is allowed.