
(2009) 01 JH CK 0076
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2949 of 2006

Banke Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2009) 57 BLJR 904 : (2009) 1 JCR 630

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : R.C.P. Sah, for the Appellant; Rajesh Shankar, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed praying therein to direct the respondents to pay back a sum of Rs. 41,309/- to the petitioner which has illegally been deducted from the amount of pension of the petitioner.

2. The case of the petitioner is that the petitioner was appointed on the post of Peon on 11.12.1964 in Government Teacher's Training College, Ranchi. In course of time, he was promoted to the Junior Selection Grade with effect from 1.4.1981 and also to the Senior Selection Grade with effect from 11.12.1989 under order as contained in letter No. 573-76 dated 7.2.1991. Thereafter the petitioner drew the salary in the promoted scale. In course of time, the petitioner retired on 31.12.2001. Much after retirement, the respondents without assigning any reason deducted a sum of Rs. 41,309/- from the retiral dues, though the respondent was not entitled to recover the amount even on the plea that it has been drawn in excess as the petitioner was promoted to the Junior Selection Grade and Senior Selection Grade without their being any misrepresentation on his part and that apart, the respondent was not entitled to recover the same without taking recourse of the provision as stipulated under Rule 43(b) of the Bihar Pension Rules.

3. Counter affidavit has been filed on behalf of the respondents where it has never been stated that the petitioner had wrongly been given promotion to the Junior Selection Grade as well as Senior Selection Grade, rather stand has been taken that the petitioner was given benefit of 2nd ACP with effect from 9.8.1999 under order as contained in letter No. 994 dated 18.7.2006 by the Regional Deputy Director of Education, South Chotanagpur Division, Ranchi in the scale of Rs. 2750-70-3800-75-4450/- whereas he had drawn salary in higher scale and therefore excess amount drawn by virtue of the order granting selection grade was recovered and as such, action of the respondents under which amount which had been drawn in excess was deducted from the retiral dues cannot be said to be illegal.

4. Having heard learned Counsel appearing for the parties and on perusal of the record, it does appear that the petitioner was given Junior Selection Grade as also Senior Selection Grade with effect from 1.4.1981 and 11.12.1989 respectively under order as contained in letter No. 573-76 dated 7.2.1991 which order has never been said to be illegal or has been passed by the authority without having power to do so, rather respondent in his counter affidavit is quite silent on this point. Moreover it is also not the case of the respondents that the promotion was given to the petitioner on account of misrepresentation on his part. That apart, the respondents had no authority in view of the provision as contained in Rule 43(b) of the Bihar Pension Rules to recover the amount said to have taken in excess by the petitioner without resorting to the provision of Rule 43(b) of the Bihar Pension Rules. This proposition of law has already been laid down by the Full Bench of this Court in a case of Laxman Prasad Gupta v. State of Jharkhand and Anr. where question fell for consideration as to whether the amount, if any, paid in excess to the employees while in service due to mistake, fault or any misrepresentation can be recovered from the employee after retirement from the pension or gratuity of the Government employee?

5. Their Lordship taking into consideration the number of cases including the case of Sahib Ram v. State of Haryana (supra) and also the provision as enshrined in Rule 43(b) of the Bihar Pension Rules held hereunder:

In the light of absence of any material to show that excess amount was received by the petitioner on misrepresentation, collusion, fraud or negligence, the said excess amount cannot be recovered out of the retiral dues after retirement, without following the procedure contemplated under Rule 43(b) of the Bihar Pension Rules. In this case the said procedure which is mandatory has not been followed. Therefore, action of the respondents for recovery of the amount from the retiral dues is not valid in law.

In the instant case also the authority without resorting to the provision as stipulated under Rule 43(b) of the Bihar Pension Rules has recovered the amount said to have been drawn in excess by the petitioner from the amount of the pension and as such, the said order being illegal is hereby set aside.

6. Accordingly, the respondent concerned is directed to refund the amount of Rs. 41,309/- to the petitioner which has illegally been deducted from the retiral dues within a period of three months from the date of receipt/production of a copy of this order.

In the result, this writ application is allowed.