(2004) 04 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1559 of 2003

Bhola Prasad Chaudhary APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 313

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : J.P. Jha, for the Appellant; M.J. Rahman, J.C. to G.P. II and S. Shrivastava, for the Respondent

Judgement

Amareshwar Sahay, J.—The prayer of the petitioner in this writ application are the following :--

(1) To quash Annexure-3 dated 21.10.2002, whereby the time bound promotion given to the petitioner with effect from 01.04.1981 in the pay-scale of Rs. 680-695 granted on 20.11.1986 was cancelled after the retirement of the petitioner from service on 30.09.2000.

(2) To restrain the respondents from realising the amount received by the petitioner on account of time bound promotion.

(3) To direct the respondents to fix final pension of the petitioner as per the last pay drawn by him before retirement.

2. The petitioner retired as Head Clerk from the Mines Department on 30.09.2000. He was given time bound promotion on 20.11.1986 with effect from 1.4.1981 in the pay scale of 680-695. For fixing the final pension of the petitioner, the original service book of the petitioner was sent to the Accountant General. Bihar Patna. It is said that the Account General, Bihar returned the pension paper etc. to the District Mining Officer, Pakur with an objection that the first time bound promotion given to the petitioner was against the rules, because

the petitioner had not clear the accounts examination, which was a must for having time bound promotion and the said fact was not entered in his service book. It is said that by issue of Annexure-6 dated 21.10.2002, the Government of Jharkhand after considering the objection of the Accountant General cancelled the time bound promotion given to the petitioner and also directed that the access amount received by the petitioner pursuant to the said promotion would be deducted from his Gratuity and other pensionary benefits. This order as contained in Annexure-3 is under challenge in this writ application.

3. It is submitted by the learned counsel for the petitioner that the said time bound promotion was given to the petitioner, not on the basis of any mis-representation or fraud committed by him and, therefore, the order for realisation of the so called excess amount, from his Gratuity and other pensionary benefits is absolutely illegal in view of the decision of the Apex Court in the case of Sahib Ram v. State of Haryana and Ors., reported in 1995 Supp (I) SCC 18.

4. It is further submitted by the learned counsel for the petitioner that the pension of the petitioner has to be fixed on the basis of last pay drawn by him on the date of his retirement and further that after his retirement from service, the time bound promotion given to the petitioner in the year 1986 cannot be cancelled.

5. In support of his submission, learned counsel for the petitioner has relied on a decision of the Apex Court in the case of Sahib Ram v. State of Haryana and Ors., reported in 1995 Supp (I) SCC 18, and the decisions of this Court in the case of Paltu Charan Ram v. State of Jharkhand and Ors., reported in 2002 (3) JCR 68, and also in the case of Jhupru Degri v. State of Jharkhand and Ors., reported in 2003 (3) JCR 600.

6. Mr. Shrivastava, learned counsel appearing for the Accountant General, Bihar on the basis of the averments made in the counter affidavit, submitted that the time bound promotion given to the petitioner in the year 1986 vide Annexure-A to the counter affidavit was conditional one, with a condition that if the petitioner does not pass the accounts examination by availing two chances of appearing in the said examination then he would automatically be reverted to the same post which was held by him prior to the said promotion and, therefore, since admittedly the petitioner did not pass the said Accounts examination and, therefore, he was not entitled to the higher scale of pay on the basic of the said time bound promotion.

7. It is further submitted on behalf of the Accountant General by Mr. Shrivastava, that even if it is found that the petitioner was allowed to have the benefit of higher salary on account of the said time bound promotion without having cleared/passed the said Accounts examination till the date of his retirement, the same was absolutely illegal and the said illegality should not be allowed to be perpetuated by fixation of his pay on the basis of the last pay drawn by him

before superannuation.

8. I find much force in the submission advanced by the learned counsel for the Accountant General, Bihar. It is not disputed that the petitioner was given the aforesaid time bound promotion in the year 1986 which was subject to the condition of the passing of the Accounts examination. It is also not disputed that the petitioner did not pass the said examination at any time before his superannuation, therefore, in my view, as per the order granting time bound promotion to the petitioner, which was a conditional that if he does not pass the said Accounts examination then he would automatically be reverted to his original post and pay scale, the petitioner was not entitled to have the benefit of higher pay scale which was paid to him till the date of his retirement.

9. This Court cannot shut its eyes and cannot give its seal to the illegality committed by the State-respondent. The petitioner was very much aware of the fact that the time bound promotion given to him was a conditional one and he would be reverted back to his original post and pay scale, if he docs not pass the said Accounts Examination but as it appears that he kept mum and went on receiving the higher pay scale on the basis of the said time bound promotion till his superannuation and. therefore, it can be said that he at least suppressed the fact if not at all committed any mis-representation or fraud.

10. I am also unable to agree with the submission of the learned counsel for the petitioner that the pension of a person has to be fixed only on the basis of the last pay drawn by him, even though it is found that the employee received the higher salary, which he was not entitled to at all, at the time of his superannuation. The pension has to be fixed on the basis of the correct facts. From the judgments cited by the learned counsel for the petitioner, it does not appear that in those cases, the promotion granted to those petitioners was subject to any condition, therefore, those decisions are not at all applicable in the facts and circumstances of the present case.

11. Accordingly, I hold that the pension of the petitioner has to be fixed on the basis of the last pay drawn by him before grant of the time bound promotion in the year 1986, as the petitioner would be deemed to have been reverted to the said post and the pay-scale because he did not pass the accounts examination. However, relying on the decision in the Sahib Ram Vs. State of Haryana and Others, the access amount paid to the petitioner on the basis of the said time bound promotion is not liable to be recovered from the Gratuity or other pensionary benefits of the petitioner as directed by order dated 21.10.2003 as contained Annexure-3 to the present writ application.

12. Accordingly, I direct that the pension of the petitioner be fixed on the basis of the last pay drawn by him, before the time bound promotion. It is further directed that the excess amount paid to the petitioner, on the basis of the said time bound promotion till his superannuation, be not recovered from the Gratuity or other pensionary benefits of the petitioner.

13. With the above observation and direction this application is disposed of.

