

(2015) 08 JH CK 0004
In the Jharkhand High Court
Case No : W.P. (S) No. 1738 of 2013

Birendra Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 3 JLJR 531

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Sunil Kr. Sinha, for the Appellant

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. Grievance of the petitioner, as encapsulated in the order dated 21.1.2014, is reproduced hereunder:--

"According to the petitioner his pay scale granted after first time bound promotion w.e.f. 5.2.1992 vide order dated 6.7.1996 in the scale of Rs. 1400-2300 has been reduced by the impugned order dated 16.2.2012 to Rs. 1200-1800/- and an amount of Rs. 87,578/- has been ordered to be recovered by the Executive Engineer, Drinking Water and Sanitation Division, Adityapur. The same has been issued without any notice or show cause to the petitioner. The petitioner is said to have retired on 30.4.2013 while working as bill clerk.

Learned counsel for the State seeks time to obtain instruction and file counter affidavit.

Let this case appear in the first week of March 2014 under the heading for admission."

2. The respondents have filed their counter affidavit thereafter stating therein that the petitioner was appointed in Work Charge Establishment on the post of Bill Clerk in the scale of Rs. 535-765/- with effect from 5.2.1982 by the

Superintending Engineer, Jamshedpur after completion of 10 years in Work Charged Establishment. The post of Bill Clerk was not the sanctioned post in the department, but office wrongly compared it similar to that of other department and granted the scale of Rs. 580-860/- to the petitioner. The said scale was allowed to the directly appointed person in the parent department. But on audit objection against the grant of Rs. 580-860/- it was revised with effect from 1.1.1986 to Rs. 1200-1800/-. It is stated that the order at Annexure-2 granting scale of pay was very clear that in case the Finance Department does not approve such scale, it would be revoked and payments made would be recovered. Therefore, the petitioner who was wrongly given the aforesaid scale of pay and the same being objected by the audit, the impugned order has sought to correct the same.

3. Learned counsel for the petitioner submits that the aforesaid scale of pay was paid all along after grant of first time bound promotion with effect from 5.2.1992 and has been reduced just one year before his retirement on 30.4.2013 by the impugned order dated 16.2.2012. It is submitted that the petitioner being Class-III employee, such recovery is not permissible in the eye of law in view of the ratio laid down by the Apex Court in Civil Appeal No. 11527/2014, in the case of State of Punjab and Others vs. Rafiq Masih (White Washer) etc. vide judgment dated 18.12.2014, para-12 thereof.

4. I have considered the rival submissions of the parties and pleadings on record. On the face of it, the impugned order seeks to recover the salary paid to the petitioner on the scale of pay granted by order dated 6.7.1996 with effect from 5.2.1992 after almost 16 years of its issuance and just one year before the retirement. Such an order of recovery from Class-III employee is impermissible in law in view of the ratio laid down in the case of Rafiq Masih (supra). Para-12 of the said judgment is quoted hereunder:--

"12. 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 decision referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:--

(i) Recovery of 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 recovery."

Clause-iii thereof specifically applies to the petitioner's case as such payments have been made for a period in excess of five years, in the present case, for a period of twenty years reckoning from 1992.

5. In that view of the matter, petitioner also having retired on 30.4.2013, the impugned order dated 16.2.2012 cannot be sustained in the eye of law and it is accordingly quashed. Any amount recovered pursuant to the impugned (sic) shall be refunded to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

6. Learned counsel for the petitioner submits that the post retirement benefits are also outstanding simply on account of pendency of the writ application.

Needless to say, if the petitioner approaches the competent authority/ Respondent No. 3-Superintending Engineer, Drinking Water and Sanitation Circle, Jamshedpur by way of a representation, together with all supporting facts and documents, his grievances in relation to post retirement benefits be also considered by the competent authority in accordance with law after due scrutiny of all relevant records within the same time.

The writ petition stands allowed in the aforesaid terms.