(2002) 08 JH CK 0104

In the Jharkhand High Court

Case No : CWJC No. 3641 of 1993 (R)

Bishnu Kant Mishra APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Citation : (2002) 08 JH CK 0104

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Pal, for the Appellant; P. Modi, GP-I and Sarvendra Kumar, JC to GP-I, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mrs. M.M. Pal, learned counsel for the petitioner and Mr. Sarvendra Kumar, learned JC to GP-1.

2. Mrs. M.M. Pal has submitted that the action of the respondents in deducting the sum of Rs. 2271/- from the monthly salary of the petitioner with effect from September, 1993 is illegal and arbitrary and consequently she has made a prayer that a writ of mandamus be issued restraining the respondents from making any further deduction and for directing them to refund the deducted amounts with interest. The writ petitioner has also made a prayer that the salary of the petitioner should be revised and he should be paid the corresponding scale of Rs. 940-1660/- which on revision became Rs. 2000-3550/- with effect from 08.11.1988.

3. Petitioner has stated that since he was appointed in 1978, therefore his first time bound promotion became due with effect from 08.11.1988 and therefore he is entitled to the corresponding appropriate scale with effect from the said date.

4. According to the petitioner, he was appointed as an Assistant Teacher on 08.11.1978 and after having completed a period often years, he was granted his first time bound promotion with effect from 08.11.1988 vide office order dated

03.11.1989 as contained at Annexure 1 to the writ application.

5. The petitioner has further stated that pay revision came into effect from 01.01.1986 by reason whereof the petitioner''s scale was incorrectly fixed at Rs. 1640.2900 which was not the corresponding scale of Rs. 94-1660/- but it was the corresponding scale of Rs. 850-1360. In other words, the scale which was fixed was one which the petitioner was drawing prior tohis date of first time bound promotion.

6. The petitioner has stated that he was subjected to various forms of harassment, the first of which came in the matter relating to incorrect fixation of pay in the manner stated above. The second harassment was when the respondents started deducting the sum of Rs. 2771 /- from the monthly salary of the petitioner with effect from September, 1993 on the ground that the petitioner has drawn excess or that the petitioner was not entitled to first time bound promotion after completing ten years and that he should actually have been promoted on completion of twelve years of service.

7. It appears that being aggrieved by the aforementioned deduction, the petitioner wrote a letter to the Headmaster in-charge on 13.10.1993, whereupon by letter dated 18.10.1993 as contained at Annexure 4, the Headmaster replied informing the petitioner that the deduction had been made on the basis of an audit report and upon directions of the Pay Fixation Cell, Dhanbad. The petitioner has stated that such a decision was taken behind his back without any opportunity or notice to the petitioner.

8. In fact, the petitioner has stated at paragraph 12 that he even approached the Pay Fixation Cell at Dhanbad but they were completely silent on their part and gave no satisfactory explanation as to why the aforesaid sum of Rs. 2271/- was being deducted from the monthly salary of the petitioner.

9. The petitioner has alleged implied malice by the respondents on the ground that for promotion he had earlier moved CWJC No. 694 of 1993 (R) and on non-compliance of the directions passed in that case he had also preferred a contempt application being MJC No. 338 of 1993 (R) in which notices had been issued against the concerned respondents. The petitioner has asserted that he is entitled to the salary in the revised scale of pay of Rs. 2000/- 3550/-with effect from 08.11.1988 and has asserted that the deduction made in the manner aforesaid is totally illegal, unconstitutional and amounts to an infringement on his right to receive full salary.

10. In the counter affidavit that has been filed by the respondent Nos. 2 and 3, the stand taken is that as per resolution No. 6022 F (2) issued by the Finance Department, an incumbent who has completed twelve years of service is entitled to time bound promotion and since the petitioner completed twelve years on 08.11.1990, therefore, whatever amount he received on the basis of Annexure 1, was an incorrect fixation and was done by mistake, and therefore, consequential order of deduction was passed.

11. The aforementioned contention/submission of the respondents is rejected outright. There appears to be sufficient force in what Mrs. M.M. Pal, learned counsel for the petitioner has asserted and it definitely appears that this is a case of implied malice. The counter affidavit proceeds to defend and justify the action of the respondents basically on para 13 (ii) of the aforementioned resolution dated 18.12.1989, which is contained at An-nexure-A to the Counter Affidavit. The relevant portion reads as follows :

"All those teachers who were in receipt of promotion or time bound promotion into the Junior Selection grade and had completed 12 years of service in the basic grade prior to 1st January 1986 shall have their pay fixed in the Revised senior scale where indicated in Schedule-II. Those teachers who were in receipt of promotion or time bound promotion into the junior selection grade prior to 1st January 1986, but had not completed 12 years of service in the basic grade on that date shall also have their pay fixed in the....."

12. In rebuttal to the submission made on the side of the respondents, Mrs. M.M. Pal, learned counsel for the petitioner, correctly argued that this circular cannot be made applicable upon the petitioner, inasmuch as the opening sentences of that circular shows that this relates to revision of pay scale of teachers of schools taken over and under the administrative control of Department of Human Resources Development.

13. Admittedly, the petitioner is not under the control of the Department of Human Resources Development. The circular, in fact, which is applicable and which has been quoted in Annexure 1, by which the petitioner was given time bound promotion is the circular No. 10770 dated 30.12.1981 and it was issued pursuant to the recommendations of the IVth Pay Revision Committee''s report. The above mentioned circular was produced in Court by Mrs. M.M. Pal, learned counsel for the petitioner and reading the same it is clear that so far employees like the petitioner is concerned, their first time bound promotion is at the end of ten years and second time bound promotion is at the end of twenty five years. Consequently, it is held that the circular relied upon by the petitioner being circular dated 18.12.1989 being No. 6022 F (2) as contained at Annexure A to the counter affidavit is not applicable upon the petitioner in the facts and circumstances of this case.

14. It is indeed a very sorry state of affairs to note that even when the petitioner approached the concerned Cell, he was not even told the reasons for deduction. If they had told the petitioner the reasons for deduction at that stage, the petitioner would have certainly pointed out that the said circular was not applicable to the case of the petitioner and perhaps he would not have been forced to enter into litigation.

15. Consequently the impugned action on the part of the respondents in making deduction in the manner indicated above is held to be illegal and arbitrary.

16. The respondents are, therefore, directed to refund the entire amount

deducted from the petitioner together with interest at the rate of 6% from the date of such deduction. So far as the revision/restoration of scale is concerned, it appears that the petitioner is right in stating/submitting that his pay scale was wrongly fixed in a scale which was corresponding to Rs. 850-1360 (the scale which the petitioner drew prior to first time bound promotion). This aspect needs to be looked into by the respondents on top priority. Accordingly, petitioner is given liberty to bring this order to the notice of the respondent No. 4 alongwith a short representation by which he will make a prayer for correcting the aforesaid anomaly. Upon such representation, the respondent No. 4 shall immediately look in the matter and dispose it off in accordance with law within two weeks from the date of receipt of such representation. It goes without saying that the petitioner shall be entitled to all consequential benefits in accordance with law.

17. With the above mentioned observations, this writ application is allowed. However, there shall be no order as to costs.