(2006) 07 JH CK 0082

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3651 of 2003

Cyril Dung Dung APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : (2006) 4 JCR 539

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Ajit Kumar, S. Shrivastava, for the Appellant; Mahadeo Thakur, J.C. to G.P III, for the Respondent

Judgement

Permod Kohli, J.—Petitioner is aggrieved by a communication dated-28.05.2001, issued by the Accountant General (A&E)-II, Bihar & Jharkhand, Patna fixing his pension in the pay-scale of Rs. 4500-7,000/- and also the letter dated 08.011.2001, whereby amount of Rs. 41,966/- has been deducted from his retiral benefits. Accordingly a direction is sought for quashing the recovery memo as also the communication for fixation of the pension in the lower pay scale and consequential direction for payment of the pensionary benefits in the pay-scale of Rs. 5,000-8,000/-.

2. Briefly stated sequence of events whereunder petitioner now a retired Government servant earned these promotions and pay-scales is as under:

Petitioner joined as Lower Division Clerk on his appointment on 7th of September, 1965. He was promoted as Upper division clerk on 11.09.1976 w.e.f. 01.04.1971 and further promoted as Head Clerk on 08.05.1976 and posted at R.E.O. works division, Dhanbad. He came to be placed in the selection grade of Rs. 730-1080/-vide order Dated 28.05.1986 w.e.f. 19.08.1981. It is alleged that there was anomaly in fixation of pay for Jr. selection grade Head Clerk and Sr. Selection grade Head Clerk which was clarified by the Finance Department vide memo Dated 22.04.1992 and consequently petitioner placed in pay-scale of Rs.

785-1210/-. This Pay-scale was again replaced by a scale of Rs. 1500-2750/-. On the recommendations of the 5th Pay Revision Commission, pay scale of Rs. 1500-2750/- was further replaced by new pay scale of Rs. 5000-8000/-. Petitioner continued to draw salary in this pay-scale and retired from service on 30.04.1999 and submitted papers for retiral benefits.

3. After the petitioner''s retirement, when his pension papers were in progress, the Accountant General (A&E) II, Bihar & Jharkhand, Patna vide his letter dated 12.01.2000 informed respondent No. 6 that the petitioner was wrongly given higher pay-scale of Rs. 1500-2750/- w.e.f. 01.01.1986. On receipt of the aforesaid communication, Executive Engineer, Rural division vide his letter dated 10.11.2000 informed the Accountant General that petitioner was entitled to pay-scale of Rs. 5000-8000/-, which is according to the rules and pre-revised pay-scale was also approved and given to the petitioner by the Finance Department vide letter No. 2071 dated 08.04.1987. It is further mentioned that this pay-scale was given to the petitioner, who was appointed as Head Clerk Selection grade on permanent basis. It is further mentioned that under the departmental order selection grade Head Clerk is entitled to this pay-scale. It appears that despite clarification, vide letter dated 20.05.2001, respondent No. 7 fixed provisional Pension of the petitioner in the pay scale of Rs. 4500-7000 and also asked for recovery of excess amount . The only question that needs to be considered is whether the petitioner was entitled to pay-scale of Rs. 5000-8000/-. The State of Jharkhand in the counter affidavit filed has specifically stated that pay of the petitioner was fixed in the pay-scale of Rs. 785-1210/- (revised to Rs. 1400-2600/- w.e.f. 01.01.1986 and to Rs. 5,000-8,000/- w.e.f. 01,01.996) according to order No. 2071 dated 08.04.1987 of the Finance Department. It is further stated that it is only on the instructions of A.G. that recovery of excess amount has been ordered from the retiral benefits vide letter Dated 08.11.2001.

4. It is not in dispute that the petitioner''s placement in the pay-scale of Rs. 5000-8,000/- was consequent upon the pay revision Scheme and this revision is on the basis of existing scale of Rs. 1500-2750/- held by the petitioner at the relevant time. In view of the categorical stand of the Respondent-State that the post held by the petitioner carried the pay-scale of Rs. 785-1210/- revised finally to 5,000-8,000/-, objection of the Accountant General is not justified. Petitioner was in the pay-scale of Rs. 5000-8,000/- at the time of his retirement and he is entitled to pensionary benefits on that basis.

5. In view of the categorical stands of the State of Jharkhand and the fact that petitioner has earned this pay-scale from time to time on the basis of his entitlement, this writ application is allowed. Impugned letters dated 28.05.2001 as also letter Dated 08.11.2001, whereby recovery of Rs.41,966/- has been made from the retiral benefits of the petitioner are hereby quashed and consequently a direction is issued to the Respondents to fix the pension of the petitioner in the pay-scale of Rs. 5000-8,000/- and refund the amount of Rs.

41,966/- illegally deducted from him. Petitioner shall be entitled to interest on this amount @ 6 % from the date of recovery till the amount is refunded. He will also be entitled to interest on the differential amount of pension at the aforesaid rate Let the pension of the petitioner be re-fixed accordingly. All the claims of the petitioner be settled within a period of three months.