
(2013) 01 JH CK 0181
In the Jharkhand High Court
Case No : WP (S) No. 3314 of 2009

Deo Naresh Das

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2013) 2 JLJR 444

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : R.M. Singh, for the Appellant; R. Krishna, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has filed the writ petition seeking quashing of order dated 10.12.2008, whereby recovery of excess payment allegedly made to the petitioner has been ordered. The petitioner was appointed as Mines Inspector on 26th March, 1973 and he superannuated from service with effect from 31st October, 2007. As the petitioner was not given promotion in his entire service career, the petitioner was entitled for grant of benefit under Accelerated Career Progression Scheme after completion of 12 years of service and again on competition of 24 years of service. Accordingly, vide order dated 31st March, 2005, the petitioner was given Scale of Rs. 6,500-10,500 as first A.C.P. He was further granted Scale of Rs. 10,000-15,200 on account of benefit for second A.C.P. Such fixation of scale of pay of the petitioner on account of first and second A.C.Ps has been confirmed by the Department of Mines and Geology vide its letter dated 24th May, 2007.

2. After the petitioner superannuated, office order dated 10.12.2008 was issued which indicates that by Memo No. 705 dated 23rd May, 2008 the scale of pay given to all Mines Inspectors on account of first and second A.C.P. has been refixed in the Scale of Rs. 5500-9000 and 6500-10,500 and therefore, excess amount which has been paid to the petitioner was ordered to be recovered.

3. A counter affidavit has been filed on behalf of respondent nos. 2 and 4 taking stand that resolution dated 18.12.2007 of the Finance Department, Government of Jharkhand prescribes that posts or group of posts of particular cadre which do not have recruitment and promotion Rules or post which has not been formulated in existing Rules for promotion but fixation of percentage of post of State service/ cadre are earmarked for promotion in the cadre will not be considered as ladder post for promotional benefits under A.C.P. Scheme.

4. Further reliance has been placed on office order dated 23rd May, 2008 whereby recovery of the excess amount paid to Mines Inspectors has been ordered by superseding the earlier office order dated 31st March, 2005, in the light of resolution dated 18.12.2007.

5. The learned counsel for the petitioner has submitted that the petitioner has not misrepresented or played fraud nor there is any allegation of collusion made against the petitioner and the grant of benefit of first and second A.C.P. has been decided by the respondents in the light of resolution dated 31st March, 2005. The reliance of the respondents on resolution dated 18.12.2007 and office order dated 31st March, 2008 is not tenable for the simple reason that the petitioner had already superannuated on 31st October, 2007.

6. It is an admitted case that the petitioner was granted benefit of first and second A.C.Ps. and such order has been confirmed by the Department of Mines and Geology. The resolution dated 18.12.2007 is not retrospective and it can not be made applicable to the petitioner. It is also not the case of the respondent that the petitioner had misrepresented before the authorities. The Hon'ble Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others, has upheld the contention of the appellant therein holding that, "since it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him, the appellant cannot be held to be at fault".

7. In the light of aforesaid discussion office order dated 31st May, 2008 also cannot be given effect to. The impugned order dated 10.12.2008 is not sustainable in law and is hereby quashed. The writ petition is allowed. There is no order as to costs.