Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 12/08/2026

(2013) 12 JH CK 0034

In the Jharkhand High Court

Case No : W.P. (S) No. 203 of 2013

Devidas Gupta APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) 1 AJR 700

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S. Chandrashekhar, J.

I.A. No. 8786 of 2015

1. This interlocutory application has been filed seeking permission to challenge order dated 31.12.2012, a copy of which has been produced along with the counter-affidavit filed on behalf of the respondents. In view of the averments made in the application, I.A. No. 8786 of 2013 is allowed.

W.P. (S) No. 203 of 2013

The petitioner has approached this Court seeking a direction upon the respondents for fixation and payment of final pension and gratuity along with arrears of pension with interest @ 5%. As noticed hereinabove order dated 31.12.2012 is also under challenge in the present proceeding.

1A. The brief facts of the case are that, the petitioner was initially appointed as Treasure Guard on 09.06.1971 and thereafter, he was appointed as Correspondence Clerk on 20.07.1972. The petitioner was appointed as Correspondence-cum-Typist Clerk by order dated 05.05.1975 and he superannuated from service w.e.f. 31.05.2009. The petitioner was granted benefit of 2nd ACP by order dated 24.07.2004 pursuant to a decision taken by the Screening Committee on 15.06.2004. The finalisation of pension of the petitioner and payment of gratuity was withheld on the ground of non-confirmation of grant of 2nd ACP to the petitioner and finally by order dated 31.12.2012, the order granting 2nd ACP to the petitioner has been cancelled.

2. A counter-affidavit has been filed by the respondents stating as under:

5. That it is stated and submitted that the petitioner joined as Correspondence Clerk-cum-Typist in pay-scale of 220-315 in National Highway Circle, Ranchi on 09.05.1975. He retired from the Government Service on 31.05.2009. Superintending Engineer, National Highway Circle, Ranchi vide his letter No. 68 dated 24.07.2004 has given the provisional benefit of 2nd ACP to petitioner. On this ground pay fixation was done and accordingly his monthly salary was paid. After retirement petitioner has been paid the retirement benefits on provisional basis. His service book and details in prescribed format was submitted to Divisional Commissioner, Ranchi for confirmation of benefits of ACP by Superintending Engineer, National Highway Circle, Ranchi vide his letter No. 811 dated 28.06.2012. Divisional Commissioner, Ranchi has not confirmed the above benefits on the ground that petitioner has not passed all the departmental accounts examination. (He has passed only first paper to its final level). This was intimated to Superintending Engineer, National Highway Circle, Ranchi vide this office letter No. 2135 (Anu) dated 05/12/2012. Superintending Engineer, National Highway Circle, Ranchi vide his office order No. 34 dated 31.12.2012 has cancelled the provisional benefits of 2nd ACP to petitioner (earlier granted to him vide Superintending Engineer, National Highway Circle, Ranchi letter No. 68 dated 24.07.2004) and ordered to recover the financial benefits taken by him due to it.

3. The learned counsel appearing for the petitioner relying on the order dated 06.02.2010 and letter dated 09.11.1983, which has been reiterated in letter No. 4674 issued in May, 1992, has contended that, since the petitioner completed the age of 50 years on 01.06.1999, he become eligible for grant of exemption from passing the departmental examination. Considering this aspect of the matter, the Screening Committee in its meeting dated 15.06.2004 recommended for grant of benefit of 2nd ACP to the petitioner. The learned counsel has further submitted that in view of the letter dated 05.12.2012, Superintending Engineer, who has issued letter dated 31.12.2012 is not competent to recall/cancel grant of ACP.

4. As against the above, the learned counsel appearing for the respondents has submitted that, since petitioner did not pass the departmental examination, therefore, the grant of 2nd ACP to the petitioner has rightly been recalled/ cancelled by the respondent No. 4. He has further submitted that the grant of 2nd ACP was not approved by the competent authority and therefore, the respondent No. 4 is competent to order cancellation of grant of 2nd ACP.

5. The learned counsel appearing for the petitioner has next contended that it is an admitted fact that the petitioner completed 50 years on 01.06.1999 and even

if by mistake the petitioner appeared in the departmental accounts examination in the year, 2007, it would be of no consequence and this cannot be taken against the petitioner for denying the benefit of 2nd ACP to the petitioner. The learned counsel for the petitioner has laid stress on letter dated 06.02.2010 wherein, it has been stated that in view of the fact that the petitioner completed 50 years of age, the Screening Committee by order dated 15.06.2004 had decided to grant benefit of 2nd ACP to the petitioner and therefore, it is not open to the respondents to take the plea that since the petitioner did not pass the departmental examination he was not entitled for grant of 2nd ACP.

6. On perusal of the documents on record, I find that the letter dated 09.11.1983 provides for grant of exemption from passing the departmental examination to an employee, who has completed 50 years of age. This has been further reiterated in the letter issued in May, 1992 and it has also been further clarified that in the event the departmental examination was not conducted within 5 years of the relevant date and the employee has completed 50 years of age, the benefit of exemption would be extended to the Government employee.

7. From the Resolution dated 26.05.2005, it appears that it is the Finance Department only, which is the competent authority to recall/cancel the monetary benefit which has been accorded to the Government employee. A perusal of letter dated 06.02.2010 indicates that the Screening Committee decided to grant benefit of 2nd ACP in its meeting held on 15.06.2004 after considering the fact that the petitioner had already completed 50 years of age. Thus, the exemption from appearing in the departmental examination on attaining 50 years would be deemed to have been extended to the petitioner. The case of the petitioner was examined by the Screening Committee which approved grant of 2nd A.C.P. to the petitioner.

8. In view of the aforesaid discussion, I am of the opinion that it is not open to the respondents to contend that, since the petitioner did not pass the departmental accounts examination till 2007, he is not entitled for grant of 2nd ACP. The petitioner has superannuated from service w.e.f. 31.05.2009 and order dated 31.12.2012 has been passed without issuing show-cause notice to the petitioner and therefore, I am of the view that the order of cancellation of order dated 24.07.2004 is liable to be quashed and is hereby quashed.

9. The respondents are directed to calculate the final pension of the petitioner and make payment of pension, gratuity along with arrears of pension to the petitioner within a period of 8 weeks. However, in the facts and circumstances of the case no interest is awarded separately. The writ petition is disposed of accordingly.