

(2009) 05 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4470 of 2008

Dhananjay Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0042

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; Rahul Gupta, J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Dr. S.N. Pathak, learned Counsel for the petitioner and J.C. to A.G. for the respondents.

2. Petitioner in this writ application has prayed for quashing the order dated 20.09.2006 (Annexure-1) passed by the Superintendent of Police (Wireless), Ranchi whereby recovery of certain amounts have been made from the petitioner's salary on the ground that such amount was paid in excess to him.

3. The contention of the petitioner is that no excess amount was paid to him since to the petitioner's belief, he was entitled to pay protection since persons junior to him were getting higher pay scale and it was only by way of pay protection, that the petitioner's scale, with other similarly situated persons, (were increased in the form of personal pay. The petitioner's further contention is that even otherwise, such amount was not paid on account of any misrepresentation or fraud practiced by him.

4. Dr. S.N. Pathak, learned Counsel for the petitioner would submit that as a matter of fact, the difference in the pay scale of the petitioner and that of his juniors was to the extent of Rs. 1050/-. In order to ensure pay protection, the petitioner was compensated by the payment of the difference amount by way of

his personal pay protection (R.P.P.) with effect from 01.01.1996 and such amount was paid to the petitioner continuously. The payment of the R.P.P. to the petitioner was not made on account of any act of fraud or misrepresentation on the part of the petitioner. Furthermore, the impugned order appears to have been passed only on the basis of some promptings received from the Finance Department of the State Government of Bihar communicated vide letter dated 01.02.1991. The petitioner had adequately explained in his show cause replies that no excess amount towards R.P.P. was paid to him and such fixation of R.P.P. was only by way of pay protection. Learned Counsel submits further that the impugned order dated 20.09.2006 was a general order made applicable to several other police personnel, some of whom had challenged the same by filing writ applications before this Court vide W.P.(S) No. 7474 of 2006. Upon considering the entire issues, this Court vide its order dated 10.01.2007 passed in the aforementioned writ application, had quashed the impugned order dated 20.09.2006. Learned Counsel adds further that earlier, in the case of Baleshwar Singh v. State of Jharkhand and Ors. 2005(3) JLJR 518, the same issues came up for consideration before this Court and this Court had observed that the amount of R.P.P. i.e. reducible pay protection, was paid to the writ petitioners by order of the competent authority to protect their pay against the juniors. It was also observed that the fixation made by the said order was accepted for a long time and there was no fraud or misrepresentation on the part of the petitioners in getting the said pay protection and as such, the amount paid by way of said pay protection, cannot be recovered.

5. Though no counter affidavit has been filed on behalf of the respondents, but learned Counsel for the respondents would submit that the pay scales of the police personnel employed in the Wireless Section was revised by the Government of Bihar in 1999 in the light of the Central Government pay scales, whereafter the R.P.P. which was earlier fixed and paid, was withdrawn with effect from the date of revision of the pay scales. In spite of the withdrawal, the amount of R.P.P. by way of pay protection, continued to be availed by the petitioner and it was this excess payment which was sought to be recovered from the petitioner's salary.

6. As has been pointed out by the learned Counsel for the petitioner, the same impugned order dated 20.09.2006 was earlier challenged by several other police personnel employed in the Wireless Section of the Police Department vide W.P. (S) No. 7474 of 2006. Upon considering the facts of the case and the stand taken by the respondent State Government, this Court in the aforementioned case had quashed the impugned order in respect of the writ petitioners therein. The same grounds do apply in the case of the petitioner also since the facts of the present case are fully covered by the judgement passed in W.P.(S) 7474 of 2006 and in the earlier case of Baleshwar Singh (Supra) passed by this Court.

7. In view of the above, this writ application is allowed. The impugned order vide Memo No. 137 dated 20.09.2006 (annexure-1) is quashed to the extent it affects

the petitioner. If any amount has already been deducted on the basis of the said impugned order, the same shall be refunded to the petitioner within four weeks from the date of receipt/production of a copy of this order.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State.