
(2008) 09 JH CK 0081
In the Jharkhand High Court

Dudheshwar Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Citation : (2009) 1 JCR 174

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—The petitioner was appointed as Malaria Inspector on 10.9.1961. Subsequently, he was appointed on the post of Lab Technician on 1.2.1972 at Primary Health Centre, Baliapur in the district of Dhanbad and his pay was fixed in the scale of Rs. 4500-7000/- and accordingly, the petitioner went on drawing the salary in the said scale for about 30 years and that petitioner was even granted first financial upgradation (1st A.C.P) in the scale of Rs. 5000-8000/- and also second financial upgradation (2nd A.C.P) in the scale of Rs. 5500-9000/- with effect from 8.9.1999. After the petitioner retired on 31.1.2001, an objection was raised that the petitioner was wrongly given pay scale of Rs. 4500-7000/- as that pay scale was admissible to the Lab Technician, who had passed B.Sc/I.Sc and holds Diploma of Technician but the petitioner being not Diploma holder, is entitled to pay scale of Rs. 4000-6000/- and, accordingly, order was passed as contained in memo No. PEN-4-1833 dated 2.11.2001 (Annexure 2) whereby pay scale of the petitioner was reduced to Rs. 4000-5000/- from Rs. 4500-7000/- and further excess amount paid was sought to be adjusted from the retiral dues.

2. Being aggrieved with that order, the petitioner challenged that order in W.P.(S) No. 868 of 2004 which was allowed on a consideration that pay fixed in the scale of Rs. 4500-7000/- had never been filed on misrepresentation or wrong representation by the petitioner Accordingly, respondents, were directed to release all the retiral benefits. However, that order was challenged by the State of Bihar in I.P.A. No. 603 of 2005 taking the same plea that under letter bearing

No. 6966 dated 9.10.2001 issued by the Government of Bihar petitioner is entitled to pay in the scale of Rs. 4000-6000/-. However, the petitioner by appealing in the said case brought a letter dated 6.9.2006 on the record to show that the Government of Bihar under the aforesaid letter has withdrawn earlier letter bearing No. 6966 dated 9.10.2001 under which pay scale of the petitioner was shown to be Rs. 4000-6000/-.

3. The appellate court having considered the matter, set aside the order passed by the learned Single Judge and remitted the matter back to the Secretary, Department of Health, Government of Jharkhand, Ranchi to consider the matter afresh in the light of the letter of the Government of Bihar dated 6.9.2006. Accordingly, in terms of the order passed by this Court in the aforesaid L.P.A, the petitioner made representation before the respondent No. 2 but when nothing was done, a contempt proceeding was initiated before this Court raising grievance that still retiral benefits have not been given nor any fixation of pension has been fixed in the scale of Rs. 5500-9000/-.

4. However, in course of hearing, it was submitted on behalf of the State that as the concerned papers were not made available, no decision could be taken in the matter and thereupon under the direction of the Court, the petitioner handed over all the relevant documents to learned Advocate General so as to be placed before the Secretary for taking decision in the matter.

5. Learned Counsel appearing for the petitioner submits that in stead of taking decision regarding payment of retiral dues, respondent No. 2 passed an order as contained in letter No. 87 dated 26.4.2007 (Annexure 9) holding therein that the petitioner cannot take advantage of resolution No. 5865 dated 6.9.2006 as the said letter had been issued by the State of Bihar much after the Reorganization Act came into force and as such, the petitioner is entitled to pay in the scale of Rs. 4000-6000/- and that letter has been sought to be quashed.

6. Having heard learned Counsel appearing for the parties, it does appear that the petitioner on being appointed as Lab Technician was given pay in the scale of Rs. 4500-7000/-. Accordingly, pay was drawn in the said scale until the petitioner retired on 31.1.2001. Thereafter respondent in the light of a letter bearing No. 6966 dated 9.10.2001 issued by the Government of Bihar held that the petitioner is entitled to pay in the scale of Rs. 4000-6000/- as he is not having Diploma of Technician and the scale of Rs. 4500-7000/- is admissible only to the Diploma of Technician which letter subsequently was withdrawn by the State of Bihar, vide its letter dated 6.9.2006 meaning thereby that the petitioner would be restored to the position which he was holding before 9.10.2001 when he was getting pay scale of Rs. 4500-7000/- but the respondent No. 2 did not consider the matter from this angle, rather took the stand that the letter issued by the State of Bihar on 6.9.2006 will have no bearing as it has been issued after bifurcation of the State but the respondent seems to have forgotten completely that earlier letter No. 6966 dated 9.10.2001 under which pay scale had been reduced from Rs. 4500-7000/- to Rs. 4000-6000/- had also been issued by the State of Bihar and

that the petitioner was getting salary in the scale of Rs. 4500-7000/- before that letter bearing No. 6966 dated 9.10.2001 came into existence and, therefore, if the same reasoning is applied as has been applied by the respondent No. 2 while passing the impugned order, consequence would be that earlier letter No. 6966 dated 9.10.2001 being issued after bifurcation of the State of Jharkhand will never affect the pay scale of the petitioner.

7. Be that as it may, in any event, letter No. 6966 dated 9.10.2001 being not in force, the petitioner would be entitled to pay scale of Rs. 4500 - 7000/-, Accordingly, the order as contained in memo No. 87 dated 26.4.2007 (Annexure 9) is hereby quashed.

8. Consequently, respondent No. 2 is directed to pay all retiral dues to the petitioner as expeditiously as possible, preferably within a period of two months from the date of receipt/production of a copy of this order, failing which the petitioner would be entitled to have interest @ 6% on the amount which he is entitled to.