
(2005) 07 JH CK 0014
In the Jharkhand High Court
Case No : Writ Petition (S) No. 868 of 2004

Dudheshwar Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Citation : (2005) 4 JCR 251

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : N.L.K. Singh and Rashmi Kumari, for the Appellant; Azeemuddin, JC to G.P. 1 and S. Srivastava, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the parties.

Petitioner was appointed as Malaria Inspector on 10.9.1961 and later on he was appointed on the post of Lab-Technician on 1.2.1972 at Primary Health Centre, Baliapur in the district of Dhanbad. His pay scale was fixed at Rs. 4500-7000/-. Petitioner continuously withdrew salary at the aforesaid pay scale for about 30 years and thereafter, retired on 31.1.2001. It was only after retirement, an objection was raised that his pay scale should have been fixed at Rs. 4000-6000/- instead of Rs. 4500-7000/-. The scale mentioned herein above are the revised scale which came into effective from 1.1.1996. Consequently, instead of releasing entire pensionary benefits an order has been passed for recovery of the excess amount to the petitioner.

2. In the counter affidavit filed by the State, it is stated that petitioner was wrongly given pay scale of Rs. 4500-7000/-. According to the respondents, pay scale of Rs. 4500-7000/- is admissible to the Lab-Technician who have passed B.Sc./I.Sc. and holds Diploma of Technician. Petitioner is not Diploma holder because in his service record no entry in this respect has been made and therefore, petitioner is not entitle to the pay scale of Rs. 4500-7000/-. For better appreciation relevant paragraphs of the counter affidavit is reproduced here in

below :

"That from perusal of Annexure-"B" it appears that the pay scale of Rs. 4500-7000/- is admissible to Lab-Technician who has passed B.Sc./I.Sc. and holds Diploma of Technician."

"That it is stated that the petitioner is not a diploma holder because in his service record no entry to this effect has been made and therefore, prima facie the petitioner was not entitled to pay scale of Rs. 4500-7000/-"

3. On the aforesaid basis the respondents are denying fixation of pension at the pay scale lastly drawn by the petitioner and release of pensionary benefits rather they have decided to make recovery of the excess amount paid to the petitioner. It is most surprising that for the entire 30 years of service, petitioner was getting scale corresponding to revised scale of Rs. 4500-7000/- and admittedly discharged his duties as Lab-Technician. After 30 years that too after retirement the State cannot be allowed to say that since petitioner was not possessing Diploma in Laboratory Technician his pay scale ought to have been fixed at Rs. 4000-6000/-. There is nothing in the counter-affidavit alleging that because of the misrepresentation or any wrong representation petitioner's pay scale was fixed. A person, who discharged his duties as Lab-Technician for 30 years, cannot be denied any benefits of the post of Lab-Technician merely because of want of some requisite qualification. In my opinion, therefore, the decision relied upon by the counsel appearing for the Accountant General Jharkhand in the case of Union of India and Others Vs. Rakesh Kumar etc., and also the decision of the Division Bench of this Court rendered in LPA No. 256/2003 cannot and shall not be made applicable in the instant case. On the contrary, the ratio decided by the Supreme Court in the case of Sahib Ram v. State of Haryana and Ors., (1994) 5 SLR 753 applies in full force.

4. Moreover, in similar circumstances, this Court disposed of one writ application on 15.4.2004 being WPS No. 2012 of 2004 and held as under :

"The petitioner has prayed for quashing the letter issued by the Accountant General dated 03.08.2000/ 10.08.2000 by which he has directed for recovery for the excess amount paid to the petitioner out of the retiral dues because of wrong fixation of pay scale. The petitioner retired from the post of Headmaster in 1998. In the impugned order the Accountant General has opined that the pay fixed by the Government for the purpose of payment of pension and retiral benefits is not correct in as much as in 1990 and subsequent date there was some mistake in fixation of pay. It is further mentioned in the said letter that the fixation of pay of the petitioner dated 1.1.1996 is not finally approved by the Finance Department.

So far fixation of pension is concerned in absence of any allegation of misrepresentation against the petitioner regarding fixation of pay in the year 1990 and thereafter, normally the pension should be fixed at the pay scale lastly drawn by the petitioner at the time of retirement. The objection raised by the Accountant General in my opinion is not justified. The impugned order as

contained in the letter aforesaid is quashed and the respondents are directed not to recover any amount from the retiral dues of the petitioner. Needless to say that the pension shall be finalized as expeditiously as possible. So far other benefit is concerned the petitioner will be at liberty to file representation."

5. Hence, in the entire facts and circumstances of the case, this writ application is allowed and the respondents are directed to release all the retiral benefits minus the amount already paid, together with interest to the petitioner, as expeditiously as possible and preferably, within a period of two months from the date of receipt of copy of this order.