
(2022) 11 JH CK 0045

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3734 Of 2018

Emmanuel Tigga And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 18-11-2022

Acts Referred:

Citation : (2022) 11 JH CK 0045

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Aakansha Mittal, Prakash Narayan, Sunita Kumari

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Sumeet Gadodia, learned counsel appearing on behalf of the petitioners along with Ms. Aakansha Mittal and Mr. Prakash Narayan, Advocates appearing for the petitioners.

2. Heard Ms. Sunita Kumari, learned counsel appearing on behalf of the respondents.

3. During the pendency of the present writ petition, the original petitioner namely Sunita Glory Tigga had expired and the present petitioners have been substituted pursuant to I.A. No. 6283 of 2022 which was allowed vide order dated 18.07.2022. Vide order dated 17.08.2022 it has been recorded that during the pendency of this case, the post death benefits have been paid, but this case has a direct bearing on the quantum of death-cum-retiral benefits.

4. This writ petition has been filed for quashing the order contained in letter No. 2551 dated 16.04.2012 (Annexure-11) issued by respondent no.2 whereby representation of the original petitioner has been rejected and the pay-scale of the original petitioner has been determined to be Rs. 3200-4900 instead of Rs. 4000 – 6000 (as claimed by the original petitioner).

A further prayer has been made for quashing the order contained in memo no. 42(ii) dated 04.01.2012 (Annexure-8) whereby the existing pay-scale of the original petitioner i.e. Rs. 4000-100-6000 has been reduced to the pay-scale of Rs. 3200-85-4900 with retrospective effect i.e. from 29.01.2004 – the date of initial appointment of the original petitioner.

The petitioners are also seeking a declaration that the original petitioner was entitled for payment of salary on the basis of her pay-scale determined at the time of initial appointment i.e. Rs. 4000-100-6000, and, further, a mandamus has been sought upon the respondents to fix the pay-scale of the original petitioner pursuant to 6th pay revision with effect from 01.01.2006 in the pay-band of Rs. 5200-20,200 treating the existing pay-scale of the original petitioner as Rs. 4000-100-6000 instead of Rs. 3200-85-4900 and to pay all consequential benefits with statutory interest.

Arguments of the Petitioners

5. In the year 1998, the then Bihar Public Service Commission issued advertisement for conducting 1st Regional Offices Competitive Examination for filling up the vacancies in various offices of the districts including vacancies on the post of Clerk, Assistant, Typist, Accounts Clerk, Jan Sewak, Gram Sewika, etc.

6. In the said advertisement, 32 posts for Ranchi were identified. Out of which 22 vacancies were for the post of clerk/equivalent post and 10 vacancies were for the post of Gram Sewika/equivalent post. As per the advertisement, only 9 posts of Gram Sewika were available in the District of Ranchi for General quota and remaining posts were reserved for Scheduled Caste and Scheduled Tribe categories. The original petitioner belonged to Scheduled Tribe category. The original petitioner participated in the proceedings and was declared successful.

As per the merit list, the name of the original petitioner appeared at Serial No. 16. Pursuant thereto, the original petitioner was appointed on the post of Gram Sewika in Ranchi Collectorate in the pay-scale of Rs. 4000-100-6000 along with all allowances vide memo No. 83(II) dated 29.01.2004 (Annexure-5).

7. The specific case of the original petitioner was that she stood at Serial No. 16 in the merit list and was made to understand at the time of her initial appointment that the post of Gram Sewika and clerk are equivalent posts carrying equivalent pay-scale and hence, her appointment was made on the post of Gram Sewika in the pay-scale of Rs. 4000-100-6000. The original petitioner did not have any grievance at the time of appointment in view of the pay-scale mentioned in the letter of appointment being Rs. 4000-100-6000 although several persons who were lower in rank in the merit list were appointed on the post of Clerk/equivalent post in the pay-scale of Rs. 4000-100-6000.

8. Thus, the original petitioner was appointed on the post of Gram Sewika by representing to her that said post carries equivalent pay-scale as that of a clerk. Thereafter, she was regularly paid salary on the pay-scale of Rs. 4000-6000.

9. As per the writ petition, pursuant to 6th pay-revision, the salary of the original petitioner was to be revised in accordance with the circular of the Finance Department dated 28.02.2009 in the pay-band of Rs. 5200-20200 by treating her existing pay-scale of Rs. 4000-100-6000.

It has also been submitted by the learned counsel for the petitioners that the pay-scale of the original petitioner was accordingly revised and in support of that, a copy of relevant page of service book of the original petitioner has been annexed as Annexure- 6 to the writ petition.

10. The cause of action for filing the present writ petition arose when the existing pay-scale of the original petitioner was reduced while fixing her pay in the pay-band of Rs. 5200-20200 by treating her existing pay-scale as Rs. 3200-4900 instead of Rs. 4000-6000 and this has also been recorded in the service book whose relevant sheet has been annexed as Annexure- 7 in the writ petition.

11. However, being aggrieved by such action, the original petitioner filed a representation before the respondent no. 4 seeking correction in pay-scale, but the respondent no. 4 vide impugned order dated 04.01.2012, directed for reduction of pay-scale of the original petitioner to Rs. 3200-4900 from the date of her initial appointment instead of pay-scale of Rs. 4000-6000. The reduction of pay-scale of the original petitioner was sought to be justified on the basis of circular of Finance Department in which the pay-scale of Gram Sewikas was shown as Rs. 3200-4900.

12. The learned counsel for the petitioners has also submitted that on account of reduction of pay-scale of the original petitioner right from the date of her initial appointment, it has been stated in the writ petition that the respondents are taking steps for recovery of alleged excess salary paid to the original petitioner by deducting the same from monthly salary. It has also been pointed out that vide order dated 04.12.2012, an interim order was passed in favour of the original petitioner that there would be no recovery from the original petitioner pursuant to the impugned orders as contained in Annexure- 8 and 11.

13. The learned counsel for the petitioners has raised the following points to challenge the impugned order and action of the respondents which have also been mentioned in the short notes prepared and kept along with the records of this case:

(i) As per Advertisement, Pay Scale adjacent to the post of Assistant/Clerk was Rs. 1200-1800 along with other allowances. Further, in the district of Ranchi, altogether there were 32 vacant posts and out of the said 32 posts, 22 posts were of Assistant/Clerk and 10 posts were for Gram Sewika out of which only 1 post was reserved for reserved category.

(ii) In the list of Successful Candidates (Annexure-3), name of original Petitioner finds place at Serial no. 16. However, despite being placed at Sl. No. 16, instead of appointing the original Petitioner on the post of Assistant/Clerk, she was

appointed on the post of Gram Sewika by making her believe that post of Assistant/Clerk is equivalent to the post of Gram Sewika.

(iii) In the appointment letter issued to the original Petitioner, the pay scale attached to the post of Gram Sewika has been mentioned as Rs. 4000-100-6000.

(iv) The respondents have relied upon the order contained in memo no. 1543/f. dated 10.07.2004 and have tried to make out their case on the basis of the said order dated 10.07.2004. However, the original Petitioner was appointed on 29.01.2004 i.e. prior to the issuance of memo dated 10.07.2004.

14. The learned counsel for the petitioners has also submitted that the facts mentioned in the writ petition which have not been denied in the counter-affidavit, are admitted facts on record.

15. The learned counsel for the petitioners has placed the following judgements for consideration:

(a) Judgement of Hon'ble Supreme Court reported in 1987 (Supp.) SCC 228 (Balram Gupta vs. Union of India and Another). He has referred to paragraph 13 thereof to submit that as a model employer, the Government must conduct itself with high probity and candour with its employees and in the present case, the appointment letter having been issued to the original petitioner projecting a particular pay-scale should not have been disturbed later on as has been done in the present case.

(b) Judgement reported in (2007) 14 SCC 234 (Balco Captive Power Plant Mazdoor Sangh and Another Vs. National Thermal Power Corporation and Others) to submit that the terms and conditions of the initial appointment cannot be altered and has referred to paragraph 35 of the said judgement.

Arguments of the Respondents

16. The learned counsel appearing on behalf of the respondents, on the other hand, has opposed the prayer of the petitioners and has referred to the counter-affidavit filed in the present case. It has been stated in the counter-affidavit that in the course of verification of fixation of pay in revised scale consequent upon 6th pay replacement scale with effect from 01.01.2006, it was detected by the District Accounts Officer, Ranchi that the appointment on the post of Gram Sewika was made in the pay-scale of Rs. 4000-100-6000 vide letter of appointment dated 29.01.2004 (Annexure-5) and that Gram Sewikas were being paid salary accordingly.

17. It has been stated in the counter-affidavit that the post of Gram Sewika comes under Rural Development Department and the pay-scale of Gram Sewika is sanctioned in the scale of Rs. 3200-85-4900 and not in the scale of Rs. 4000-100-6000 and therefore, while fixing the replacement scale, the District Accounts Officer, Ranchi treated the pre-revised scale of Gram Sewika as Rs. 3200-85-4900 and the matter was reported to the higher authority with a

request to take further action. The said communication has been annexed as Annexure-A to the counter-affidavit which is dated 21.11.2011.

18. In pursuance of such communication dated 21.11.2011 (Annexure-A), the matter was examined and impugned order dated 04.01.2012 (Annexure- 8) was passed by respondent no. 4 stating that the admissible pre-revised pay-scale of Gram Sewika was Rs. 3200-85-4900 and not Rs. 4000-100-6000 and it was directed that the salaries be paid accordingly.

19. Pursuant to such order dated 04.01.2012, the original petitioner along with two other Gram Sewikas made representation before the then respondent no. 4 on 21.01.2012 and after obtaining detailed report, the matter was sent to the Principal Secretary, Rural Development Department, Government of Jharkhand vide letter dated 31.01.2012 seeking necessary instructions and a copy of the said letter dated 31.01.2012 was also forwarded to the concerned Gram Sewikas. The said letter is contained as Annexure- C to the counter-affidavit. Thereafter, concurrence was taken from the Finance Department and it was communicated to respondent no. 4 that the pre-revised pay-scale of Gram Sewikas was Rs. 3200-85-4900.

20. The counter-affidavit also refers to memo dated 10.07.2004 of the Finance Department, Government of Jharkhand, Ranchi by which the post of clerk has been re-structured as Lower Division Clerk (LDC) with pre-revised scale of Rs. 3050-75-3950-80-4590 and Upper Division Clerk (UDC) with pay-scale of Rs. 4000-100-6000. It has also been mentioned that the post of Lower Division Clerk is direct recruitment post whereas the post of Upper Division Clerk is cadre promotional post. It has been further stated that so far as the claim of the petitioners regarding pre-revised scale of clerk i.e. Rs. 4000-100-6000 is concerned, the original petitioner cannot be absorbed or appointed in the post of Upper Division Clerk with pre-revised pay-scale of Rs. 4000-100-6000 as the same is cadre promotional post for LDC. It has been further mentioned that any recruitment on or after 10.07.2004 is to be made in the post of LDC and if the original petitioner is absorbed or appointed in the post of LDC, she will be entitled to pre-revised pay-scale of Rs. 3050-4590 which will be lower than the pay-scale for the post of Gram Sewika (Rs. 3200-85-4900).

21. It has been categorically stated in para 19 of the counter-affidavit that the original petitioner was appointed as per the available vacant post of IIIrd Grade employees (Gram Sewika) in February, 2003 against the employment notice dated 26.01.1998 and she accepted the post at that time with replacement pay-scale of Rs. 975-1540 which is mentioned in the advertisement on the basis of which the original petitioner had applied and now, the original petitioner not agreeing with the pay-scale of Rs. 3200-85-4900 which is the pay-scale of the post of Gram Sewika.

Findings of this Court

22. After hearing the learned counsel for the parties and considering the facts

and circumstances of this case, it is not in dispute that a number of different posts of Clerk, Assistant, Typist, Accounts Clerk, Jan Sevak, Gram Sewika, etc. were advertised as back as in the year 1998. The advertisement is contained at Annexure- 1 to the writ petition.

23. Upon perusal of the advertisement, it appears that different posts have been mentioned with the corresponding pay-scale and the requisite qualification in the tabular chart. With respect to Gram Sewika, the pay-scale has been specifically mentioned as 975-1540 and the minimum qualification has been shown as matriculate or equivalent.

24. Admittedly, the original petitioner had participated in the selection process and her name stood at Sl. No. 16 in the merit list which is contained at Annexure- 3 to the writ petition. In spite of the publication of result, the appointment was not made and in the meantime, the State of Jharkhand was created. Ultimately, pursuant to direction issued by Hon'ble Patna High Court, letter dated 31.03.2003 (Annexure- 3) was circulated and communicated to respondent no. 4 in which the name of the original petitioner stood at Sl. No. 16. Further, in the said letter, it was categorically communicated to respondent no. 4 that recommended candidates have to be appointed on the available posts on the basis of merit cum choice at the level of respondent no. 4 itself.

25. Ultimately, the original petitioner was appointed on the post of Gram Sewika in Ranchi collectorate and the pay-scale as mentioned in the letter of appointment dated 29.01.2004 (Annexure-5) was Rs. 4000-100-6000. As per the advertisement, the pay-scale for Gram Sewika was Rs. 975-1540 and for the clerk it was Rs. 1200-1800. It has been specifically mentioned in the counter-affidavit filed by the respondents that the original petitioner was appointed on the post of Gram Sewika whose pay-scale was mentioned in the advertisement itself as Rs. 975-1540 on the basis of which the original petitioner had applied, but now the original petitioner is not agreeing to accept the pay-scale of Rs. 3200-85-4900.

26. This Court is of the considered view that when the advertisement itself had mentioned the pay-scale as Rs.975-1540 for Gram Sewika, the original petitioner having been appointed on the post of Gram Sewika vide appointment letter as contained in Annexure- 5, cannot claim any other pay-scale apart from what is mentioned in the advertisement or its equivalent pay-scale. It is not the case of the original petitioner that the equivalent pay-scale of Gram Sewika as mentioned in the advertisement i.e. Rs. 975-1540 is Rs. 4000-100-6000. Rather, the original petitioner tried to make out a case that at the time of issuance of appointment letter, she was made to understand that the post of Gram Sewika and clerk were equivalent posts carrying equivalent pay-scale and hence, her appointment was made in Gram Sewika in the pay-scale of Rs. 4000-100-6000.

27. This Court is of the considered view that the advertisement clearly provided for different pay-scale for Gram Sewika and clerk and there was no scope for any

confusion on the part of the original petitioner or representation from the side of the respondents that the post of Gram Sewika was equivalent to the post of clerk and were carrying equal pay-scale. In the advertisement itself, the post of Gram Sewika clearly mentioned the pay-scale as Rs. 975-1540 and the post of Clerk clearly mentioned the pay-scale as Rs. 1200-1800.

28. It is also important to note that as per Annexure-3, the candidates were to be appointed on the available post on the basis of merit-cum-choice at the level of the respondent no. 4 himself and therefore, even if the merit position of the original petitioner was at Sl. No. 16, she could have been appointed on the post of Gram Sewika on the basis of merit-cum-choice.

29. This Court finds that the pay-scale having been clearly mentioned in the advertisement, there could have been no confusion with regard to the entitlement of pay-scale. The original petitioner having been appointed to the post of Gram Sewika was not entitled to any other pay-scale other than that of Gram Sewika which was clearly mentioned in the advertisement published as back as in the year 1998, i.e. pay scale of Rs. 975-1540 or its corresponding revision from time to time.

30. From the perusal of Annexure- 5, it appears that the original petitioner was issued the appointment letter dated 29.01.2004 along with others on purely temporary basis on the post of Gram Sewika in the pay-scale of Rs. 4000-100-6000 although admittedly the same was not the corresponding pay-scale of Gram Sewika when seen in the light of the advertisement (Annexure- 1) where the pay-scale was mentioned as Rs. 975-1540 or its revised scale.

31. The error in the pay-scale mentioned in the letter of appointment was detected much later at the time of re-fixation of pay- scale pursuant to 6th pay-revision and unilateral action was taken from the side of the respondents while issuing Annexure- 8 wherein the pay-scale of Gram Sewika was mentioned as Rs. 3200-85-4900.

The original petitioner had subsequently represented against such revision of pay-scale to lower level, but the same was rejected vide impugned order No. 2551 dated 16.04.2012 (Annexure-11) wherein an error committed by the department in giving the pay-scale to the original petitioner at the time of appointment in the scale of Rs. 4000-100-6000 has been duly acknowledged and corresponding revision has been made with effect from the initial date of appointment i.e. 29.01.2004.

32. While issuing the letter dated 31.01.2012 (Annexure-10), which was followed by order dated 16.04.2012 (Annexure-11), a reference has been made to the circular of the State of Jharkhand dated 10.07.2004 in order to demonstrate that the pay-scale of Rs. 4000-100-6000 was available for Upper Division Clerk which is a promotional post and that the pay-scale of Lower Division Clerk, which is the entry level post, was Rs. 3050-4590 and the pay-scale of Gram Sewika was on a better pay scale than lower Division Clerk.

33. This Court is of the considered view that the original petitioner at the time of the original appointment was entitled for the pay-scale in terms of the advertisement and no more and any error committed while issuance of the letter of appointment has been rightly rectified by the respondents. The original petitioner neither had any vested right nor had any legal right to get a pay-scale or its corresponding revised scale, more than what has been specifically mentioned in the advertisement itself.

34. So far as the judgment relied upon by the petitioners decided in the case of Balram Gupta (Supra) is concerned, the same does not apply to the facts and circumstances of this case in view of the fact that the pay-scale with regard to Gram Sewika was clearly mentioned in the advertisement and as per the advertisement itself, the pay -scale was different from that of Assistant/Clerk and thus, treating Gram Sewika in the same pay-scale of Assistant/Clerk while issuing appointment letter was ex-facie a mistake which could certainly be rectified by the respondents as and when it was detected, as has been done in the present case.

35. So far as the judgement in the case reported in (2007) 14 SCC 234 (Supra) is concerned, the same also does not apply to the facts and circumstances of this case as the terms and conditions of initial appointment was governed by the advertisement itself and the appointment letter issued to the original petitioner was itself in conflict with the advertisement with respect to the pay scale as fully explained above. There was no legal bar on the part of the respondents to rectify their mistake as and when it was detected. There is neither any legal right nor any vested right entitling the original petitioner to perpetuate the mistake committed by the respondents or to stop the respondents from rectifying their mistake. However, the equity demands that there can be no recovery of excess payment as the original petitioner had no role to play. This aspect of the matter has been considered in subsequent paragraphs of this judgement.

36. In view of the aforesaid findings, this court does not find any illegality or perversity in the impugned action and orders so far as they relate to revision of pay scale of the original petitioner from Rs. 4000-100-6000 to Rs. 3200-85-4900.

37. Having held as aforesaid, it is also required to be considered as to whether the respondents are justified in taking steps for recovery of the differential amount from the original petitioner on account of excess payment arising out of payments made in the pay scale of Rs. 4000-100-6000 instead of pay scale of Rs. 3200-85-4900. This court finds that there is neither any allegation nor any material to suggest any role of the original petitioner in the matter of issuance of appointment letter in the pay scale of Rs. 4000-100-6000 instead of Rs. 3200-85-4900, to which the original petitioner was entitled. Thus, there is no allegation or material to show any fraud or connivance of the original petitioner in the matter of grant of pay scale of Rs. 4000-100-6000 instead of actual entitlement of Rs. 3200-85-4900. The grant of pay scale of Rs. 4000-100-6000 instead of Rs. 3200-85-4900 is apparently on account of mistake committed by

the respondents at the time of issuance of appointment letter to the original petitioner which was contrary to the pay scale mentioned in the advertisement itself which resulted in excess payment to the original petitioner.

38. In the judgement passed by the Hon'ble Supreme Court in the case of "State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others" reported in (2015) 4 SCC 334, it has been held in paragraph 18 as follows:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

39. Keeping in mind the ratio of the judgement passed by the Hon'ble Supreme Court in the case of "State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others" (Supra), this Court is of the considered view that in spite of there being excess payment to the original petitioner, much more than her entitlement, the respondents are not justified in seeking any recovery from the original petitioner and now her legal heirs – the present petitioners. The appointment letter was issued way back on 29.01.2004 (Annexure- 5) which mentioned the pay-scale wrongly, resulting in excess payment. The original petitioner having no role to play in such mistake committed by the respondents and the original petitioner being only a Gram Sewika, there can be no recovery in view of the law laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (Supra). Consequently, though the impugned orders do not call for any interference, but at the same time, there can be no recovery from any amount payable to the original petitioner or the present petitioners.

40. This writ petition is accordingly disposed of.

41. Pending interlocutory application, if any, is closed.