
(2019) 07 JH CK 0247

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4876 of 2010

Irfan Ozair

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Citation : (2019) 07 JH CK 0247

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Krishna Kumar, V.N. Jha, Pankaj Kumar

Final Decision : Disposed Of

Judgement

Heard Mr. Krishna Kumar, learned counsel for the petitioner, Mr. V.N. Jha, A.C to G.P.I for the State and Mr. Pankaj Kumar learned counsel for the State of Bihar.

In this writ petition the petitioner has prayed for quashing the order dated 22.12.2010 by which the respondents-State of Jharkhand has withdrawn designation as well as pay scale given to the petitioner on the post of Joint Registrar in the light of the notification no. 2017 dated 20.5.2008 issued by the Department of Co-operative, Government of Bihar. The petitioner has also prayed for quashing the notification No. 2017 dated 20.5.2008 issued by the Department of Co-operative, Government of Bihar.

The learned counsel for the petitioner submits that petitioner was working as In-charge Additional Registrar, Co- operative Society in the territorial jurisdiction of State of Jharkhand. He further submits that the petitioner was appointed as Assistant Registrar through 23rd Combined Competitive Examination. The petitioner joined on 15.10.1976. The petitioner was given Junior Selection Grade vide notification No. 113 dated 14.2.1992 and the said promotion was given effect from 15.10.1986. Vide notification No. 1429 dated 20.6.1991 the petitioner was posted as Managing Director, Adivashi Co-operative Vegetable Marketing Federation Limited at Ranchi and the said post of Managing Director is

equivalent to the post of Joint Registrar and pursuant to that , he has submitted his joining on 22.6.1991. Thereafter, vide letter dated 25.1.1997, the petitioner was transferred and posted as Joint Registrar, Co-operative Society, Handloom in the Industries Department at Patna. In the light of the aforesaid notification no. 335 dated 25.1.1997, the Department of Industries has accepted the joining of the petitioner w.e.f 27.2.1997. It is further stated that the Department of Co-operative, Government of Bihar vide its notification no. 1652 dated 7.5.1997 had given senior selection grade to 18 persons including the petitioner in the pay scale of Rs. 3700-5000/- and the petitioner was provided Junior Selection Grade w.e.f 1986 and according to the petitioner, the petitioner has become eligible for promotion to senior selection grade w.e.f 1991 but because of laches, the promotion to the senior selection grade was not given in time and therefore , the said mistake was realized and accordingly, vide notification no. 830 dated 18.3.1998 the petitioner was given promotion in senior selection grade w.e.f 1.1.1991 along with various other persons with retrospective effect. He further submits that the petitioner was given pay scale of Joint Registrar in the scale of 12000-16,500/- which is the revised pay scale of Rs. 3700-5000 pursuant to the 5th Pay Revision w.e.f 1.1.1996. He further submits that Department of Finance, Government of Jharkhand vide its resolution dated 04.02.2006 had given approval of revised pay scale as recommended by Fitment Committee since the pay revision committee earlier provided only two pay scale for the officers working in the Co-operative Department and therefore, the need was felt to send aforesaid revision to the fitment committee in proper recommendation of revised pay scale against different posts. In the light of the recommendation of the fitment committee, the Department of Finance, Govt of Jharkhand had accepted the revised pay scale against further different type of identified grade which also enclosed the post of Joint Registrar whose pay scale was revised from 3700-5000 to 12000-16500/-. In the light of the resolution of the Department of Finance accepting the different pay scale for different identified grade as recommended by the Fitment Committee, the Co-operative Department, Government of Jharkhand has also granted its approval over the revised pay scale against the different posts for those persons who are working on the said post. The petitioner since was working on the post of Joint Registrar and therefore, the revised pay scale of the petitioner had also been confirmed in the pay scale of Rs. 12000-16500/- vide its letter no. 326 dated 1.3.2006. It is contended that the sanctioned post, as identified in Jharkhand, is one Additional Registrar and four Joint Registrar as well as two non-cadre posts of Joint Registrar as Managing Director. The petitioner, after bifurcation of the State of Jharkhand, cadre of the Cooperative Department was finally bifurcated on 14.3.2005 and the petitioner's service has been finally transferred to the State of Jharkhand and consequently the petitioner joined on 17.5.2005 in Jharkhand. It is further contended that the State of Jharkhand had published the seniority list of the officers in the Co-operative Department vide list dated 15.11.2000 in which the name of the petitioner find at serial no.5. The other four persons, who are above the petitioner, has already been superannuated meaning thereby that the petitioner

as on that day was the Senior most officer in the Department of Co-operative in the State of Jharkhand and is eligible to be promoted as Additional Registrar Co-operative Societies. It is further contended that in the meantime, the 6th Pay Revision has been implemented in the State of Jharkhand with effect from 1.1.2006 and the petitioner, who was in the pay scale of Rs. 12000-16500/- i.e. the pay scale of Joint Registrar, the said pay scale has been revised in the pay scale of Rs. 19000-37500/- in the light of the recommendation of the 6th Pay revision Committee report and the petitioner is at present drawing the salary in the aforesaid pay scale after the same is fixed and approved by the Accountant General, Jharkhand. The successor State of Bihar vide its notification no. 2017 dated 20.5.2008 has withdrawn the notification no. 1920 dated 13.7.2002 by which the petitioner was given the pay scale of Rs. 12000-16500/- on the ground of giving promotion on the identified post of joint Registrar Co-operative Society according to the seniority. The petitioner was drawing the salary on the revised pay scale in terms of 6th Pay revision. It is further contended that the officers Junior to the petitioner namely Yogeshwar Ram working as Deputy Registrar, Dumka and Mr. Hari Shankar Prasad Deputy Registrar were getting the revised pay scale in the scale of Rs. 12000-16500/- w.e.f 1.4.1996 which is corresponding to pay scale of selection grade scale (3700-5000) and the said scale was given to the aforesaid person pursuant to the decision of this court in the year 2007. The learned counsel for the petitioner submits that the State of Jharkhand has got no occasion to act on the order of the State of Bihar as the seniority list in the State of Bihar had already been published. He further submits that order dated 20.5.2008 cannot be taken into consideration for the employees who are posted in the State of Jharkhand and taking into account the order dated 20.5.2008 the State of Jharkhand vide notification no. 1423 dated 22.12.2010 has directed for recovery of the excess amount taken by the petitioner in the light of the notification for withdrawal of the scale of the petitioner by the State of Bihar, It is further contended that similarly situated persons namely Sri Yogeshwar Ram working as Deputy Registrar, Dumka and Mr. Hari Shankar Prasad Deputy Registrar were getting the revised pay scale of Rs. 12000-16500/- w.e.f 1.4.1996 which is corresponding to Scale of Rs. 3700- 5000/- and the said scale was given to the aforesaid person pursuant to the decision of this court in the year 2007. It is contended that before passing the impugned order the petitioner was not put for show cause nor notice was served on him and this impugned order cannot be survived as there is violation of principle of natural justice. The learned counsel for the petitioner is not able to point out any discrepancy of the notification dated 20.5.2008 by which the State of Jharkhand passed the impugned order. It is pointed out that as no opportunity of hearing had been provided to the petitioner and without explaining the case of the petitioner the impugned order has been passed, which is a grave civil consequence upon the petitioner. As such on this ground alone the impugned order cannot be sustained in the eyes of law. He has referred to the order dated 21.8.2008 passed in W.P.(S) No. 3888 of 2008 in which the same notification was under challenge.

Mr. Pankaj Kumar, the learned counsel for the State of Bihar submits that in granting selection grade promotion to the Bihar Co-operative Service, Seniority had not been followed. Gradation list published in 1994 was faulty as names of officers appointed in the period 1981 to 1994 and retired or left the services were not included. The compulsion of passing the departmental examination for promotion in Bihar Co-operative Service Rule 1975 has not been followed. General Administrative Department(then personnel and Administrative Reforms Department) had advised that the reservation policy would not be applicable in Junior selection grade/Senior selection grade/super time sale promotion from 1.4.1981 to 31.12.1995 in the light of different court orders because of sanction of selection grade scales in a service is not a promotion in the eye of law. Advice of General Administrative Department, order passed in Cont(C) Case No. 304/1999 in CA No. 148 of 1996 on 31.1.2001 by the Supreme Court and order passed on 23.9.1996 in C.W.J.C No. 3973 of 1981 by the Patna High Court are being brought on record for kind consideration of this court . It is stated that selection grade promotion have been abolished from 1.1.1996 vide resolution no. 660F(2) dated 8.2.1999. Finance Department under the above resolution has directed to identify need based promotional posts of a cadre and sanction the pay sale of these posts according to seniority in super time scale/ senior selection grade/ Junior selection grade. In the light of the facts he submits that advice and roster clearance from the then personnel and Administrative Department, the departmental notification no. 1920 dated 13.7.2002 has been amended vide departmental notification no. 2017 dated 20.5.2008 read with correction memo no. 3637 dated 28.8.2008 keeping roster point and post reserved on 1.1.1996 for senior members of service whose super time/ senior selection grade promotion were pending before 31.12.1995. He further submits that according to conditions laid down in departmental notification no. 1920 dated 31.7.2002 excess payment made will be realized from the concerned officers if matter differs in any enquiry in future. He further submits that it clearly mentioned in the notification no. 2017 dated 20.5.2008 that excess payment made would be recovered due to ACP and post facto grant of promotion on the post of Joint Registrar, Co-operative Societies and this notification has been sent to the Co-operative Department, Jharkhand for necessary action on their part. Taking into account all these facts,Government of Jharkhand issued impugned order, against which this petitioner has preferred this writ petition.

Mr. V.N. Jha, learned counsel, who is representing the respondents no. 2 to 4, submits that the State of Bihar vide notification dated 21.2. 2006 had identified the need based for the officers of the Bihar Co-operative Service. In course of such identification, two post of Additional Registrar, 20 posts of Deputy Registrar and 44 posts of Assistant Registrar were identified. Earlier, the benefits of the enhanced scale granted to the petitioner had been given without getting the roster clearance and the officers had also been given the benefits of the posts. In that view of the matter, a fresh seniority list was prepared , keeping in mind the super selection grade, senior selection and Junior selection grade granted to the

petitioner. It is stated that the name of the petitioner appears at Sl. No. 27 and that as on 1.1.1996 he was entitled to get the scale of Deputy Registrar and not that of Joint Registrar. It is stated that the Government of Jharkhand decided to recover the excess amount withdrawn by him in lieu of the higher scale of Joint Registrar given to him earlier by the Government of Bihar which was subsequently found to have been given wrongly to the petitioner. On this ground he submits that Government of Jharkhand has decided to recover the excess amount withdrawn by the Joint Registrar. He further submits that there is no illegality in the impugned order passed by the State of Jharkhand as the petitioner was illegally provided the scale of Joint Registrar instead of Deputy Registrar.

As a cumulative effect of all the facts and taking into account the order dated 21.8.2008 passed in W.P(S) No. 3888 of 2008 this court finds the force in the arguments of the learned counsel for the petitioner that though the impugned order dated 20.5.2008 issued by the Department of Co-operative, Government of Bihar, but for making it applicable to the petitioner who was working under the State of Jharkhand who has taken decision on the impugned notification on the State of Bihar as to whether any money should be recovered from the petitioner or not and whether the promotion which was already granted to the petitioner should be recalled or not. If such decision taken by the State of Jharkhand, the petitioner cannot be saddled of such recovery without providing an opportunity of hearing. Accordingly, the impugned order cannot be survived in the eye of law as such it is quashed. However, in the event State of Jharkhand is inclined to take action on the basis of the recommendation contained in the impugned order dated 20.5.2008 so far as the petitioner is concerned, it may do so with the opportunity given to the petitioner and to explain the matter.

With the aforesaid observation this writ petition stands disposed of.