

(2009) 11 JH CK 0116
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5706 of 2007

Jagannath Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0116

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : J.N. Tripathy, for the Appellant; J.C. to G.A. for State and S. Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the parties.

2. Petitioner, in this writ application, has prayed for a direction upon the Respondents to pay him his post-retiral benefits at the revised scales applicable at the time of grant of the 02nd A.C.P. benefits and also to pay him the arrears of salary due to his promotion from the post of Corresponding Clerk to the post of Head Clerk and other revised admissible dues upon the revised pay-scale of Rs. 5500-9000/-.

3. Facts of the petitioner's case in brief are as follows:

The petitioner was initially appointed on 13.05.1968 as "Chowkidar" in the Workcharge Establishment of the Respondents. Thereafter, his services were regularized in the Establishment with effect from 01.04.1972.

He was promoted to the post of Typist-cum-Corresponding Clerk with effect from 18.06.1979 and later, was granted Junior Selection Grade with effect from 18.02.2004 in the pay-scale of Rs. 680-965/-, which was followed by his provisional promotion in the scale of Rs. 730-1080/-.

Consequent upon the revision in the pay-scales, his salary was revised in the

scale of Rs. 4,000-6,000/- with effect from 01.11.1996. Later, upon his promotion to the post of Head Clerk, his salary was fixed on the scale of Rs. 4500-7,000/- as approved by the Chief Engineer, vide his letter dated-13.02.2004.

An objection was raised by the State Government against the fixation of the aforesaid salary on the ground that the petitioner had not passed his departmental Accounts Examination and was therefore, not entitled for the selection Grade with effect from 18.06.1984.

This objection was overcome by the petitioner when he had passed the Departmental examination in the year 1997, whereafter the date of his regular promotion in the regular junior selection grade was accordingly adjusted.

4. The petitioner's contention is that since he was granted regular promotion, he was not therefore, considered for the grant of the first A.C.P. but after having remained in service for more than 24 years, the petitioner had earned the eligibility for the grant of the benefits of the 02nd A.C.P.

Referring to Annexure-8 annexed to the writ application, learned Counsel for the petitioner explains that Annexure-8 is an office order, issued by the Executive Engineer, on 14.05.2008, acknowledging certain relevant facts relating to the petitioner's service records. Inviting attention to Paras 7 and 8 of the office order, learned Counsel submits that even as acknowledged by the concerned authorities of the Respondents, the petitioner had earned the eligibility for grant of the benefits of the second A.C.P. after completing 24 years of service on 18.06.2003 and the corresponding revised pay-scale upon the grant of such benefit was acknowledged as Rs. 5500-175-9,000/- and after computing the increments, which the petitioner would have earned from the date of his eligibility, his total emoluments by the date of his retirement, would have been Rs. 6550/-.

Referring to the Government Circular dated-01.01.1996, containing the Resolution of the Finance Department and inviting attention to the Schedule 1 of the revised pay-scales, learned Counsel submits that the revised pay-scale even as acknowledged in Annexure-8, is in consonance with the pay-scales as declared in the schedule of revised pay-scales in the State Government Notification.

Learned Counsel submits further, that the last paid salary to the petitioner was in the scale of Rs. 4500-7,000/-, whereas he was legally entitled to the pay-scale of Rs. 5500-9,000/-, upon the grant of the 02nd A.C.P. benefits to him after his completing 24 years of continuous service on 18.06.2003 and such payments ought to have been given together with all corresponding monetary increments till the date of his retirement and his pension amount ought to have been fixed on the basis of such pay-scales and the total emoluments which was legitimately payable to him.

5. Counter affidavit has been filed on behalf of the Respondents.

6. Learned Counsel for the Respondents, by inviting attention to Paragraph 21 of the counter affidavit, would submit that there does not appear any arguable controversy surviving in view of the fact that the petitioner's claim for the grant of the benefits of the 02nd A.C.P. from the date when it fell due to him, has already been granted to him and the petitioner has also been paid his entire retrial benefits, post-retirement.

7. It appears from perusal of Paragraph 21 of the counter affidavit, that though the Respondents have acknowledged to have granted the benefits of the 02nd A.C.P. to the petitioner but such grant appears to have been made in the scale of Rs. 5,000-8,000/-.

Learned Counsel for the Respondents is not able to explain as to how such a scale of pay could be fixed contrary to the scales declared in the schedule relating to the revised pay-scales as stipulated in the Government Notification while that the scale of pay upon the grant of the benefits of the 02nd A.C.P. is Rs. 5500-9,000/-.

8. Even if the controversy relating to the date on which, the petitioner's first promotion was granted is ignored in view of the fact that the petitioner had passed the departmental examination some time only in the year 1997, yet, the admitted facts would confirm that the petitioner had completed 24 years of continuous service on 18.06.2003 and was entitled to the benefit of the grant of 02nd A.C.P., which the Respondents have apparently conceded. In the light of such admission, it was obligatory on the part of the Respondents to fix the scale payable to the petitioner in consonance with the revised pay-scales as informed by the State Government. It is not understood as to how even after having earned the eligibility for the grant of the 02nd A.C.P. and after having been granted the benefits thereof, the pay-scale of the petitioner at the time of his retirement could continue to remain the scale of Rs. 4,000-6,000/-, which is the scale applicable to the post of Correspondence Clerk and not to the post of Head Clerks.

9. In the light of the above discussions and also in the facts and circumstances of the case, I find merit in this writ application. Accordingly, this writ application is allowed. The Respondents are directed to consider the petitioner's claim for the grant of the appropriate pay-scales, pursuant to the benefits of the grant of the 02nd A.C.P. to him as declared in the Schedule of the revised pay-scales as notified by the State Government and to pay the difference of salary to the petitioner upon such re-assessment and further, to fix the petitioner's pension on the basis of the scales and the total emoluments to which he is entitled and would have earned on the date of his retirement. This exercise must be initiated and concluded within a period of four months from the date of receipt/production of a copy of this order. If the arrears of the difference of salary is not paid within the stipulated period, then the total amounts as payable arrears, shall carry

interest at the rate of six per cent per annum from the date when it fell due for payment and till final payment.

10. Let a copy of this order be given to the learned Counsel for the Respondent-State.