
(2020) 09 JH CK 0201
In the Jharkhand High Court
Case No : Writ Petition(S) No. 425 Of 2013

Jageshwar Ravidas

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43, 43(a), 43(b)

Citation : (2020) 09 JH CK 0201

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : S.K.Pandey, Sreenu Garapati

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties through V.C.

2. The instant writ application has been preferred by the petitioner for following reliefs;

(i) For issuance of an appropriate writ in the nature of mandamus directing and commanding upon the respondent to remove the anomaly in fixing the pay scale of the petitioner as on 03.03.2001 vide letter No. 209 issued by the Director, Directorate of Agriculture (Soil Conservation Cell) by reducing the pay scale of the petitioner from Rs.4000-6000 to 3200-4900 which caused reduction of pay of the petitioner and also loss of financial benefit of 1st and 2nd ACP from 09.08.1999 at the scale of Rs. 4500-7000 and 5000-8000 and consequently an amount of Rs. 1,06,000/- has been deducted from the retiral dues ;

(ii) For quashing the speaking order passed by the Director, Directorate of Agriculture (Soil Conservation Cell) vide letter No. 1874 dated 21.12.2012 ;

(iii) Consequently, the petitioner be paid the arrears of differences salary as well as the differences of the retiral dues upon the gratuity, leave encashment and pensionary benefits etc. with 12% interest to the petitioner since he has already

retired on 31.03.2008 on the post of Field Supervisor.

3. The facts of the case as stated in the writ application is that the petitioner was appointed under the respondents on the post of Field Supervisor on 02.01.1967 in the Agriculture Department and has superannuated from service w.e.f. 31.03.2008. During his service the petitioner was given promotion in the selection grade scale w.e.f. 01.04.1972 and was also allowed the Second Time Bound Promotion w.e.f. 02.01.1992. Upon grant of Second Time Bound Promotion the petitioner was allowed a pay scale of Rs. 1320-30-1560-40- 2040 which upon implementation of 5th Pay Revision recommendations was revised to Rs. 4000-100-6000 w.e.f. 01.01.1996. It has been specifically submitted by the petitioner that the said pay scale was made by the competent authority and was also confirmed and approved by the department. The further case of the petitioner is that the respondent No.3 vide memo no. 539 dated 13.03.1996 has already fixed the pay scale of the petitioner at Rs.1320-2040 subject to approval/confirmation by the Finance Department and the said scale is equivalent to the revised scale of Rs. 4000-6000. The case of the petitioner is that in view of the aforesaid scale of Rs. 4000-100-6000 being already granted to the petitioner w.e.f. 01.01.1996, the respondents were required to allow the pay scale of Rs.4500-125-7000 and 5000-150-8000 to the petitioner upon A.C.P, but the respondent no.3 vide its order as contained in letter No. 209 dated 03.03.2006 (Annexure-2), while granting the benefits of ACP to the petitioner directed for fixation of his same pay scale at Rs. 4000-100-6000 w.e.f. 09.08.1999 because of which the monthly pay of the petitioner has been badly affected. Pursuant to the said order dated 03.03.2006 petitioner preferred a writ application being W.P. (S) No. 4721 of 2008, the said writ application was allowed and the impugned order dated 03.03.2006 was quashed and set aside by giving liberty to the respondents to pass a fresh order after issuing show cause notice to the petitioner and after examining the explanation furnish by the petitioner. For ready reference the order dated 04.10.2012 passed in W.P.(S) No. 4721 of 2008 is quoted herein below:

"Perusal of the impugned order dated 03.03.2006, Annexure no.1, reveals that the salary of the petitioner was fixed on the higher side and after detecting the mistake recovery was directed to be made from the petitioner.

Learned counsel appearing for the State submits that vide Annexure-E to the counter-affidavit, the petitioner has undertaken for refund of the excessive amount, if found paid to the petitioner.

I have carefully examined Annexure-E, which only says that if fixation of salary is found to be excessive in future, excess amount shall be refunded by the petitioner. There is nothing on record to prove that the petitioner was ever issued any show cause notice mentioning therein the correct salary to which the petitioner was entitled for and as to under what circumstances wrong excess salary was fixed.

Therefore, the present petition is allowed and the impugned order, Annexure No.1 is hereby quashed.

However, the respondent shall be at liberty to pass fresh order after issuing show cause notice to the petitioner and after examining the explanation furnished by the petitioner."

Pursuant to the said order petitioner preferred a representation before respondent No.3 requesting to refund the deducted amount of Rs. 1,06,000/- which was already deducted from his retiral dues and also prayed for the arrears of A.C.P. benefits. After receiving the representation of the petitioner the respondent No.3 directed the petitioner to submit clarification of his claims in details vide letter No. 1761 dated 04.12.2012 and thereafter, petitioner again submitted his clarification vide his representation dated 12.12.2012. The said clarification/representation of the petitioner was rejected by the respondent No.3 vide its order as contained in memo no. 1874 dated 21.12.2012 which has been impugned in this writ application(Annexure-7).

4. Learned counsel for the petitioner submits that the impugned notification is bad in law and the respondent- authorities cannot take back the benefits given to the petitioner as the petitioner has availed the promotions long back as per the order passed in the case of Bijay Kumar Sharma and Ors. Vs. Ranchi University as reported in 2003 (3) JLJR 566 (HC). He further submits that there cannot be any withdrawal of promotions without any proceeding under Section 43 (B) of Bihar Pension Rules. He further submits that the Supreme Court has prohibited any recovery if there is no misrepresentation or fraud on part of the employees already paid on merits. He contended that as two promotions which were granted in 1972 and 1992 on account of the Finance Department confirmation could not be withdrawn or cancelled after a gap 40/20 years and that too without due process of law. In order to buttress his argument, learned counsel for the petitioner has relied upon the following judgments :-

a) 2003(3) JLJR 566

b) 2008(1)JCR 381

c) 2013(12)SCC 580

d) 1978 (1) SCC 405

e) 2012 (8)SCC 44

5. Per contra, learned counsel for the respondent submits that the Department of Finance Government of Bihar vide Resolution No. 3M-2-5-VE-PU-01/99-660 (F/2) dated 08.02.1999 have accepted the revised pay scales after careful consideration of the recommendation of the Fitment Committee regarding post wise Central scales of pay. The existing scale in relation to a government employee means the present scale applicable to the post held by the government employee. He further submitted that the State Government have decided to

abolish the existing facilities of time bound promotion and selection grade and they shall cease to be applicable w.e.f. 01.01.1996 and thereafter in the existing pay scales. The revised pay scale for the post of Field Supervisor is 3200-4900. The fifth pay commission recommended revised scale on the post working by the employee instead the scale getting by the employee at the time of the revision. The concept was misconstrued and the petitioner drawn the salary of Rs.4000-6000 scale, which appears to be revised scale to Rs.1320-2040. The scale of Rs. 4000-6000 is not the revised scale for the post of Field Supervisor rather the revised scale for Field Supervisor is Rs. 3200-4900. Thereafter, taking Rs. 3200-4900 as the present scale/revised scale for the post of field supervisor, considering the scheme of ACP as contained in Memo No. 5207 dated 14.08.2002 granted next higher pay scale 4000-6000 as 1st ACP w.e.f. 09.08.1999 and 2nd ACP in next high pay scale 4500-7000. It is humbly submitted that there is not any illegality or infirmity in the impugned order as contained in order No. 1874 dated 21.12.2012 and the same is passed in accordance with the revised pay scale to the Field Supervisor post as per the Department of Finance resolution no. 660 dated 08.02.1999 and the ACP scheme contained in Memo No. 5207 dated 14.08.2002. He further submits that the judgments referred by the petitioner are not applicable in the present facts of the case as that the issue in the referred cases is with respect to reduction of the pay scale by changing the designation of employees and withdrawing the time bound promotion, as the petitioner, therein, not eligible due to non- passing of the department examination etc. The facts of the present case are regarding the change in the pay scale due to the revision of pay made on the recommendations of the Pay Commission, an expert body which examined all the issues, various representations and disparities and before making recommendations for pay scales/revised pay scale, the pay commission takes into consideration the existing pay structure, representations of the government servants and various other factors like interdepartmental disparities owing to varying promotional hierarchies, the issue of stagnation, efficiency in the functioning of the departments and the task done is not a random exercise which is unilaterally done by the government rather it is based on the opinion of the expert body. The decision of expert bodies like Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the post in various services and nature of the duties of the employees. He further submits that the petitioner gave an undertaking at the time of the revise of the pay scale to refund the amount if any excess has been paid to the petitioner and the same is recorded in the order dated 04.10.2012 passed by this Court in W.P.(S) No. 4721 of 2008.

6. In order to buttress his argument, learned counsel for the respondent relied upon the judgments passed in the case of High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh as reported in (2016) 14 SCC 267 in which the Hon'ble Apex Court at para 3 has held that while obtaining for the revised pay scale, the respondent undertook to refund any excess amount, if it was so detected and

demanded subsequently. The Hon'ble Apex Court upheld the action of recovery by the respondents. Relying upon the aforesaid judgment learned counsel for the respondent defended the impugned notification and the recovery.

7. Having heard learned counsel for the parties and after going through the various judgments adduced at bar, it appears that the petitioner had earlier moved this Court by challenging order dated 03.03.2006 whereby the respondent no. 3 while granting benefit of ACP to the petitioner directed for fixation of his same pay scale at Rs. 4000-100-6000 w.e.f. 09.08.1999 because of which the monthly pay of the petitioner was badly affected. It further transpires that the said impugned order dated 03.03.2006 was quashed. However, a liberty was given to the respondent-authorities to pass a fresh order after issuing show cause notice to the petitioner and after examining the explanation furnished by him.

8. An interesting development took place during pendency of the previous writ application that the petitioner stood retired from service. It is well settled principle that before taking any action against an employee under Bihar/Jharkhand Pensions Rules; the State has to comply with the provisions of Rule 43 (b). Thus, in my considered opinion, apart from the other questions; the moot question arises for consideration as to whether the impugned order is legally valid when there is no proceeding initiated against the petitioner after retirement. It is an admitted fact that the order dated 03.03.2006 was quashed on 04.10.2012 though a liberty was given to the respondents to issue a fresh show cause notice to the petitioner, but this court has never given liberty to bypass the statutory provision. This court did not permit the respondents to resume the earlier inquiry rather there was a specific direction that the show cause notice can be issued to the petitioner. At the cost of repetition, the show cause notice was issued to the petitioner pursuant to the representation filed by him on 04.12.2012 without adhering to the procedure under Rule 43 (b) of Bihar Pension Rules. For brevity, Rule 43 which deals with provisions relating to grant of pension is quoted herein below:

"43.(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserves to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b)The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re- employment

after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

9. From bare perusal of the aforesaid section it transpires that any proceeding shall not be instituted save with the sanction of the State Government and also shall not be in respect of an event which took place beyond four years before the institution of such proceeding. In the instant case even though the liberty was given by the High Court, but there was no direction and/or observation for not following the statutory provisions. In the case of State of Bihar & Ors. Vs. Mohd. Idris Ansari as reported in 1995 Supp (3) SCC 56 the Hon'ble Apex Court at para 7 has laid down the law as under:

"7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before initiation of such proceeding. It is therefore the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition No. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently it is not open to the learned advocate for the appellant to rely upon the said earlier notice dated 17-10-1987."

10. In the case in hand, admittedly, no proceeding under Rule 43 (b) has been

initiated pursuant to the order passed by this Court which was necessary as the petitioner stood retired much before quashing of the said order. Further the two promotions i.e. in the year 1972-1992 given by the Government on account of Finance Department confirmation has been withdrawn by the order dated 03.03.2006 w.e.f.1999. Thus, the cause of action for any recovery was much beyond the period of four years. It is also an admitted fact that there was no misrepresentation by this petitioner in fulfilling any of the information. The Hon'ble Full Bench of this court in the case of Laxman Prasad Gupta vs. The State of Jharkhand and Ors. as reported in 2008(1) JCR 381 (jhr) has held that the Government has no power to recover the amount paid in the excess arbitrarily and such recovery can be made in accordance with the procedure prescribed under rule 43(b) of Pension Rules. At this stage it is pertinent to mention the order passed in the case of Normi Topno vs. The State of Jharkhand and Ors. reported in 2008 (1) JCR 381 (jhr). Para 47 of the said judgment is reproduced herein below:

"47. In view of the above discussions, we arrive at the following conclusion. To sum up:

After retirement, there is no relationship of employer and employee and as such no recovery can be made from the retiral benefits without following procedure of law as provided under Rule 43(b) of the Bihar Pension Rules. Hence, without fulfilling the conditions under Rule 43(b) and without cancelling the order of promotion after enquiry by the competent authority, pension and other retiral benefits cannot be recovered that too without giving opportunity to the retired employee and without giving any finding with reference to the misrepresentation or misconduct on the part of the concerned employee or any other employee merely on the recommendation of audit objection.

11. Thus, at the cost of repetition, the order passed by this Court in the earlier writ application filed by the petitioner, the impugned letter dated 03.03.2006 was quashed and set aside vide order dated 04.10.2012 and till that time the petitioner retired from service. As such, after the order of this Court, there was no proceeding pending against the petitioner. As such, in my considered opinion, though the respondents were at liberty to initiate any proceeding, but were duty bound to follow the riders as enshrined in Rule 43(b) of Bihar Pension Rules that any proceeding after retirement of an employee shall not be initiated save and except with the sanction of the State Government and secondly shall not be initiated if the cause of action is beyond the period of four years. In the instant case, admittedly, no proceeding has been initiated under rule 43 (b) of the Bihar Pensions Rules.

12. In view of the aforesaid findings, the impugned order has no legs to stand. Normally in such type of cases, the matter should have been remitted back to the respondent authority, but admittedly the initial impugned letter for recovery was of 2006 issued on the basis of notification dated 08.02.1999, as such the period is much beyond the limit of four years; as such, no fruitful purpose would

be served in remitting the case back to the respondent authorities.

13. As a result, the impugned order as contained in letter No. 1874 dated 21.12.2012 is quashed and set aside. The respondent-authorities are directed to refund the amount forthwith within a period of three months from the date of receipt/production of copy of this order and re-fix the pension of the petitioner. It is made clear that if the refund is not made within the aforesaid stipulated period; the respondent- authority would be liable to pay an interest at the rate of 7% per annum from the date of such deduction till the date of actual payment.

14. With the aforesaid direction the instant writ application is allowed and disposed of.