
(2009) 01 JH CK 0097

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7240 of 2005

Janki Prasad Sharma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Bihar/Jharkhand Pension Rules, 1950 — Rule 43(b)

Citation : (2009) 57 BLJR 919

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : J.P. Sinha, for the Appellant; Suresh Kumar, J.C. to G.P. III, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.

Heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the State.

1. The petitioner retired from the service of the State Government on 31.01.2002 as Correspondence Clerk, working in the Public Health Department. His grievance is that after his retirement, by an office order dated 15.01.2005, contained in Annexure-6 to the writ petition, the first time bound promotion given to him on 19.2.1992 w.e.f. 05.11.1989, has illegally been cancelled and consequent thereto that his pension has wrongly been fixed at a lower scale.

2. Learned Counsel appearing for the petitioner submitted that in the case of "Nakul Raut v. State of Jharkhand and Ors. In C.W.J.C. No. 1998 of 2001" disposed of on 10.09.2001, it has specifically been held by this Court that after retirement and after more than three years of the date of promotion, it is not open to the State to raise the question of legality and propriety of promotion, which has granted in favour of the petitioner while he was in service.

3. It is further submitted that the respondents have no jurisdiction to re-open the legality and propriety of order of promotion given to the petitioner when he was in service and they cannot cancel the promotion given to him. It is further submitted that the respondents cannot fix his pension at a lower scale nor can they cancel promotion nor can they recover the amount. Infact the pension has to be fixed on the basis of the last pay drawn by the petitioner at the time of his retirement. The said judgment passed in C.W.J.C. No. 1998 of 2001 has been annexed as Annexure-7 to this writ petition.

The relevant portion of the judgment is quoted hereinbelow:

Admittedly, the petitioner retired from the services of the State on 31.1.1999. He was granted promotion to senior selection grade while he was in service. After retirement and more than three years from the date of promotion, now it is not open to the respondents to raise the question of legality and propriety of promotion as was granted in favour of petitioner while he was in service. Even if such order is recalled, the respondents cannot recover any amount from the petitioner, nor can lower down the last pay actually drawn by him. In the aforesaid background, if the respondents of their own have requested the Accountant General to fix the pension and gratuity on the basis of last pay actually drawn by petitioner i.e. Rs. 7700/-, the Accountant General, Bihar should fix the same accordingly and should issue appropriate payment order in favour of petitioner immediately but not later than a period of one month from the date of receipt/production of a copy of this order.

It may be mentioned that the respondents cannot reopen the issue relating to legality and propriety of order of promotion to selection grade as was allowed to petitioner while he was in service at this belated stage, nor can recover any amount, there being no proceeding under Rule 43(b) of the Bihar Pension Rules having initiated.

4. In the present case also, there is no dispute of the fact that no proceeding under Rule 43(b) of the Bihar/Jharkhand Pension Rules has been initiated against the petitioner rather from the counter affidavit filed by the respondent-State, it appears that by issue of Annexure-B to the counter affidavit, order has been passed for fixation of pension at lower stage. The point in issue in the present case is fully covered by the decision of Nakul Raut Case (Supra).

5. Accordingly, this application is allowed. The order as contained in Annexure-6 dated 15.1.2005 issued under the signature of the Superintending Engineer, Public Health Department is hereby quashed and the respondents are directed to take appropriate step for fixation of the pension of the petitioner on the basis of last pay drawn by him without any further delay.