

(2009) 03 JH CK 0094
In the Jharkhand High Court

Kameshwar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Citation : (2009) 03 JH CK 0094

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—By Court - The petitioner has prayed for a direction to the respondents to fix his pay in the scale of Rs. 5000-8000/- and to fix the pension as well as arrears of salary payable to him on the aforesaid scale.

2. The case of the petitioner is that he was initially appointed in the District Collectorate as Clerical staff. Subsequently a separate cadre, known as the Directorate Cadre, was created and the employees of the District Collectorate were given an option to join the cadre of Directorate of Treasury. The petitioner had opted for Directorate Cadre and his application on being considered, he was selected for his absorption in the Directorate Cadre on 07.02.1980. In the Directorate Cadre, a gradation list was prepared in which the petitioner's position in seniority was fixed. At the time when he was absorbed in the Directorate Cadre, his scale of pay was initially at Rs. 260-408/- which on revision from time to time, was enhanced to Rs. 730 - 1080 and later Rs. 1400-2600/-. The last revision in the pay scales of the Government employees was made with effect from 01.01.1996 with the corresponding increased scale at Rs. 5,000 - 8,000/-

Some time in the year 1993, the Directorate Cadre was abolished and all the employees under Directorate Cadre were reverted to their respective district Collectorate Cadres. However, the service conditions as was applicable to the employees in the Directorate Cadre was not changed and it was to remain

operative in the case of the petitioner also.

3. The grievance of the petitioner is that despite the fact that in the gradation list the petitioner stands senior to two other co-employees namely Basistha Narain Jha and Arjun Ram and both of them were allowed benefit on the revised scale of Rs. 5,000 - 8,000/- with effect from 01.01.1996 but the petitioner has been denied the benefit.

4. Referring to Annexure-3 which is a letter dated 03.09.2002 issued by the Department of Finance of the State Government, learned Counsel for the petitioner would explain that in the aforesaid letter, which is by way of a notification issued by the department, the revised scale of Rs. 5,000 - 8,000/- would be applicable to those employees who were selected by the Directorate in the year 1979 and who had drawn their salary in the scale of Rs. 260 - 408/- and the corresponding increase in the revised scales. The petitioner contends that he was selected by the Directorate of Treasury in the year 1979 and had drawn his salary by availing the revised scale of Rs. 1400 - 2600/- as would be evident from his service book. Learned Counsel for the petitioner explains that the contention of the respondent Deputy Commissioner, Giridih that the petitioner had joined the District Treasury after 1979 is therefore misleading and incorrect as because the service book would confirm that the petitioner had initially joined the District Treasury prior to 1979 and it was later, when in the year 1979 a cadre of Directorate of Treasury was created, the petitioner had opted and was thereafter absorbed in the Directorate Cadre which was later abolished and then the petitioner was reverted to the District Collectorate. Learned Counsel adds further that even otherwise, since the service conditions, as was applicable to the employees of the Directorate Cadre, did not undergo any change on the petitioner's joining the District Collectorate Cadre, the petitioner is entitled to the same pay scale as was applicable to him in the Directorate Cadre.

5. Referring to a judgement passed in the case of Dhananjay Sharma and Ors. v. State of Bihar vide C.W.J.C. No. 3063 of 1992 and a more recent judgement in the case of Satendre Kumar Dubey v. State of Jharkhand in W.P. (S) 742 of 2004, learned Counsel for the petitioner would submit that in both the judgements the same issue was raised and it was held that the writ petitioners who were discharging the same functions as those employees in the District Collectorate, cannot be discriminated in the matter of scales of pay. Learned Counsel submits that since the Fitment Committee had recommended the scale of Rs. 5,000 - 8,000/- to the Accountants working in the treasuries, the petitioner in the present case discharging the same functions, is also entitled to the same pay scales. This is in addition to the rights which had accrued to the petitioner under their service conditions which was applicable to them in the Directorate Cadre.

6. Learned Counsel for the respondent State, while referring to the counter affidavit filed on behalf of the respondents, submits that as it would appear from the impugned order of the Deputy Commissioner of the district, the petitioner had joined much after 1979 and therefore, it was contended that he was not

entitled to the same benefit of pay scale given to the other employees of District Collectorate. According to learned Counsel, the year 1979 has been made as the cut of date in the earlier writ application filed by the several employees which was decided in the case of Dhananjay Sharma (Supra).

7. There appears to be an apparent fallacy in the stand taken by the Respondent Deputy Commissioner. The petitioner has demonstrated that his initial appointment was in the District Collectorate, Giridih itself much prior to 1979 and pursuant to a notification issued by the Government after the creation of the Directorate Cadre, he had opted for Directorate Cadre for which he was selected and it was only later when the Directorate Cadre was abolished and the employees were reverted to their original district that the petitioner had joined in the District Collectorate. While reverting such employees to their original districts, it was clearly stipulated that the conditions of service as was applicable to the employees under the Directorate Cadre, would continue to be applicable to them. The petitioner had demonstrated that even in the Directorate Cadre he had already achieved the pay scale of Rs. 1400 - 2600/- and on his reversion to the District Collectorate, he has been discharging the same functions as Senior Accountant as was being discharged by his colleagues in the same department. In the Judgement in the case of Dhananjay Sharma (Supra) and also in the case of Satendra Kumar Dubey (Supra), the ratio laid down was that there can be no discrimination on the pay scales since the writ petitioners were entitled to the same pay scales as that of other employees in the same department on the principle of equal pay for equal work. The same principle would apply in the present case also.

8. In the light of the above discussions, I find merit in this writ application. Accordingly, this application is allowed. The respondents are directed to fix the pay scale of the petitioner at Rs. 5,000 - 8,000/- as the revised pay scale with effect from 01.01.1996 and upon computing the arrears on the basis of difference of salary, till the date of the petitioner's retirement in the year 1998, the respondents shall pay the arrears to the petitioner and shall also fix the pension of the petitioner on the basis of the above scale of pay. This exercise must be carried out within three months from the date of this order.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the counsel for the respondent State.