
(2007) 12 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6148 of 2003

Lakshman Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

Citation : (2008) 56 BLJR 1370 : (2008) 2 JCR 233

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : S. Srivastava, Sumir Prasad, for the Appellant; M.S. Akhtar, S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioner, in this writ petition, has prayed for quashing the order dated 15th January, 1998 (Annexure-2), whereby the Respondent No. 5 has raised objection regarding second time bound promotion given to the petitioner as far back as in the year 1939 after several years of his retirement. He has also prayed for quashing the order dated 16th August, 1998 (Annexure-3), whereby the Respondent No. 4 has informed the petitioner regarding recovery of a sum of Rs. 51,479.90 paise from the retiral dues.

2. Grievance of the petitioner is that before the said orders, contained in Annexures-2 and 3, no notice or opportunity of hearing was given to the petitioner. It has been stated that the petitioner was given first time bound promotion and second time bound promotion by order dated 30th August, 1989 and the promotional benefit was also given till his retirement on 31st January, 1998 without any objection from any authority. After his retirement, the Respondent No. 5 has raised objection regarding propriety of second time bound promotion given to the petitioner observing that the petitioner was not entitled to get second time bound promotion. On that basis, the monetary benefit given to the petitioner was calculated and a sum of Rs. 51,479.90 paise has been recovered from his retiral dues. It has been submitted that there was no

misrepresentation on the part of the petitioner for getting the said amount and the said promotional benefits. On the basis of the order passed by the competent authority, the benefit of time bound promotion was given to the petitioner after completion of 25 years of his services. It has been submitted that the benefit, which has been given to the petitioner during his service tenure, cannot be recovered after his retirement and that too without giving any notice or opportunity of hearing.

3. A counter affidavit has been filed by the respondents, contesting the petitioner's claim. It has been vaguely stated that the order passed by the concerned authority is rational and legal. However, there is no reply regarding the petitioner's claim that no notice or opportunity of hearing was given and that there was no misrepresentation on the part of the petitioner. It has been simply stated that the recovery has been made only on the basis of impugned order issued by the Respondent No. 2, as contained in Annexure-2.

4. Heard learned Counsel for the parties and perused the materials brought on record. It is evident from the record that the petitioner was given time bound promotion by order issued by the Chief Malaria Officer, Bihar, Patna vide his Memo No. 2665 dated 30th August, 1989. The petitioner retired in January, 1998 and till then, the promotional benefits were given to him. After retirement, the Respondent No. 5 raised an objection and observed that the second time bound promotion was not payable to the petitioner. However, no reason has been assigned as to what was the illegality for which the petitioner was responsible. The state respondents also did not examine the reasons and also did not issue any notice and provide any opportunity of hearing to the petitioner on the said objection, regarding his second time bound promotion and a sum of Rs. 51,479.90 paise has been recovered from the retiral dues of the petitioner.

5. In *Sahib Ram Vs. State of Haryana and Others*, Hon'ble Supreme Court has held that the benefit of higher pay scale given to an employee on no misrepresentation on his part cannot be recovered from him. Similar view was also taken in *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.* .

6. In the instant case, it is an admitted position that the time bound promotion was given by the competent authority and the benefit of promotion was given to the petitioner without any objection till his retirement. The said promotion order has neither been cancelled nor withdrawn by the department till date. After his retirement, it has been alleged that the petitioner was not entitled to get second time bound promotion.

7. On perusal of the order, I find that the same is mechanical and no reason has been assigned for holding the second time bound promotion given to the petitioner was not proper. No notice or opportunity of hearing has been given to the petitioner before making such observation. The state respondents also could not afford any opportunity of hearing to the petitioner and without observing the rule of natural justice, a sum of Rs. 51,479.90 paise has been recovered from his

retiral dues.

8. It is settled law that any order visiting the petitioner with civil consequences or causing financial loss cannot be passed without giving him an opportunity of representation/hearing.

In view of the above, the impugned orders dated 15th January, 1998 (Annexure-2) and 16th August, 1998 (Annexure-3) being violative of principle of natural justice are illegal. The same are unsustainable and are hereby quashed. This writ petition is allowed.

9. The respondents are directed to refund the sum recovered from his pensionary benefits within a period of two months from the date of receipt/production of a copy of this order and fix and pay his due pensionary benefits accordingly. If the amount, so recovered, is not refunded within the said period, the same shall carry interest @ 10% per annum.

However, there shall be no order as to costs.