
(2005) 02 JH CK 0084

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4460 of 2003

Lakshmi Narayan Prajapati

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Citation : (2005) 2 JCR 243

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Rita Kumari, J.C. to G.P. II, for the Respondent

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This writ petition has been preferred by the petitioner against the order issued under Memo No. 56 (i), dated 31st May, 2003, whereby and whereunder, while the respondents fixed the leave salary of the petitioner of 240 days, also ordered to deduct a sum of Rs. 1,09,903/- which has been paid in excess.

2. According to the petitioner, he was in the junior selection grade scale of Supply Inspector in the un-revised scale of Rs. 1800-3300/- which is also the scale of the post of Marketing Officer and was rightly provided with the replaced scale of Rs. 6500-10,500/-, w.e.f. 1st January 1996 and retired on 28th February, 2003. He having received the salary in the revised scale of Rs. 6500-10,500/-, the respondents should have fixed the retiral benefits on such basis and cannot recover any amount. The impugned order issued under Memo No. 56(i), dated 31st May, 2003 has been issued without any notice and hearing to the petitioner.

3. The stand taken by the respondents is that the petitioner was wrongly provided the replaced Scale of Rs. 6500-10,500/-. He being a Supply Inspector was entitled for replaced scale of Rs. 5000-8000/-, such mistake having been committed, excess amount paid has been adjusted from the retiral benefits of

the petitioner.

4. From the pleadings made by the parties, it appears that the petitioner was appointed as Supply Inspector on 18th August, 1966 and he was granted 1st time bound promotion w.e.f. 1st April, 1981 vide Letter No. 10278, dated 28th October, 1986. At his stage, the scale of pay of Junior Selection Grade of Supply Inspector was Rs. 880-1510 which was subsequently revised by Government Resolution dated 18th December, 1989, but he was allowed lower revised scale of Rs. 1600-2780. Later on when it came to the notice of the State that by mistake the lower revised scale of Rs. 1600-2780 was provided to the Selection Grade Supply Inspector, the Government of Bihar, Department of Food, Supply and Commerce issued letter No. 339, dated 19th January, 1991, whereby an whereunder, the Junior Selection Grade Supply Inspector was provided with the pay scale of Rs. 1800-3332 w.e.f. 1st January, 1986 which was the scale of Marketing Officer. The pay scale was subsequently revised on the basis of the recommendation of the Fitment Committee w.e.f. 1st January, 1996 by the Government of Bihar vide Finance Department Resolution No. 3M-2-5-VE-P.U.-01/99-660 (F-2), dated 8th February, 1999. By the said resolution, it was decided to abolish the existing facility of time bound promotion and the following order was passed :

"The State Government have decided to abolish the existing facilities of Time Bound Promotions and Selection Grades, discussed in paras 10 and 12 of FD Resolution No. 6021, dated 18th December, 1989 and they shall cases to be applicable with effect from 1st January, 1996 and thereafter in the existing pay scales. If any such promotion, however, is due under the Rules before 1st January, 1996, it shall be given and the payment of arrears in the existing scale shall be made only upto 31st December, 1995 after which the promotion would be deemed to have been automatically terminated. While fixing pay in the revised scales, such promotions given after 31st December, 1995 will not be taken into consideration. If such promotions have been given after 31st December, 1995 then the question of adjustment of such additional emoluments obtained in the process, will be decided after the Fitment Committee submits its recommendations on promotion Policy. Promotion to any vacancy of a post identified as "need based post" would be admissible. The procedure for identification of such need based posts has been set out in paragraph 12."

5. The petitioner having been promoted to selection grade scale of Supply Inspector, according to the respondents, his pay should have been fixed in the revised replaced scale of Rs. 5000-8000/- as is the scale provided to the Supply Inspector, the post the petitioner was holding substantively. In the writ petition, the petitioner has not pleaded that he was promoted to the post of Marketing Officer, but in the counter affidavit filed by the District Accounts Officer, Ranchi, it is stated that the petitioner was promoted to the post of Marketing Officer vide Notification, No. 1207, dated 3rd December, 2001. Though such statement has been made but the Notification No. 1207, dated 3rd December, 2001 has not

been enclosed with the counter affidavit. In any case, even if it is presumed that the petitioner was promoted to the post of Marketing Officer, then at best, he could have been allowed the revised scale of pay of Rs. 6500-10,500/-.

6. In the present case, admittedly no opportunity was given to the petitioner while impugned order contained in Memo No. 56 (i), dated 31st May, 2003 was issued. It is also not clear as to why the petitioner has been provided the revised scale of Rs. 5000-8000/- if he was promoted as Marketing Officer, as has been stated in the counter affidavit.

7. In the circumstances, the impugned order having issued in violation of the rules of natural justice, without application of mind, the said Memo No. 56(i), dated 31st May, 2003 issued by the concerned respondent is set aside. The case is remitted to the respondents/competent authority of the State of redetermine as to what should have been the scale of pay which the petitioner was entitled, taking into consideration the order of promotion and the post he was holding at the time of retirement and will pass appropriate order within a period of three months from the date of receipt/production of a copy of this order. After such decision, if it is found that certain amount is to be adjusted from the retirement benefits of the petitioner, it would be open for them to do so after communicating the decision to the petitioner and rest of the amount they will pay to the petitioner. However, if it is found that the petitioner was rightly provided the replaced scale of Rs. 6,500-10,500/-, the respondents will refund the amount already deducted and, if so necessary, the respondents will re-fix the other retiral benefits such as pension, gratuity etc.

8. The writ petition stands disposed of Petition disposed of.