

(2020) 12 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1814 Of 2019, I.A. No. 8098 Of 2019

Lakshmi Narayan Sinha

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-12-2020

Acts Referred:

Bihar Pension Rules, 1950 — Section 43(b)

Citation : (2020) 12 JH CK 0011

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Nilesh Kumar, Ashish Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. Nilesh Kumar, learned counsel for the petitioner and Mr. Ashish Kumar, learned counsel for the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard on merit.

3. The petitioner has preferred this writ petition for quashing the order dated 10.09.2011 passed in memo no. 1434 by the Executive Engineer,

Mechanical Division, Road Construction Department.

4. The petitioner was appointed as Clerk in the year 1966 and subsequently he was promoted to the post of Correspondence Clerk in the year 1979.

The petitioner retired from the service on 28.02.2017. At the time of retirement, the petitioner was discharging his duties as a Correspondence Clerk in

the Road Construction Department (Mechanical Division) in the office of the Executive Engineer. The petitioner earlier moved this Court in W.P. (S)

No. 597 of 2007, which was allowed on 29.04.2009 with direction to the respondents to refund the amount already deducted from the retiral dues of

the petitioner. The petitioner again moved this Court in W.P. (S) No. 3795 of 2015 praying for the release of his retiral dues, which was disposed of on

22.10.2018 and liberty was granted to the petitioner to challenge the recovery order dated 10.09.2011.

5. Mr. Nilesh Kumar, learned counsel for the petitioner assailed the impugned order dated 10.09.2011 on the ground that earlier the petitioner moved

this Court in W.P.(S) No. 597 of 2007 which was allowed vide order dated 29.04.2009 in view of the fact that there is no misrepresentation on the

part of the petitioner and the Court held that in absence of proceeding under Rule 43(b) of the Bihar Pension Rules, no recovery can be allowed.

Thereafter, the petitioner moved this Court in W.P.(S) No. 3795 of 2015 for payment of retiral dues. He further submits that for the first time the

petitioner came to know the order of recovery dated 10.09.2011 was passed behind the back of the petitioner without giving any notice and without

providing any opportunity of hearing to the petitioner and that is why that writ petition was disposed of with liberty to the petitioner to challenge the

order of recovery dated 10.09.2011 and, thereafter, the petitioner has challenged the said order in this writ petition. He draws attention of the Court to

Annexure-D of the counter affidavit and submits that in the charge-sheet itself, it has been stated that Mechanical Circle and Mechanical Division are

guilty. He further submits that in the charge-sheet, it has been stated that there is no misrepresentation or fraud on the part of the petitioner. He also

submits that there is no departmental proceeding earlier and only after the order of the Court in W.P.(S) No. 597 of 2007, behind the back of the

petitioner the impugned order has been passed. He further submits that proceeding under Rule 43(b) of the Bihar Pension Rules was initiated after

four years from the cause of action that too after the observation given by this Court in earlier writ petition. He further submits that in view of the

judgment delivered by the Hon'ble Supreme Court in the case of Sahib Ram v. State of Haryana, reported in 1995 Supp (1) SCC 18, if

misrepresentation is not there on the part of the employee, recovery cannot be allowed.

6. Per contra, learned counsel for the respondent-State submits that the amount was wrongly paid to the petitioner and the State is entitled for

recovery of the same. He further submits that there is no straight jacket formula for recovery of the amount and only on the ground of no

misrepresentation, it cannot be said that recovery cannot be made. To buttress his argument, he relied upon the judgment rendered by the Hon'ble

Supreme Court in the case of Chandi Prasad Uniyal and Others v. State of Uttarakhand and Others, reported in (2012) 8 SCC 417.

7. On the basis of the above submissions, this Court has perused the material available on record. It is admitted fact that the petitioner earlier moved

this Court in W.P.(S) No.597 of 2007, which was allowed vide order dated 29.04.2009 and the respondents were directed to refund the deducted

amount. Only on the basis of the observation that in absence of proceeding under Rule 43(b) of the Bihar Pension Rules, recovery cannot be allowed,

the respondents further passed the impugned order dated 10.09.2011 that too behind the back of the petitioner without giving any notice or without

providing any opportunity of hearing to the petitioner. The petitioner came to know about the said order when that fact was disclosed in W.P. (S) No.

3795 of 2015 and, thereafter, the petitioner has challenged the said order in the present writ petition. Annexure-D of the counter affidavit suggests that

the petitioner is not guilty and Mechanical Circle and Mechanical Division are guilty. Moreover, the proceeding under Rule 43(b) of the Bihar Pension

Rules was initiated after four years from the cause of action that too after the observation given by this Court in earlier writ petition.

8. The judgment relied by the learned counsel for the respondent-State in Chandri Prasad Uniyal (Supra) is not applicable in the facts of the present

case in view of the fact that Hon'ble the Supreme Court has also taken note of the fact that most of the case turned on the peculiar facts and

circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the

administrative hierarchy. Here in the case in hand, the petitioner has retired from lower post of Correspondence Clerk and in view of the judgment

rendered by the Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih, reported in (2015) 4 SCC 334 ,the petitioner is entitled for the

relief.

9. Paragraphs 17 and 18 of the judgment rendered by the Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih, reported in (2015) 4

SCC 334 are quoted herein below:

17. Last of all, reference may be made to the decision in Sahib Ram v. Union of India wherein it was concluded as under:

4. Mr Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became

Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not

right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University

Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational

qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given

was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale.

However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong

construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be

recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants

Commission. The appeal is allowed partly without any order as to costs.

(emphasis supplied)

6. It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs 700-1600. The above pay parity

would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA,

MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification).

For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case, a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

10. It is well settled proposition of law that a particular judgment needs to be

read in the facts and circumstances of that case. A reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of State of Orissa v. Sudhanshu Sekhar Misra and Others , reported in AIR 1968 SC 647 in which the Hon'ble Supreme Court has considered Earl of- Halsbury, which is at page 651 of the said judgment quoted herein below for ready reference:

On this topic this is what Earl of- Halsbury. LC said in Quinn v. Leathem, 1901 AC 495.

Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character

which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts

proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole

law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an

authority for what it actually decides. I entirely deny that it can be quoted for a proposition @page- SC652 that may seem to follow logically from it.

Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always

logical at all."

11. As a cumulative effect of the aforesaid facts and judicial pronouncements, the impugned order cannot sustain in the eyes of law.

Accordingly the impugned order dated 10.09.2011 passed in memo no. 1434, contained in Annexure-4 of the writ petition is quashed. The respondents

are directed to refund the recovered amount to the petitioner within a period of twelve weeks from the date of receipt/production of a copy of this

order.

12. Accordingly, this writ petition stands allowed and disposed of.

13. In view of the final order passed in the writ petition, I.A. No. 8098 of 2019 also stands disposed of.