(2012) 01 JH CK 0051

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3752 of 2006

Laxman Choudhary APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2012) 3 JCR 328

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Sameer Saurabh and Abhishek Kumar, for the Appellant;

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly against an order passed by respondent No. 3 dated 27th May, 2006, which is at Annexure-9 to the memo of the present petition whereby, without giving any opportunity of being heard or without giving any notice to the petitioner, the pay scale of the petitioner has been reduced and that too with effect from 1st April, 1981 i.e. after approximately 25 years of service of the petitioner. It is also submitted by the counsel for the petitioner that looking to the impugned order, no reason has been assigned and therefore, the said order is a non-speaking order. Moreover, respondent No. 3 has relied upon some letters dated 19th January, 1995 as well as 8th February, 1995. Though these two documents are relied upon, never a copy whereof have been supplied to the petitioner. Nobody knows what are those letters. Had an opportunity would have been given, it would have been pointed out by the petitioner that the petitioner was rightly appointed as Typist in year, 1970 and correctly, adjusted towards the post of Stenographer on 10th December, 1980 vide order at Annexure-2 to the memo of the present petition and thereafter, the petitioner worked for approximately 25 years and abruptly, arbitrary and unilaterally, a decision has been taken in year, 2006 for reduction in the pay scale of the petitioner and therefore also, this order deserves to be quashed and set aside.

2. Counsel for the respondents submitted that a detail counter affidavit has been filed by respondent Nos. 1, 2 & 3 and it has been stated that from the very beginning, the appointment of the petitioner is illegal. So far as the post of Stenographer is concerned, at all, he is not promoted to the post of Stenographer. Nonetheless, there is no show cause notice prior to the impugned order is passed, which is at Annexure-9 to the memo of the present petition.

3. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the order, passed by respondent No. 3 dated 27th May, 2006, which is at Annexure-9 to the memo of the present petition mainly for the following facts and reasons :

(i) The present petitioner was appointed as Typist in year, 1970 with the respondents. Thereafter, vide order at Annexure-2 to the memo of the present petition, he was adjusted towards the post of Stenographer. This order is dated 10th December, 1980. Thereafter, the petitioner worked on this post for quarter of century honestly, sincerely, diligently and to the satisfaction of the respondents. Never any objection has been raised by the respondents. For about 25 long years, he has served on the post of Stenographer.

(ii) It appears from the facts of the case that on 27th May, 2006, respondent No. 3 has reduced the pay scale of the petitioner and fixed in the basic pay of Rs. 710/-with effect from 1st April, 1981. No reason has been assigned, while passing this impugned order. The order is thoroughly non-speaking order.

(iii) It also appears from the impugned order that while passing the impugned order by respondent No. 3, two documents have been relied upon, which are dated 19th January, 1995 and 8th February, 1995. Nobody knows what are these two letters about. Nothing has been mentioned in the impugned order about the contents of these two letters. It appears that on the basis of the Accountant General (Audit) letters, the pay scale of the petitioner is reduced. It ought to be kept in mind by the respondents that Accountant General Office letter is not a conclusive evidence. It is mere a suggestion to the State authorities for the action to be taken. Copy of the letters ought to have been given to the petitioner so that the petitioner could point out the defence of these two letters. Audit objection even it is raised by the Accountant General Office cannot be presumed to be true and correct and no action can be taken without giving any opportunity of being heard to the petitioner.

(iv) The reasons, which are assigned in the counter-affidavit, are of no help to the respondents because the reasons, which are not assigned in the impugned order, cannot be assigned in the counter-affidavit otherwise, all non-speaking orders will be converted into a speaking order and all void and illegal orders can be converted into valid and legal orders. Orders are not like old wine which becomes better by the passage of time. It has been held by the Hon''ble Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in para 8 as under :--

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are Intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.

(Emphasis Supplied)

In view of the aforesaid decision also, the reasons, which are not assigned in the Impugned order, cannot be given in the counter-affidavit.

(v) No prior notice was given before passing the impugned order for reduction of the pay scale to the petitioner. After 25 long years unilaterally and ex-parte, the pay scale of the petitioner has been reduced in year, 2006 with effect from 1st April, 1981, which is in gross violation of principles of natural justice.

4. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby, quash and set aside the order, passed by respondent No. 3 dated 27th May, 2006, which is at Annexure-9 to the memo of the present petition. Accordingly, this writ petition is allowed. Petition allowed.