
(2012) 08 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4816 of 2002

Mahendra Kamat

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-08-2012

Acts Referred:

Citation : (2012) 08 JH CK 0003

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Mukesh Kumar, for the Appellant; R. Mukhopadhyay, S.C.II for the Respondent Nos. 1 to 5 and Mrs. Vandana Bharti, J.C. to G.A., Bihar for the Respondent No. 6, for the Respondent

Judgement

Alok Singh

1. Perusal of impugned order dated 21.09.2001, Annexure 5 of the writ petition, would reveal that although, petitioner was initially appointed as Peon, however, he was directed to discharge the duties of Chainman. Perusal of letter dated 02.02.2002, Annexure 5/1 would also reveal that petitioner was directed to perform the duties of Chainman vide order dated 24.08.1976 issued by the Soil Conservation Directorate. Since, petitioner was performing duties of the Chainman pursuant to the order dated 24.08.1976, therefore, he was paid the salary of Chainman. Vide impugned order dated 21.09.2001, Annexure 5, a direction was issued to recover the excess amount paid to the petitioner stating that petitioner was entitled for the salary for the post of Peon, while, he has been paid the salary of Chainman.

2. Neither impugned order nor counter affidavit suggest that petitioner has ever played any fraud or misrepresentation in getting the salary of Chainman. Petitioner was paid salary of Chainman by the Department, since, he was directed to act as a Chainman vide order dated 24.08.1976. Hon''ble Apex Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , has held that if employee has not played any role in misrepresentation or fraud in

getting the salary fixed or getting the wages on the higher side and such mistake could not be detected at the earliest, then, no recovery should be directed to be made from the employee.

3. Learned counsel appearing for the petitioner clearly submits that after the bifurcation of the State, petitioner was allocated to the State of Jharkhand, therefore, the question as to whether petitioner would be paid pension considering him to have been retired from the post of Peon or Chainman, would depend on the allocation order issued by the Central Government, wherein, designation of the petitioner would have been shown by the Central Government. He further submits that if in the allocation order, petitioner is shown as a Peon, then, petitioner shall take necessary legal steps for the correction in the allocation order.

4. In view of the above, this Court is not entering into the question as to whether petitioner should be treated as Peon or Chainman. This question is left out to be agitated before the appropriate forum. However, in view of the discussion made hereinabove, no recovery should be made from the petitioner pursuant to the impugned orders, Annexure 5 and 5/1. If any recovery has been made pursuant to the impugned order, amount so recovered, shall be refunded by the State of Jharkhand, who has made recovery from the petitioner, within sixty days from today positively. If State of Jharkhand fails to refund the said amount within sixty days, petitioner shall be entitled for the interest thereof at the rate of 10% per annum from today till the actual amount paid to the petitioner.

Present petition stands disposed of accordingly.