
(2018) 07 JH CK 0060

In the Jharkhand High Court

Case No : Writ Petition (S).No. 3481 of 2011

Manjula Jha

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Citation : (2018) 07 JH CK 0060

Hon'ble Judges : DR. S.N.PATHAK, J

Bench : Single Bench

Advocate : S.S. Choudhary, Aman Shekhar, Mithilesh Singh, Sanjoy Piprawall

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner has approached this Court with multiple prayers but now confines her prayer with respect to quashing the letter dated 05.12.2014, issued

by the Director, Higher Education wherein the University has been directed to send a proposal of pay-fixation of the petitioner in the pay-scale of

Reader in the 6th UGC pay-scale and not against the post of University Professor as is being claimed by the petitioner and also for payment of family

pension in the last payscale drawn by the original petitioner i.e. late husband of the petitioner, Dr. Dhaneshwar Jha in revised pay-scale.

3. The factual exposition as has been delineated in the writ petition is that the original petitioner joined the service on 31.03.1975 as a Lecturer of

Chemistry in S.P. College, Dumka on the basis of recommendation made by the University Service Commission, Patna, Bihar vide notification dated

14.02.1981. Thereafter, petitioner was promoted to the post of Reader on

31.03.1985 on completion of 10 years of service and the same was duly approved by the Bihar State Service Commission, Patna, Bihar. It is the further case of the petitioner that the promotion of the petitioner was due since 31.03.1991 to the post of University Professor from the post of Reader and vide notification dated 09.12.2006, the respondent-University had recommended the name of the petitioner for abovementioned promotion with retrospective effect i.e. 31.03.1991 to the Jharkhand Public Service Commission, Ranchi. Subsequently, on 18.12.2007, a letter was issued by the Secretary, Jharkhand Public Service Commission by which the services of the petitioner as University Professor was approved subject to fulfillment of certain criteria laid down by the Jharkhand Public Service Commission. However, when the salary of the petitioner and others was not fixed they submitted representation before the Principal Secretary, Human Resources Development Department for consideration of their cases and upon which, the Principal Secretary vide its letter dated 22.11.2008 directed the Secretary to take appropriate decision with regard to the representation of the petitioner for fixation of salary on the post of Professor after obtaining opinion of the Advocate General on the matter. Thereafter, on 16.09.2009 a letter was sent by the respondent-University addressed to the Director, Higher Education, Govt. of Jharkhand for fixation of salary of the petitioner to the post of professor. Along with the said letter, the respondent-University also forwarded the representation of the original petitioner, late Dr. Dhaneshwar Jha dated 03.10.2009.Â

Â It is the further case of the petitioner that on 22.12.2009 a notification was issued by the respondent-University stating therein that, â??the Vice Chancellor has been pleased to withdraw the promotion of the readers whose names appears in the said notification to the post of University Professor under 16 years continuous service scheme as their cases do not conform with the conditions laid down by the JPSC, Ranchi. Subsequently, the petitioner retired from his service on 28.02.2010, on attaining the age of superannuation. On 28.10.2010, a letter was issued by the Human Resource Department, whereby the pay-scale of the petitioner was fixed in the UGC Pay-scale of Rs.16,400-22,400/- w.e.f. 01.01.1996. It is further submitted that on the representation dated 14.04.2011 filed by the petitioner, it has been stated by the Director, Human Resources Department vide his

letter dated 07.06.2011 that the pay-scale of the petitioner to the post of Professor has already been fixed vide letter dated 28.10.2010 and directed the respondent-University to make payment of all the legally payable dues of the petitioner. However, when the respondent-University has not turned up for making legally admissible due of the petitioner, the petitioner has no option but to knock the door of this Honâ??ble Court for redressal of her grievances.Â

4. Mr. S.S. Choudhary, learned counsel appearing for the petitioner strenuously urges that the respondent-authorities have no right to recall the promotion already granted to the petitioner to the post of University Professor at this belated stage that too after retirement of the petitionerâ??s

husband and also after his death. Learned counsel further argues that the part of the letter dated 18.12.2007 is bad in law, as the same has been held

to be an extra qualification and the date of registration of the scholar for Ph.D. was to be counted for promotion to the post of University Professor.

The action of the respondent-JPSC in not removing/ eliminating the rider of â?? obtaining the Ph.D. degree by a scholar prior to 22.09.1995â??, while

granting promotion to the petitioner is wholly illegal, arbitrary and unjust as well as bad in law and the action of the respondent authorities is a perfect

example of the authorities deliberately showing disregard to the order and direction of the Honâ??ble Courts and the same amounts to the contempt

of Court. The respondent-authorities are making colorable exercise of power conferred to them as during the lifetime of late Dr. Dhaneshwar Jha,

husband of the petitioner, he enjoyed the fruits of his promotion to the post of University Professor and was also granted the pay-scale of the same but

the same was recalled soon after his death. To strengthen his arguments, learned counsel for the petitioner places heavy reliance on the following

case laws:-

(i)Â Dr. Maya Singh Vs. State of Jharkhand [2006(1) JCR 165 (Jhr.)]; ii)Â Smt. Karuna Devi Vs. State of Bihar [2002 (2) JCR 434 (Jhr.)].

5. Per contra, counter-affidavit has been filed by the respondents. Mr. Mithilesh Singh, Learned counsel for the respondent-University vehemently

opposes the contention of the learned counsel for the petitioner. Mr. Singh argues that late Dr. Dhaneshwar Jha, husband of the petitioner was given

promotion from the post of Reader to the post of University Professor

provisionally on temporary basis subject to the recommendation of the Jharkhand Public Service Commission vide notification dated 09.12.2006. Learned counsel further argues that the Jharkhand Public Service Commission through its letter dated 18.12.2007 has given a conditional recommendation for promotion of the petitioner to the post of University Professor with a rider that he completes 16 years of continuous service before 22.09.1995 and a scholar has obtained Ph.D. prior to 22.09.1995 under his guidance. The name of late Dr. Dhaneshwar Jha appears at Sl. No. 1 of the aforesaid letter dated 18.12.2007. In view of the aforesaid conditional recommendation by the JPSC through its letter dated 18.12.2007, the matter relating to the promotion of the late Dr. Dhaneshwar Jha was examined by the University in the light of direction of the JPSC along with other similarly situated teachers and thereafter, the provisional promotion granted to late Dr. Dhaneshwar Jha along with some other teachers was withdrawn vide notification dated 22.12.2009. So far as the case of late Dr. Dhaneshwar Jha is concerned, no scholar under his guidance has obtained Ph.D. degree prior to 22.09.1995 and the first Ph.D. candidate obtaining Ph.D. degree under his guidance was on 02.09.1996. In support of his arguments, learned counsel for the respondents has placed reliance on the judgment passed on 06.09.2011, in case of Smt. Krishna Devi Vs. State of Jharkhand & Ors., W.P.(S). No. 3539 of 2008.

6. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered opinion that the case of the petitioner needs consideration. It is settled principles of law that no recovery can be made from the retiral benefits of an employee after retirement without following the procedure of law. In the instant case order of recovery has been passed for recovery from the legal representative of the original writ petition i.e. from the widow of late Dr. Dhaneshwar Jha, without adhering to the provisions of law. Now when the original petitioner has died it is not open for the respondents to raise the issue regarding legality and propriety of promotion. The original petitioner i.e. late husband of the present petitioner was given promotion long back by the competent authority and he got the benefit of promotion and there was no misrepresentation or suppression of any fact. The order/ notification of the Jharkhand Public Service Commission, which becomes a basis for recovery and fixation of pay-

scale was never served to the original petitioner prior to his death. Not a chit of paper has been brought on record to show that petitioner was

informed regarding notification of the University with respect to alteration or change in the pay-fixation. It is one thing to say that original petitioner

was not entitled for promotion to the post of Professor as he did not fulfill the requisite qualification. The petitioner was considered, recommended and

approved for the post of University Professor and was getting the benefits which is not in dispute and is admitted by the respondents. Law does not

permit to cancel the promotion given long back, without adhering to the provisions of law. Admittedly, the husband of the petitioner, late Dr.

Dhaneshwar Jha, worked as a University Professor and received the salary of the said post and as such, after his death, the respondent cannot deny

the widow, the benefits to which she is entitled on the ground of notification of Jharkhand Public Service Commission.Â

Â Â The Honâ??ble Supreme Court in case N.D.P. Namboodripad (Dead) By Lrs. Vs. Union Of India & Ors, reported in (2007) 4 SCC 502 held

that, â??if any excess payment has been made to the deceased appellant, it shall not, however, be recovered from the Legal Representatives of the

deceased appellantâ??.

7. As a cumulative effect of the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncement, I hereby quash and set aside

the letter dated 05.12.2014, issued by the Director, Higher Education by which he has directed the University to send a proposal of pay-fixation of the

petitioner in the pay-scale of Reader under 6th UGC pay-scale and not against the post of University Professor as is being claimed by the petitioner.

The respondentUniversity is directed to pay the entire benefits accrued to the petitioner by way of family pension. The respondent-University is

further directed to fix the pension/ family pension of the petitioner under revised pay-scale. If the amount has already been recovered, the same shall

be refunded to the petitioner. Petitioner is entitled for fixation of the family pension on the basis of last pay drawn by the original petitioner, i.e. her

deceased husband. The respondentUniversity is also directed to pay the legally due amount to the petitioner with interest @ 5% per month within

three months from the date of receipt/ production of a copy of this order, failing which respondents will be liable to pay penal interest @ 10% apart

from statutory interest and additional cost of Rs.5,000/- in favour of the petitioner.

8. Resultantly, the writ petition stands allowed.