

(2013) 07 JH CK 0065
In the Jharkhand High Court
Case No : WP (S) No. 495 of 2013

Md. Mustafa and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 4 AJR 352 : (2013) 3 JLJR 671

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Dhananjay Kr. Dubey, for the Appellant; Sarvesh Kr. Verma, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioners have approached this Court with the following prayers:-- a. To issue appropriate writ, order or direction, including the writ of mandamus, directing the respondents authorities to fix the salary of the petitioner in the pay scale of Rs. 2610-3540/- in view of the order dated 25.2.2003 passed by this Hon"ble Court in W.P.(S) No. 4041 of 2001 (Shiv Shankar Choudhary & Ors. vs. State of Jharkhand & Ors.), which has been affirmed by the Division Bench of this Hon"ble Court in L.P.A. No. 92 of 2005 by order dated 26.4.2006 and also affirmed by the Hon"ble Supreme Court vide order dated 16.11.2007 in SLP as also affirmed by the Hon"ble Supreme Court in Review Petition (Civil) No. 615 of 2009 by order dated 23.7.2009 and also in view of the orders passed by the respondents authorities vide Office Order No. 220 dated 18.12.2009, Office Order No. 223 dated 21.12.2009 and Office Order No. 226 dated 22.12.2009;

b. To issue further appropriate writ, order or direction on the respondents to pay the arrears on account of fixation of salary of the petitioners in scale of Rs. 2610-3540/-; and

c. For any other relief or reliefs for which the petitioner is legally entitled in the facts and circumstances of the case.

The brief facts disclosed in this writ petition are that, the petitioners were appointed on Class-IV post between the period 1972 to 1980 and they were granted first time bound promotion in the pay scale of Rs. 800-1150/-. In terms of recommendation of the 5th Pay Revision Committee, the pay scale of Rs. 800-1150/- was revised by Resolution dated 8.2.1999 in the pay scale of Rs. 2610-3540/-. Some aggrieved persons approached this Court in W.P.(S) No. 4041 of 2001 which was allowed by the learned single Judge of this Court by order dated 25.2.2003 noticing the following:--

4. Learned counsel for the respondents has drawn my attention to Schedule-III of the said resolution and submitted that the pay scale of the orderly Peons was Rs. 775-1025/- which correspondence to the revised pay scale of Rs. 2550-3200/-. Paragraph 11 of the said resolution by which the pay scale of the Government employees has been revised is worth to be quoted hereinbelow:--

The State Government have decided to abolish the existing facilities of Time Bound Promotions and Selection Grades, discussed in Paras 10 and 12 of F.D. Resolution No. 6021 dt. 18th December, 1989 and they shall cease 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. From bare perusal of the aforesaid paragraph, it is clear that any time bound promotion given to the employees prior to January, 1996 shall not be affected by the subsequent resolution of the Government.

6. As noticed above, admittedly the petitioners were given time bound promotion in 1991 and 1993 and they were placed in the pay scale of Rs. 800-1150/-. In my opinion, therefore, they are entitled to the revised pay scale of Rs. 2610-3540/-. The action of the respondents, therefore, in fixing the pay scale of the petitioners at Rs. 2550-3200/- is arbitrary and without any basis.

7. For the aforesaid reason, this writ application is allowed and the impugned order of fixation of the petitioners pay is set aside. It is directed that the petitioners shall be entitled to the pay scale of Rs. 2610-3540/-.

2. Against the said order, L.P.A. No. 92 of 2005 was preferred by the State of Jharkhand which was dismissed vide order dated 26.4.2006 and after dismissal of the said Letters Patent Appeal, State of Jharkhand moved the Hon''ble

Supreme Court preferring SLP which was also dismissed. The petitioners have relied on the Office Order dated 18.12.2009 by which similar benefit has been extended to other similarly situated persons however, the same benefit has been denied to the petitioners by the respondents. Therefore, being aggrieved, the petitioners have approached this Court by filing the present writ petition.

3. A counter affidavit has been filed on behalf of Respondent Nos. 2 to 4, in which a stand has been taken by the Respondents that letter dated 21.7.2006/22.7.2006 alongwith the orders passed by this Court and the Hon"ble Supreme Court and the other relevant materials seeking fixation of pay scale of the petitioners, were sent to the Finance Department however, the Finance Department has not responded and the necessary direction has not been received by the answering respondents and therefore, the claim of the petitioners could not be decided. The following stand has been taken by the Respondents:--

7. That with reference to above writ of the petitioners it is humbly submitted that Finance Department of the State Government fixes the salary of the employees" category-wise. After passing aforesaid orders by the Hon"ble Supreme Court and High Court Respondent No. 4, Executive Engineer, Road Construction Department, Road Division, Koderma wrote letter to the Secretary, Department of Finance, State of Jharkhand, Ranchi vide letter No. 617 (Enc), dated 21.7.2006/22.7.2006 and sent the relevant judgment and sought necessary direction regarding fixation of salary of the petitioners. Thereafter, the Deputy Secretary, Department of Finance vide letter No. 75 Vidhi Koshang dated 18.9.2006 made query in this regard and which was made clear by Respondent-No. 4, in this regard by sending letter to Deputy Secretary, Finance Department vide letter No. 819, dated 26.9.2006. Thereafter, the Respondent No. 4 is waiting for the direction of the Finance Department and as soon as necessary direction is received he shall act accordingly. Secretary, Department of Finance of the State Government is a necessary party and in his absence the writ is not maintainable.

12. That the statement made in paragraph-17 of the writ application, under reply, it is stated and submitted that the Respondent No. 4 is waiting for the direction of the Finance Department and after receiving the same, he shall comply the directions of the Government.

4. Heard counsel for both the parties and perused the documents on record.

5. Learned counsel appearing for the petitioners has submitted that in spite of orders passed by this Court which has been affirmed by the Hon"ble Supreme Court in the case of "Shiv Shankar Choudhary & Ors." who are identically situated persons working under the same establishment in which the petitioners are workmen, the petitioners have been denied benefit of the recommendation of the 5th Pay Commission, which is not justified in the facts of this case.

6. Learned counsel appearing for the Respondent Nos. 2 to 4 submits that since the proposal was sent to the Finance Department in the year, 2006 itself

however, as necessary instruction has not been received from the Finance Department, the fixation of pay scale of the petitioners has not been done. He further submits that since the Department of Finance is not made party here, this issue may not be decided by this Court.

7. A perusal of the documents on record indicates that this Court by order dated 25.2.2003 has already decided that the employees in W.P.(S) No. 4041 of 2001 were entitled for the benefit of revised pay scale of Rs. 2610-3540/- and in the counter affidavit filed by the Respondent Nos. 2 to 4, respondents have not denied that the petitioners are not identically situated to the petitioners in W.P. (S) No. 4041 of 2001, which was allowed by order dated 25.2.2003. This has also not been denied by them that by the Office Order dated 18.12.2009, the benefit of recommendation of 5th Pay Revision Committee has been extended to the identically situated persons. The only stand taken by the respondents is that since the proposal was sent to the Finance Department in the year 2006 itself and necessary instruction has not been received from the Finance Department, therefore, the pay scale of the petitioners has not been revised. I am of a considered opinion that such a stand taken by the respondents is not justified. It was upon to the respondents to seek instruction after the proposal was sent to the Finance Department which admittedly has not been done in this case. The petitioners have been deprived of their lawful dues on account of inaction on the part of the respondents and therefore, the respondents are directed to decide the claim of the petitioners within a period of four weeks from today and pay all the arrears of salary etc., as admissible in law, within a period of further four weeks. With the aforesaid direction, this writ petition is disposed of.