
(2011) 07 JH CK 0241

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1566 of 2004

Md. Ulfat Hussain

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Fundamental Rules — Rule 22, 22(I)(a)(2)

Citation : (2011) 4 JCR 25

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—By Court.--Heard learned counsel appearing for the petitioner. Accountant General and learned counsel appearing for the State.

2. Learned counsel appearing for the petitioner submits that the petitioner-an Assistant Teacher, while was posted at Millat High School, Dhapra, district Godda was given annual increment. On getting increment, pay of the petitioner was fixed under Rule 22-C of the Fundamental Rule. On fixation of pay, the petitioner was drawing salary in the said Scale. Subsequently, it was detected that the fixation of pay had wrongly been made in terms of Rule 22-C of the Fundamental Rule, instead of 22(I)(a)(2) of the Fundamental Rule and. thereby, an order was passed on 05.1.2004 (Annexure-5) by the Office of the Accountant General, bringing to the notice of the authority that, it has wrongly been fixed under Rule 22-C of the Fundamental Rule, rather it should have been fixed under Rule 22(I)(a)(2) of the Fundamental Rule and, therefore, request was made for its rectification and also for recovery of the amount drawn by the petitioner in excess. Part of that order under which recovery was sought to be made, has been challenged to be bad.

3. Learned counsel further submits that similar matter came up for. consideration before the Hon"ble Apex Court in the case of Syed Abdul Quadir & Ors. v. State

of Bihar and Ors., in Civil Appeal Nos. 3351-3354 of 2003 and Civil Appeal Nos. 3355 and 3364 of 2003 wherein it was held by the Hon''ble Apex Court that the salary had wrongly been fixed under Rule 22-C of the Fundamental Rule rather it should have been fixed under Rule 22(I)(a)(2) of the Fundamental Rule. At the same time, it was also held that on account of wrong fixation on the part of the authority, the State cannot recover the amount drawn in excess.

4. Similar is the issue before this Court and in view of the decision rendered by the Hon''ble Apex Court, referred to above, the State Government is, hereby, restrained from recovering the amount, said to have been drawn in excess, by the petitioner, by virtue of wrong fixation of pay in terms of Rule 22-C of the Fundamental Rule. Accordingly, that part of the order under which recovery of the amount was sought to be made from the salary of the petitioner is quashed.

5. However, as has been indicated by the Hon''ble Apex Court, pay required to be fixed in terms of Rule 22(I)(a)(2) of the Fundamental Rule, has already been fixed.

6. In the result, this writ application is allowed.