(2009) 04 JH CK 0049

In the Jharkhand High Court

Muleshwari Prasad Singh APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Citation : (2009) 04 JH CK 0049

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reason without any opportunity of being heard and without giving any notice to the petitioner, Respondent No. 2 passed the order on 31st August, 2002 whereby a sizeable amount of Rs. 77,273/- has been deducted from the retirement benefit of the present petitioner. The petitioner retired on 31st July, 2002. A time bound promotion which was given somewhere in the year 1979 to petitioner. As per the counsel appearing for the respondent it was wrongly given to the petitioner and, therefore, an order had been passed by Respondent No. 2 dated 21st August, 2003 for deduction of this amount from retirement benefits of the present petitioner. Thus, admittedly, after a period of more than one decode, the amount has been deducted and that too, without giving any notice and without giving any opportunity of being heard to the petitioner.

2. It is submitted by the counsel for the petitioner that respondents have no legal authority, to deduce the amount of Rs. 77,273/- from the retirement benefit. Promotion was rightly given, somewhere in the year 1979 or in 1992 (There is some dispute as to this year). Had an opportunity been given to the present petitioner, this aspect of the matter could have been highlighted by the present petitioner before the Respondent No. 2, but, an arbitrary and an unilateral decision, was taken by the Respondent No. 2 without hearing present petitioner and, therefore, an order passed by Respondent No. 2 dated 31st August, 2003 of deducting of Rs. 77,273/- deserves to be quashed and set aside.

3. I have heard counsel for the respondent who has submitted that wrongly given benefit of promotion, cannot, be retained by the petitioner and hence an order was passed by the above-said respondent for the deduction of Rs. 77,273/- from the retirement benefit of the present petitioner and no illegality has been committed by the respondent and, therefore, petition deserves to be dismissed.

4. Having heard counsel for the both sides it appears that the present petitioner was working as a Routine Clerk with the respondent authority. The petitioner has worked for more than approximately 40 years. Petitioner retired on 31st of July, 2002 and, therefore, is bound to be given time bound promotion, which is only on the basis of length of service.

5. It also appears from the facts of the case that time bound promotion was given somewhere in the year, 1979 as per the petitioner and in the year 199?. as per counsel for the respondent, but, in August, 2003 Respondent No. 2 passed an order for deduction of Rs. 77.273/- from retirement benefit of the present petitioner on the ground that such time bound promotion was wrongly given to the petitioner. Admittedly, no notice was issued and never an opportunity of being heard, was ever given to the petitioner. Only on this ground the impugned order passed by Respondent No. 2 dated 31st August, 2003 which is annexed with the reply filed by the respondent as Annexure-4, to the counter-affidavit, deserves to be quashed and set aside.

6. It ought to have been appreciated by the Respondent No. 2, that an accrued right, cannot be taken away, without giving any opportunity of being heard. Petitioner was given a time bound promotion benefit in the year 1979 or in the year 1992, but before taking away amount of Rs. 77,273/- in 2002 i. e. after at least one decade, Respondent No. 2 ought to have followed, a due procedure established by a law and at least the bare minimum requirement of observations of principles of natural justice. A notice to and a hearing of, the petitioner is a must before passing impugned order.

7. As a cumulative effect of the aforesaid facts and reasons, I hereby quash and set aside an order passed by Respondent No. 2, dated 21st August, 2003, which is Annexure-F, to the memo of the counter-affidavit, filed by the respondents, mainly on the ground that there is violation of, principles of natural justice. Reserving liberty with respondents, to hold inquiry, in accordance with law. As the impugned order dtd. 31st August, 2002 passed by respondent No. 2. is quashed, the amount deducted shall be refunded to the petitioner, with simple interest at the rate of 4% per annum.

Petition is allowed to the aforesaid extent, with no order as to costs.

