

(2006) 12 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1388 of 2005

Nageshwar Ram Dangi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43B

Citation : (2007) 2 BLJR 1083

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

**Advocate : B.K. Dubey and Vijay Kr. Sharma, S. Shrivastava, for the Appellant;
J.C. to S.C.I, for the Respondent**

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner is aggrieved of the order dated 07th January, 2005 and action of the Respondents, whereby last pay of the petitioner has been reduced from Rs. 10,250/- to Rs. 7500/- and consequently recoveries have been made from his retiral benefits on the ground that he did not pass the Hindi noting and drafting exam nation during his service. Petitioner retired from service on 01.08.2002 from the post of Headmaster, Government Middle School, Jharda at Katkam Sandi Block (Anchal). It is alleged that his retiral dues and his salary on the basis of the revised pay-scale has not been paid. On account of non-payment of the retiral benefits, petitioner filed W.P. (S) No. 2289 of 2004, which came to be disposed of vide order dated 28th April, 2004, wherein petitioner was asked to file a representation before the District Superintendent of Education, Hazaribagh giving the details of his claim and a direction was issued to the District Superintendent of Education, Hazaribagh to determine the claim of the petitioner and dispose of the representation within a period of four weeks. It was further observed that if the claim of the petitioner was found to be genuine, all steps must be taken for payment of such dues without any further delay. Petitioner filed a representation pursuant to the aforesaid directions. It is stated

that petitioner's salary was fixed on 6th of May, 1999 at Rs. 9,500/- and after adding two annual increments, last drawn salary at the time of his retirement was Rs. 10,250/-. Petitioner has placed on record last bill chart to demonstrate the last payment of salary at Rs. 10,250/-. It is also stated that difference of salary on the basis of revised pay-scale from 01.04.1997 till the date of retirement has also not been paid. On the strength of the impugned order, Respondents have deducted a huge amount from the retiral benefits by reducing the last pay drawn of the petitioner, from Rs. 10,250/- to Rs. 7500/- and consequently his pension and other retiral benefits have also been fixed on that basis. Only ground for reducing the salary is non-qualifying of the Hindi noting and drafting examination during the service. In Para 17 of the writ application, petitioner has specifically stated that he filled-up the form for departmental examination for Hindi noting and drafting examination during his service. However, result of the same was declared after his retirement on 23rd December, 2002 in which he was declared successful.

2. In the counter affidavit filed, the respondents have reiterated the stand as contained in impugned Annexure-4. However, it is admitted that petitioner appeared in the examination on 25th August, 2002 and pass the same on 23rd December, 2002. Respondents, however, have not denied the specific averment in the writ application that petitioner applied for the said Examination during his service, which was conducted after his retirement. Respondents have also made reference to the Memo No. 1834 dated 13th November, 1987, which makes it mandatory for the Headmaster to pass the Hindi Noting and Drafting Examination during service. This was followed by a Government letter No. 2394 dated 01st September, 1993, which also require passing of such examination during the service, otherwise increment shall be withheld automatically. It is stated that when the petitioner submitted his paper for preparation of pension etc., the District Accounts Officer, Hazaribagh raised objection regarding the non-qualification of Hindi Noting and Drafting Examination and consequently reduced the last pay drawn to Rs. 7500/-. Papers were, accordingly, sent to the Accountant General's Office, which has fixed the pension and other retiral benefits taking into consideration Rs. 7500/- as the last pay drawn and consequently P.P.O. No. HZB EDN 5676 has been issued.

3. In the rejoinder filed, petitioner has stated that no proceeding was ever initiated against him in terms of Rule 43B of the Bihar Pension Rules and thus neither the pay of the petitioner can be re-fixed by reducing it on the ground of non-passing of the examination during his service nor any recovery can be effected from his pensionary benefits. In W.P. (S) No. 184 of 2004, this Court relying upon a decision in the case of Jitendra Kumar v. The Bihar State Electricity Board and Ors. reported in 2001(3) PLJR 124, observed that where the employee has enjoyed the benefit of promotion, no deduction from the retiral benefits can be made. A similar view was expressed by a coordinate Bench of this Court in W.P. (S) No. 5607 of 2004 and in W.P. (S) No. 2025 of 2004. Respondents have relied upon Order dated 16th April, 2004, passed in W.P. (S)

No. 1559 of 2003, wherein an observation was made that the conditional promotion made can be reverted. However, at the same time this Court observed that the amount paid to the petitioner on account of time bound promotion be not recovered from the Gratuity and the pensionary benefits. In another case, W.P. (S) No. 3677 of 2002; though this Court did not interfere with the reduction of last pay drawn on account of non-qualifying of the Hindi Noting and Drafting Examination but refused to approve recovery of the access amount from the retiral benefits. In a latest case, in Badri Prasad and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court was considering the question of regularization on a higher post where the employees were allowed to work for ten years. The Hon''ble apex Court while approving repatriation to a lower post, directed pay-protection of the petitioner, being drawn on the higher post. In the present case, the facts are slightly different, no doubt petitioner was required to pass the Hindi Noting and Drafting Examination during his service. It is also not in dispute that petitioner appeared in the examination after about a month of his retirement and successfully passed the same when the result was declared. It is nobody''s case that petitioner applied for examination after his retirement, rather specific averment has been made in Para 17 of the writ application that petitioner applied for examination during his service. If such an examination is held by the authorities after his retirement, petitioner cannot be punished for the laches on the part of the Respondents. Petitioner was only required to apply, which he did. Though he was not obliged to sit in the examination, which was held after his retirement but the petitioner did participate in the examination and was declared successful. Qualification of the examination itself prove that petitioner had all the intentions to fulfil the requirements of rule. Merely because authorities conducted the examination after his retirement and thus prevented petitioner from passing the examination during his service cannot be a ground for reducing his pay and recovery from his retiral benefits. Though this Court had held in various judgments that even where the examination is not passed at all during service, still the last drawn salary cannot be reversed and no recovery is justified but in the present case, petitioner has successfully passed the examination by applying during his service, although result was declared after his retirement. Action of the Respondents in reducing his last drawn salary and consequential recovery from his retiral benefits is not justifiable under any circumstances. This writ petition is, accordingly, allowed and the impugned order dated 07.01.2005 (Annexure-4) and the action of the Respondents in reducing the last drawn salary and recovery from the retiral benefits is hereby quashed and set aside. Resultantly, Respondents are directed to fix the last drawn salary of the petitioner at Rs. 10,250/- and re-determine his retiral benefits on that basis and pay him all retiral benefits. Petitioner be also paid difference of revised salary with effect from 01.04.1997. Let all the claims of the petitioner be settled within a period of four months from today. Petitioner shall be entitled to statutory interest wherever payable. If the claim of the petitioner is not settled within the aforesaid period, petitioner shall be entitled to interest @ 6 per cent till the amount is paid.