
(2010) 08 JH CK 0090
In the Jharkhand High Court

Nath Mohi Ram

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 1 JLJR 69

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred by the petitioner against orders at Annexure-4, 5 and 5/A whereby pay scale of the petitioner has been reduced and order of recovery has been passed. The petitioner was posted as Forester. He was given benefit of Second Assured Career Progression on 22nd October, 2007 whereby, his pay scale was enhanced and re-fixed as Rs. 6500-10,500/- which has been reduced vide order at Annexure-4 dated 4th March, 2009 as Rs. 5000-8000/- and after few days, another order was passed, which is at Annexure-5 to the memo of the present petition dated 24th March, 2009 whereby, further reduction was given effect to in the pay scale of the petitioner and it has now again re-fixed as Rs. 4500-7000. Annexure-5/A is an order of recovery of sizable amount from the petitioner.

2. Counsel for the petitioner is challenging these annexures namely Annexure-4 and Annexure-5 and Annexure-5/A, mainly on the ground that without giving any show cause notice and without giving any opportunity of being heard to the petitioner, the pay scale which was given in the year, 2007 has been initially reduced on 4th March, 2009 and further it was reduced on 24th March, 2009. Had an opportunity would have been given to the petitioner, the petitioner would have pointed out to the concerned respondents authorities that no illegality was committed by the respondents-State in granting the benefit of Second Assured Career Progression. In fact, the petitioner was serving since 1973 and at regular

intervals and in consonance with the governmental policies, benefits of First Assured Carrier Progression as well as Second Assured Carrier Progression were given to the petitioner, but, unilaterally and arbitrarily and in violation of Article 14 of the Constitution of India, these orders at Annexure-4 and Annexure-5 have been passed. Likewise, consequent order at Annexure-5/A has also been passed for the recovery of the amount from the petitioner. All these three orders, therefore, deserve to be quashed and set aside.

3. I have heard Counsel for the respondents-State, who has submitted that the petitioner is not entitled for benefit of Second Assured Carrier Progression because he was already promoted after getting a benefit of First Assured Carrier Progression and therefore, the orders at Annexure-4 and 5 have been passed for reduction of pay scale of the petitioner. Order at Annexure-5/A is nothing, but, a consequential order and therefore, if there is no illegality in the orders at Annexure-4 and Annexure-5, there is no question of quashing an order at Annexure-5/A whatsoever arises and therefore, the petition deserves to be dismissed.

4. Having heard Counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the orders at Annexure-4 dated 4th March, 2009, the order at Annexure-5 dated 24th March, 2009 as well as order at Annexure-5/A dated 26th March, 2009, for the following facts and reasons:

(i) The petitioner was appointed in the Forest Department in the year 1973 and thereafter, the petitioner was working honestly, sincerely, diligently and to the satisfaction of the respondents and has now retired on 31st July, 2010.

(ii) It appears that the petitioner was given benefit of Second Assured Carrier Progression on 22nd October, 2007 whereby, his pay scale was fixed at Rs. 6500-10500/-.

(iii) It appears that thereafter he worked for several months with the aforesaid pay scale and with the aforesaid benefits of Second Assured Carrier Progression. Never any objection has been raised by the respondents nor any show cause has been given to the petitioner that the pay scale which was given to the petitioner or the benefit of Second Assured Carrier Progression given to the petitioner was wrongly given benefits.

(iv) It appears that abruptly on 4th March, 2009 an order has been passed which is at Annexure-4 to the memo of the present petition whereby unilaterally it has been decided that the petitioner ought not to have been given the benefit of Second Assured Carrier Progression and therefore, his pay scale ought to be reduced and it would be re-fixed as Rs. 5000-8000/-. The decision taken by the concerned respondent authorities, which is at Annexure-4, is without giving any opportunity of being heard to the petitioner and therefore, is in gross violation of principles of natural justice. It is submitted by the Counsel for the petitioner that had an opportunity would have been given to the petitioner, it would have

pointed out to the concerned respondent authorities that there was no illegality committed at the relevant time for granting benefit of Second Assured Carrier Progression on 22nd October, 2007. Similarly, one more order has been passed by the respondents which is at Annexure-5 dated 24th March, 2009 whereby, there is a further reduction of pay scale and again it is re-fixed as Rs. 4500-7000. No notice has been given to the petitioner and no opportunity of being heard was given to the petitioner before passing these orders at Annexure 4 and Annexure-5. In fact, by order at Annexure-2, benefit of Second Assured Carrier Progression was given to the petitioner and that order cannot be modified without giving any opportunity of being heard to the petitioner. Absolutely unilateral and arbitrary is the decision taken by the respondents and therefore, both orders at Annexure-4 and Annexure-5 deserve to be quashed and set aside.

(v) The order at Annexure-5/A is a consequential order of orders at Annexure-4 and 5. Order at Annexure-5/A is an order of recovery of the amount from the petitioner. Once this Court holds that orders at Annexure-4 and Annexure-5 deserve to be quashed and set aside, the consequent order also deserves to be quashed and set aside.

5. As a cumulative effect of the aforesaid facts and reasons, I hereby, quash and set aside the order at Annexure-4 dated 4th March, 2009 and order at Annexure-5 dated 24th March, 2009. Likewise, consequential order at Annexure-5/A dated 26th March, 2009 is also hereby, quashed and set aside. However, respondents are at liberty to take action in accordance with law, rules, regulations, policies and enforceable Government orders, applicable to the petitioner and at least, after following principles of natural justice.

6. In view of the aforesaid observations, this writ petition is allowed and disposed of.