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(2011) 11 PAT CK 0082

In the Patna High Court

Case No : CWJC No. 6354 of 2007

Radha Raman Prasad Yadav APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Citation : (2012) 1 PLJR 706

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Kumar Alok, for the Appellant; Archana Prasad for the State and Mr. Ranjan Kumar for the Accountant General, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner superannuated with effect from 30.6.2003 while officiating as Head Clerk in the office of the District Animal Husbandry Officer, Munger. He has filed this writ petition praying, inter alia, to quash the entries made against him in the remarks column vide serial no. 8 of Memo No. 142 dated 11.1.2007, Annexure-1 in terms whereof recoveries have been directed to be made from him as according to the authorities scale of Rs. 4500-7000/- was not admissible to him for the period between 1.1.1996-8.8.1998 as during the said period the post of Head Clerk was neither identified nor petitioner was promoted nor he officiated as Head Clerk during the said period.

2. Counsel for the petitioner questions the aforesaid remark on the ground that under Memo No. 1610 dated 30.9.2002, Annexure-2 petitioner was allowed the scale of Rs. 4500-7000/- with effect from 1.1.1996 in the light of the resolution of the Government dated 8.2.1999, Annexure-A to the counter affidavit. Close perusal of the aforesaid order dated 30.9.2002 indicates that the said order has been issued by the District Animal Husbandry Officer, Munger in the light of the instructions received from the Finance Department bearing no. 90209 dated 11.11.2000. It is submitted by the counsel for the petitioner that petitioner

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having been allowed the higher scale of Rs. 4500-7000/- under order bearing Memo No. 1610 dated 30.9.2002 in compliance of the instructions of the Government in the Finance Department dated 11.11.2000 referred to in the order dated 30.9.2002 recoveries could not have been ordered without obtaining direction from the State Government that too after the retirement of the petitioner and the entries in the remarks column to recover the amount paid to the petitioner in the scale of Rs. 4500-7000/- for the period between 1.1.1996-8.8.1998 is required to be quashed. In support of such submission learned counsel for the petitioner has also relied on the judgment of the Hon''ble Supreme Court in the case of Syed Abdul Qadir & Ors. vs. State of Bihar and Ors., reported in 2009(2) PLJR (SC)74, and with reference to the said judgment it is submitted that petitioner having been granted the higher scale of Rs. 4500-7000/- in compliance of the instructions of the Finance Department contained in order dated 11.11.2000 without any misrepresentation by the petitioner the recoveries in the light of the entries in the remarks column should not be made from the petitioner as having retired in 2003 it shall be too harsh for him to refund the amount from his meager pensionary benefits.

3. Counsel for the State in opposition submitted that in terms of the resolution of the Finance Department the post of Head Clerk and other higher posts are required to be identified, without identification the superior post of Head Clerk petitioner could not have officiated as Head Clerk with effect from 1.1.1996 and as the posts were never identified Memo No. 1610 dated 30.9.2002 granting the petitioner higher scale could not have been acted upon.

4. Having heard counsel for the petitioner and the State and having appreciating the rival submissions, I am of the view that as petitioner was allowed the higher scale of Rs. 4500-7000/- in compliance of the instructions of the Finance Department dated 11.11.2000 under order bearing Memo No. 1610 dated 30.9.2002, Annexure-2 which order has not been withdrawn so far the impugned entries in the remark column of the impugned order dated 11.1.2007, Annexure-1 has to be quashed as petitioner having received the salary in the scale admissible to the Head Clerk with effect from 1.1.1996 and superannuated with effect from 30.6.2003 it shall be too harsh for him if the recoveries are made after his retirement. Accordingly, the entries made in the remarks column of Serial No. 8 in the order dated 11.1.2007 is quashed. The writ petition is, accordingly, allowed.

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