
(1996) 12 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 3868 of 1995 (R)

Ram Dayal Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-12-1996

Acts Referred:

Citation : (1997) 1 PLJR 373

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Deb, J.—This writ petition has been filed praying for certiorari to quash the office order dated 7.7.1992 as contained in Annexure-11 issued by the Executive Engineer, Electric Works Division, Ranchi (Respondent No. 5) and also office order No. 140 dated 7.7.1992, as contained in Annexure-12 whereby the Petitioner has been reduced to lower pay scale without initiating any departmental enquiry or issuance of any notice of show cause to the Petitioner. Further prayer has been made for direction to the Respondents to pay his retirement benefits to the Petitioner on the basis of his pay at Rs. 1770/- fixed vide office order dated 2.4.1992 as contained in Annexure-9.

2. The Petitioner joined the service in the Electricity Department of the State of Bihar as Lift Man and subsequently posted as Lineman Grade-I vide Annexure-1 dated 6.8.1981. He was posted in the year 1981 in the office of the Electrical Engineer, Ranchi vide Annexure-2 as Lineman Grade-I. His initial pay was lower and after giving increment vide Annexure-3 his pay was increased first in the scale of Rs. 425-605/-. But, there was some anomaly in the pay fixation of the Petitioner as he was regularised in the pay scale of Rs. 240-396, although, he ought to have been put in the pay scale of Rs. 535-675-765/- as per Annexure-4. After retirement, Petitioner has not been paid his retiral benefits as pay fixation was not made in proper way and hence this petition has been filed, when office orders were issued as contained in Annexures-10, 11 and 12.

3. In the counter affidavit, it has been stated that initial appointment of the Petitioner was as a Lineman as there was no post available at Koderma at that time in Linemen Grade-I but because of the mistake of the department, the Petitioner's appointment was given as Lineman Grade-I for which anomaly arose and the Finance Department took objection as a result of which the Petitioner's pay scale had been reduced and hence abovementioned Annexures had been issued.

4. Mr. R.N. Sahay, appearing on behalf of the Petitioner submitted that when the Petitioner's pay scale and appointment as Lineman Grade-I was issued by the Department itself long back in the year 1981, now at this stage in the year 1992 the Petitioner's pay scale cannot be reduced stating that no post was available as Lineman Grade-I at Koderma at the time of his initial appointment.

In support of his case, Mr. Sahay has referred to a judgment of this Court as reported in 1996 BBCJ 15 (Raghubir Prasad Singh v. Bihar State Electricity Board and Ors.), wherein it was held that if by mistake higher pay was given to an employee not on misrepresentation of the Petitioner, no recovery can be made and the order of recovery and fixation of lower pay scale was set aside.

5. In the present case, there is no order of recovery but the Petitioner is going to lose sufficiently his pensional benefits also, if his pay scale is fixed at a lower rate.

6. Mrs. I. Sen Choudhary, appearing on behalf of the Respondents has argued that when Annexures-10, 11 and 12 were issued in the year 1992 and the Petitioner remained in service till 1995, now at a belated stage the Petitioner cannot take such plea. But, such sort of delay as argued by Mr. Sen Choudhary cuts both ways. When a pay scale has been given to the Petitioner long back, two decades ago, now the same cannot be revised without giving any show cause to the Petitioner and on the plea that by mistake the department, had posted him as Lineman Grade-I. although the post was of Lineman alone. It is not a fact that there was no post by Lineman Grade-I, in the Department. There was a post of Lineman Grade-I. It may be that such post was not available at Koderma at that time, but when the Department had given so and the Petitioner enjoyed such benefit for long two decades for no fault of his own, he cannot be debarred from his pay fixation in Lineman Grade-I and get the pensional benefits of that pay scale. No fault on the part of the Petitioner could be shown by Mrs. Sen Choudhary, but her submission is that when Finance Department had taken objection, there remains no scope to give pay scale of Lineman Grade-I to the Petitioner. Such sort of argument is of no avail.

7. In that view of the matter, Annexures-10, 11 and 12 are hereby set aside and the Respondents are hereby asked to fix pay scale of the Petitioner at the time of his retirement on the prevalent pay scale of Lineman Grade-I and then calculate pension and other benefits of a retired employee within three months next from the date of presentation of a copy of this Order. The sanction order must be issued within the said period after giving a copy of accounts to the Petitioner. If

the Petitioner has got any objection, he may file a representation to that effect within one month next thereafter, which should be disposed of within one month next by the concerned authority.

8. The writ petition is allowed, but no order as to costs.