
(2003) 04 JH CK 0112
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5129 of 2002

Ram Lakhan Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Citation : (2003) 2 JCR 638

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Shafique Rahman, S.K. Murty and Om Prakash Singh, for the Appellant; G.P. II and S. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—The petitioner has filed this writ for a direction upon the respondents to reckon and treat the petitioner as Government Servant from the date of his initial appointment as Chaukidari Tahsil-dar In view of Government Notification No. 598 dated 25.8.1995 and to calculate, refix and pay the difference of the pension and other retirement benefits and further direction to the respondent to give arrear of pay after giving the petitioner 1st and 2nd time bound promotion and fix the pension accordingly as well as direction for refund of the amount, which has been deducted from the pension of the petitioner as per pension intimation and also for arrear of salary in the revised scale of pay w.e.f. 1964, 1971, 1981 and 1986 and other consequential benefits along with penal interest @ 18 per annum.

2. The petitioner was appointed as Chaukidari Tahsildar and he was not a Government employee in the year 1955. Subsequently after the abolition of Jamindari by Annexure-C such persons were directed to be absorbed against the Revenue Karmachari post and they were to be treated as Government Servant for purpose of pension, gratuity etc. w.e.f. the date of their absorption as such. Against that decision the Non Gazetted Employees Association has raised demands and the Government thereafter decided to treat them as Government

Servant to give pensionary benefit from the date of their initial appointment as Chaukidari Tashildar (Annexure-D).

3. It appears that the petitioner had filed a writ petition earlier that was disposed of with a direction to pay all the admitted dues to the petitioner by way of retirement benefits. The petitioner again filed MJC, which was disposed of in the terms of the Government letter dated 25.8.1995 (Annexure-3) and the petitioner was directed to file subsequent representations.

4. The petitioner admittedly has retired in the year 1988, it appears that the petitioner was granted the benefits of time bound promotion on the basis of the letter aforesaid but subsequently a letter Annexure-E was issued whereby and whereunder the earlier decision of the Government was recalled and it was decided that such employee will be treated as Government servant from the date of their absorption as such consequent thereto as the promotion given under the old letter of the year 1995 certificated in the year 1996 and the amount paid in excess was withdrawn and it was also found that since the petitioner has not passed Hindi Examination he was not also entitled to promotion.

5. Now the grievance of the petitioner is contained in the relief stated in the first paragraph of this order. If the petitioner was absorbed in Government job in the year 1986 and retired in the year 1988 then obvious it is that at the time of absorption in the Government job he was of 56 years of age and he was only left two years of service. Prior to his absorption as he was not a Government servant he was not guided by the rules and regulations of the Government therefore prior to 1986 the question of passing Hindi examination could not have arisen and during rest two years of service it would be an unreasonable expectation on the part of the respondent that the petitioner should have passed Hindi Examination particularly when he had already crossed the age of fifty years. Therefore on this score that he had not passed Hindi Examination the petitioner could not have been denied the promotion.

6. The next question is whether the petitioner who had been granted benefit of two time bound promotions on basis of which pension had been given could have been got refunded on the basis of Annexure- E ?

7. As stated the promotion could not have been denied because of non-passing of the Hindi Examination. So far two time bound promotions are concerned, these were given in view of the Government decision as contained in (Annexure-C) as the petitioner was treated as Government servant from the date of his initial appointment. The relevant portion of the Government decision as contained in Annexure-C, reads as follows :--

"Patrank 1317 Dtnank 5.7.1986 Dwara Sarkar Ne Yah Nirnay Liya Hai Ki Jis Tithi Se Aese Karamchari Sewa Mm Samayojit Kiye Gaye Hai Usi Tithi Se Unhen Pension, Upadan Aadi Ka Labh Deya Hoga Isi Prakar Sarkari Sewa Me Samayojit Hone Wale Yese Karamchari Usi Tithi Se Kalbadh Pronati Tatha Anya Suvidhon Ke Dawedar Ho Sakte Hai Jis Tithi Se Unka Samayojan Sarkari Seva Men Hota Hai."

8. This letter was not a creation of the petitioner nor it was a result of his misrepresentation or fraud. Therefore the benefit given was given to him in accordance with Government decision itself. Therefore if by a subsequent letter the Government recalled that order then as the benefit that had accrued to the petitioner under the old letter, could not have been withdrawn from him particularly the monetary benefits for the simple reason that it was not due to misrepresentation or fraud on the part of the petitioner. Moreover this Annexure-E came 13 years after the retirement of the petitioner; therefore, in view of the decision rendered in Sahib Ram case by the Apex Court, the monetary benefit that was given to the petitioner could not be recovered from him.

9. Thus, the petitioner was given the time bound promotions in accordance with the rules that prevailed under Annexure-C.

In the result, I find merit in this writ and hold as follows :--

1. The amount that has been paid to the petitioner cannot be recovered and if recovered it should be refunded within a period of three months.
2. The time bound promotion that was given to the petitioner can also not be recalled.
3. The pension, gratuity and other retrial dues has to be paid to the petitioner on the basis of the last pay drawn by the petitioner on the basis of time bound promotion given to the petitioner. However this decision will not form precedent because the petitioner has been aggrieved by the decision of the Government taken 13 years after retirement by issuing a general circular having retrospective effect.