

(2009) 04 JH CK 0121
In the Jharkhand High Court

Rameshwar Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Citation : (2009) 04 JH CK 0121

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—Both the aforesaid writ petitions have been preferred by the same petitioner; first petition has been filed for the nonpayment of salary to the present petitioner against the promoted post upon which he has worked from 2001 onwards and second petition has been preferred because during pendency of the first petition as this Court directed the respondents to file an affidavit in the first matter, they have given reversion to the present petitioner to the original post and the promotion, which was granted on January 1, 2001 has been withdrawn, unilaterally, arbitrarily and without giving any opportunity of being heard, much less, by following any procedure worth the name, on September 22, 2006 and, therefore, both these actions of non-payment of salary as well as withdrawal of promotion after lapse of approximately five years and nine months from granting the promotion, is under challenge.

2. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case:

(i) it appears that the present petition was initially working as Godown Chowkidar as Class IV employee of the respondents. Thereafter, he was given charge of the post of Accounts Clerk for a period of sue months. Though he worked on the said post, no salary was paid for this additional charge.

(ii) it also appears from the facts of the case that thereafter the present petitioner was regularly promoted on the post of Accounts Clerk with effect from January 1,

2001 vide order, as contained in Annexure 1 to W.P.(S) No. 6028 of 2006.

(iii) it appears that thereafter, the present petitioner has joined the promoted post on the same date and worked for approximately five years and nine months.

(iv) it also appears that as the salary was not paid for the promoted post, the present petitioner preferred a writ petition bearing W.P.(S) No. 1143 of 2006. In the said petition no reply was filed by the respondents despite directed and, thereafter, once again the direction was given. Perhaps being annoyed of this, as alleged by the learned Counsel for the petitioner, instead of paying salary, as prayed for by the present petitioner in W.P.(S) No. 1143 of 2006, the respondents withdrew the promotion in the year, 2006 unilaterally and without giving any opportunity of being heard, which was given on January 1, 2001 and, therefore, second writ petition bearing W.P.(S) No. 6028 of 2006 has been preferred.

(v) thus, it appears that the order of withdrawal of promotion, which was granted to the petitioner on January 1, 2001, which was also brought into effect for approximately five years and nine months, has been withdrawn, without giving any notice and without hearing the present petitioner.

(vi) learned Counsel appearing on behalf of the respondents though justified the action initiated by the respondents, very fairly submitted that neither any notice nor an opportunity of being heard was given to the petitioner.

3. As a cumulative effect, of the aforesaid facts and reasons, I hereby quash and set aside the orders, passed by the respondents, as contained in Annexures 5, 6 and 7 to the memo of W.P.(S) No. 6028 of 2008, whereby, the promotion, given to the present petitioner with effect from January 1, 2001, has been withdrawn, as there is gross violation of the principles of natural justice. The respondents are at liberty to follow the law, rules, regulations and policies, applicable to the present" petition and at least the bare minimum requirement i.e. the principles of natural justice before withdrawal of the promotion, which was granted to the petitioner on January 1, 2001. Reserving the aforesaid liberty with the respondents, the orders, as contained in Annexures 5, 6 and 7 to the memo of W.P.(S) No. 6028 of 2006 are hereby quashed and set aside.

4. So far as payment of salary is concerned, it is an admitted position of fact that the petitioner was given charge of the post of Accounts Clerk for the period of six months prior to his actual promotion and, thereafter, the learned Counsel appearing for the respondents in W.P.(S) No. 1143 of 2006 admits in the counter affidavit that the petitioner is entitled for additional salary of having worked as in-charge of the post of Accounts Clerk for six months.

5. So far as regular payment of scale of the promoted post is concerned, it is submitted by the learned Counsel for the respondents that now the promotion has been withdrawn because it was wrongly given, no question of payment of salary whatsoever arises.

6. This contention is not accepted by this Court mainly for the reasons that the order of withdrawal of promotion has been quashed and set aside in W.P.(S) No. 6028 of 2006, reserving liberty, as stated in the aforesaid paragraphs. It is also an admitted fact that the present petitioner has worked on the promoted post of Accounts Clerk from January 1, 2001 till September 22, 2006, the date on which the promotion was withdrawn. Thus, the petitioner was regularly promoted by giving promotion. The petitioner resumed the services of promoted post. The petitioner actually worked on the promoted post and never any notice was issued from January 1, 2001 till withdrawal of the promotion, leveling any allegation against the petitioner that he has not worked efficiently or no grievance has been ventilated about the working style of the petitioner on the promoted post by the respondents. Thus, the petitioner is entitled for his regular salary on promoted post for the period for which he has actually worked on the promoted post of Accounts Clerk. This amount will be determined by the respondents and necessary payment shall be made within a period of four months from the date of receipt of a copy of the order, passed by this Court.

7. So far the admitted amount of six months prior to regular promotion to the post of Accounts Clerk is concerned, this admitted amount of additional salary for the period of six months, as the petitioner remained in-charge of the promoted post, will be paid within a period of four weeks from the date of receipt of a copy of the order, passed by this Court.

8. Both the writ petitions are, thus, allowed to the aforesaid extent and are hereby disposed of.