

(2009) 03 JH CK 0115
In the Jharkhand High Court

Ramlagan Oraon and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Citation : (2009) 03 JH CK 0115

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reasons that in this case an auditor has taken objection that the petitioners are not entitled for B.Sc. trained scale. The benefit which was already extended to the petitioners in the year 1995 has been withdrawn after more than a period of one decade i.e. in the year 2006 vide order at Annexure -7 and 8 without giving any opportunity of being heard, thus, there a violation of principles of natural justice.

2. The counsel for the petitioners ha;; also submitted that in fact there was no mistake in grant of B.Sc trained scale to the petitioners as the petitioners were B.Sc. degree holders and they were entitled for B.Sc. trained scale. Nonetheless, had a notice been issued by the respondents, the petitioners would have pointed out the correct factual as well as legal position to the respondents and the present petition could have been avoided. Thus, the petition may be allowed only on this ground that there was a breach of principle of natural justice. It has also been submitted by the counsel for the petitioners that the auditor's report is not a conclusive piece of evidence nor can it by pass the bare minimum requirement for initiating action against the petitioners that is to follow the principle of natural justice. The auditor's report is not a decree itself. There has to be a notice of opportunity of being heard, which has not been given to the petitioners, and therefore, the orders at annexure- 7 & 3 to the memo of petition deserve to be set aside.

3. I have heard the counsel appearing on behalf of the respondents, who has submitted that the petitioners are not entitled for B.Sc. trained scale, therefore,

the Accountant General has taken objection as per their letter dated 26th April, 2006 and consequently, the order at annexure- 7 and 8 were passed by the concerned respondent authorities on 1.9.2006 and 04.10.2008, respectively.

4. Having heard counsel for both the sides and looking into the facts and circumstances of the case, I, hereby, quash and set aside the recovery of the amount from the petitioner as per annexure-7 and 8 to the memo of petition which is dated 04.10.2008 mainly for the following facts and reasons, that:

i) The petitioners were given B.Sc. trained scale with effect from the year 1995 as per annexure -6 to the memo of petition;

ii) No grievance has been ventilated by the respondents about the working of the present petitioner for a period of one decade, otherwise also no notice has been issued to the petitioners for any reason whatsoever mainly for the effect that wrongly the B.Sc. trained scale has been given to the petitioners

iii) It is only when the A.G. office has given a letter dated 26th April, 2006, the respondents have withdrawn the benefits without following any procedure of law and without following the bare minimum requirement of following the principle of natural justice, an order dated 04.10.2008 has been passed which is at annexure-8 to the memo of petition, whereby B.Sc. trained scale has been withdrawn, which was given in the year 1995. Thus after 13 long years without giving any notice, without giving any opportunity of being heard, the order at annexure-8 has been passed by the concerned respondent authorities",

iv) The letter written by the A.G. office is not a conclusive piece of evidence nor does it allow the respondents to bye-pass the requirements of following bare minimum procedure i.e. the principle of natural justice before withdrawing the benefit given to the petitioners. The A.G.'s report is never permitting the respondents to treat the report as a decree of any Court. Straight-way recovery cannot be done by the respondents of any amount. There should have been a notice to the petitioners and hearing of the petitioners. This procedure is required to be followed, even if recovery is based upon a report of A.G. office;

v) In the facts and circumstance;; of the case, it is admitted position on fact that neither any notice nor any hearing was given to the petitioners for withdrawal of the benefit, which was already granted to the petitioners in the year 1995 (as per annexure-6 to the memo of petition). The petitioners were given B.Sc. trained scale since last 13 years, and therefore, I, hereby quash and set aside the order passed by the concerned respondent authorities which is at annexure -8 dated 04.10.2008 as the same is in breach of principle of natural justice.

5. As a cumulative effect of the aforesaid facts and reasons, the order at annexure- 7 and 8, are, hereby, quashed and set aside, and the respondents are at liberty to follow the procedure of law and will give an opportunity of being heard to the petitioner before implementing any report of the A.G. office

6. This writ petition is disposed of in view of the aforesaid order. If any

opportunity of being heard is given to the petitioners in future for withdrawal of the benefit, the concerned authority will decide independently and without being influenced by the aforesaid order.