(2013) 07 JH CK 0135

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2460 of 2007

Sadanand Dutta — APPELLANT

Vs

The State of Jharkhand and Others — RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 JH CK 0135

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : R.C. Khatri, for the Appellant;

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner is claiming the benefit of second time bound promotion granted with effect from 17th December 1987 vide Memo No. 1791(B) Satha dated 01st September 1988 (Annexure-1) to the writ application, as according to the petitioner, the arrears accrued to him thereupon till his retirement on 30th September 1997, has not been paid to him.

2. In the counter affidavit filed on behalf of the respondents, it has been stated that the petitioner was given first time bound promotion on 16th November 1988 with effect from 01st April 1981 and the second time bound promotion was granted to him on 01st September 1988 with effect from 17th December 1987. Respondents at para-8 of their counter affidavit had stated the details of arrears paid to the petitioner by way of time bound promotions and the revision in the pay scale. According to the respondents, Rs. 6,159/- was paid as arrears on account of first time bound promotion from August 1983 to February 1988. By giving effect to the second time bound promotion upon promotion in the scale of Rs. 1400-40-1800-50-2300, his basic pay was fixed at Rs. 1,950/-. Thereafter, on account of the pay revision granted vide resolution dated 8th February 1999 with effect from 01st April 1997, the basic salary of the petitioner was fixed in

the basic scale of Rs. 4000-100-6000. He retired in the said scale on 30th September 1987. Arrears of salary in the revised pay scale for the 06/ 15.07.2013 period December 1988 to 1994-95 were calculated and total amount thereof of Rs. 30,353/- was paid and revised arrear of pay with effect from 01st April 1997 till his retirement i.e. 30th September 1997 for six month totalling Rs. 7,416.00 was also paid on 17th April 2004 which he received. On the basis of the last pay drawn of Rs. 6,000/- along with R.P.P. Rs. 954 i.e. total Rs. 6954/-, petitioner''s pension was fixed at Rs. 3,477/- along with admissible D.A. which he is drawing regularly from Seraikella Treasury. At para-11, they have made a statement that after payment of entire dues, not a single farthing is payable to him as all the arrears in the revised pay has already been received by him on 17th April 2004. They have also stated that the petitioner had sent letters to the Hon''ble Chief Minister which were received in the office of the deponent and thereafter, by making due calculation, arrears of revised pay has been paid to the petitioner on 17th April 2004. The petitioner however in his rejoinder, gave details of the arrears still outstanding to him by preparing a chart enclosed to the said rejoinder.

3. Respondents were once again allowed time to file response to the rejoinder which they filed on 28th November 2011. Respondents in their reply to the rejoinder have once again taken this categorical stand that the petitioner has prepared a wrong calculation chart beyond a procedure and it cannot be accepted. He has been paid all his arrears of due on account of first and second time bound promotion as well as pay revision which he has accepted without any objection. It is further stated on their behalf that after acceptance of the said payment, after more than three to four years, writ petition has been filed without any foundational basis to claim further payments. Thus, the petitioner is not entitled to any other dues as claimed by him.

4. Having heard counsel for the parties and having gone through the relevant materials on record, it is obvious that the petitioner has been paid admissible arrears for first and second time bound promotion as also the arrears on account of pay revision, till his retirement on 30th September 1997 after preparation and calculation of the same from time to time and finally on 17th April 2004. The petitioner however still claims payment of certain outstanding dues which according to him is payable and for which he has enclosed a chart in his rejoinder to the counter affidavit. The respondents have taken a stand that all admissible legally payable dues of the petitioner have been paid and after almost three to four years of its acceptance by the petitioner, the writ petition has been filed with the instant claim based upon the own calculation of the petitioner, which cannot be the basis to claim that dues are admitted on behalf of the respondents. The writ Court in exercise of powers under Article 226 of the Constitution cannot enter into the disputed questions based on calculation which are being disputed by the respondent. Therefore, in the aforesaid facts and circumstances which have been narrated herein above, the writ petitioner has failed to make out a case for directing the respondents to pay any further outstanding due on account

of arrears of salary for first and second time bound promotion or pay revision till his date of retirement. The petitioner may avail alternative remedy to get the disputed questions of fact decided before an appropriate forum. The writ petition is accordingly dismissed.

