
(2008) 02 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3419 of 2002

Shiv Kumar Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Bihar/Jharkhand Pension Rules, 1950 — Rule 43

Citation : (2008) 56 BLJR 1367 : (2008) 2 JCR 129

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : P.C. Tripathi, for the Appellant; Mahabir Prasad Sinha, J.C. to G.P. II, for the Respondent

Judgement

Ramesh Kumar Merathia, J.—Heard the parties finally.

2. The petitioner has challenged the order dated 14.7.2001 passed by respondent No. 4 whereby the excess amount paid to the petitioner has been ordered to be recovered in installments.

3. The petitioner filed a writ petition being C.W.J.C. No. 1776 of 2001 challenging the orders by which his pay scale was sought to be revised on the ground that he was not eligible for promotion to the post of Head Master and also the order for recovery of the excess amount paid to him. On the ground that the said orders were passed without giving any opportunity of being heard to the petitioner, the said orders were quashed with a direction to respondent No. 4 to hear the petitioner and take a final decision in this regard within a given time. Pursuant to the said order, the respondent No. 4 has passed the impugned order dated 14.7.2001.

4. According to the petitioner, he was given charge of Head Master and, therefore, he was rightly given the pay scale of the Head Master by the then Superintending Engineer but his successor revised the same wrongly.

5. Counsel for the State justified the impugned order.

6. It appears that a decision was taken for opening the School for imparting education to the children of the employees working under the respondents, up to Class VI, when construction work of North Koel Barrage Project, Mohammadganj was going on. As the Education Department did not take responsibility to run the school in question, some person under work charge establishment were engaged for teaching.

Though the petitioner was not found fit by the Selection Committee, but on the threat of fast unto death, he was allowed work as Assistant Teacher One Raghunath Jha was given additional work of Head Master as he was found fit, but after his absorption on 4.10.1986, he left the teaching work. It appears that the petitioner was only given the charge of the school, but the then Superintending Engineer allowed him the promotional pay scale of Head Master with effect from 28.4.1988. When this illegality came to light, an enquiry was made and it was found that the petitioner was given the said pay scale without promotion and without approval of the Department and, therefore, the said order giving him higher scale was cancelled and he was directed to return the excess amount paid to him. The petitioner challenged the said order as noticed above. After considering the whole matter and after hearing the petitioner pursuant to the said order passed by this Court on 1.5.2001 in C.W.J.C. No. 1776 of 2001, the respondent No. 4 found that the petitioner was wrongly given the pay scale of Head Master and he continued to receive the same. The petitioner was absorbed from work charge establishment into the regular establishment only on 30.11.1991 but he was given promotional pay scale w.e.f. 29.4.1988. There was/is no provision for promotion of persons working under the work charge establishment. Only handing over charge of the school will not amount to officiating/promotion as Headmaster. Thus it is clear that there was no order by any component authority asking the petitioner to work as Headmaster or promoting him as Headmaster.

7. In this circumstance, it is clear that the petitioner was given wrong pay scale of the Headmaster by the then Superintending Engineer. In the case of *State of Jharkhand and Ors. v. Smt. Girish Kumari Prasad and Ors.* 2004 (2) JLJR 426, the Division Bench of this Court held that there cannot be any estoppel against seeking recovery in case of an unauthorized payment made to an undeserving person and any error in giving such payment to an employee would not clothe him with any such right. In a recent Full Bench judgment of this Court in the case of *Smt. Normi Topno v. State of Jharkhand and Ors.* 2007 (4) JLJR 466, the case of *Smt. Girish Kumari Prasad (Supra)* has been approved. However, it is said that recovery cannot be made without issuing show cause notice or without initiating a proceeding under Rule 43(b) of the Jharkhand Pension Rules. In the present case, admittedly opportunity of hearing was given to the petitioner pursuant to the order passed by this Court in the earlier writ petition filed by the petitioner.

After considering the entire matter and taking into consideration the relevant

aspects, as noticed above, the respondent No. 4 has passed the order impugned. In the facts and circumstances and the legal position noticed above, I do not find any reason to interfere with the same.

8. On 8.5.2003 this Court stayed the recovery and the petitioner was to get salary in the substantive post of Assistant Teacher. On the facts and circumstances of this case noticed above, in my opinion, it will not be proper at this stage to recover the excess amount paid to the petitioner on the wrong pay scale. Accordingly, only that part of the order dated 14.7.2001 passed by respondent No. 4 is set aside by which the said excess amount has been ordered to be deposited. It is made clear that this order is passed in the peculiar facts and circumstance of this case and it will not be treated as a precedent.

With these observations and directions, this writ petition is disposed of. However, no costs.