

(2009) 07 JH CK 0059
In the Jharkhand High Court

Shiv Narayan Yadav

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0059

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard Sri Ajit Kumar, leaned counsel for the petitioner and J.C. to Sri Siddhartha Rajan, learned Counsel for the respondent Electricity Board.

2. Petitioner in this case has prayed for a direction upon the respondents to release and pay the balance gratuity amount of Rs. 54,311 together with interest in the light of the order dated 31.08.2007 passed by a Bench of this Court in W.P. (S) No. 5388 of 2003 and also for a direction to rectify the pay scale of the petitioner by adding two increments which, according to the petitioner, has been illegally curtailed. The petitioner has also prayed for a direction upon the respondents to recalculate the amount of pension and all retiral dues after rectifying the pay scale as legally and legitimately due to him and make the payment of difference amount to him.

3. The petitioner was appointed as a Typist under the respondents on 01.11.1966 and was promoted to the post of Head Clerk and later he was given the Super Selection Grade and finally superannuated on 31.10.2004 in the post of Head Clerk. Prior to his appointment in service under the respondents, the petitioner claims to have completed his Matriculation in February, 1961 itself.

It is explained that post retirement, the respondents had with-held a sum of Rs. 54, 311/- from his retiral benefits. The petitioner filed a writ application vide W.P. (S) No. 5388 of 2003 challenging the retention of the petitioner's money. A plea was taken by the respondents that the said sum was detected to have been obtained by way of excess payment by the petitioner. Upon detection of the

mistake and rectification of the pay scab for which the petitioner was entitled, the amount obtained by the petitioner by way of excess payment, was assessed and the same was with-held for payment.

4. It appears that by the order dated 31.08.2007 passed by this Court in W.P.(S) 5388 of 2003, the respondents were restrained from recovering any amount on the plea of excess payment from the retiral benefits of the petitioner though with an observation that the respondents are entitled to rectify the mistake, if any. It is informed by the learned Counsel for the respondent Electricity Board that he has received the oral instruction on the basis of which he informs that the amount which was earlier with-held has since been released and paid to the petitioner. Counsel for . the petitioner is however not in a position to affirm and submits that the Respondent's claim in this regard would be subject to verification.

5. As regards the other reliefs, learned Counsel for the petitioner would argue that though in the earlier order of this Court passed in the previous writ application, the respondents were held entitled to rectify the mistake, if any, but the direction did not signify that such rectification of mistake can be done unilaterally without informing the petitioner or without affording him opportunity to be heard in the matter. Learned Counsel would explain that the inference regarding the purported mistake appears to have been drawn by the respondents on the ground that according to a circular issued in the year 1978, the employees who were getting higher pay scale, were not entitled for any further pay protection. Applying the directions contained in the circular of 1978 retrospectively the. respondents have wanted to claim that in the year 1971, the petitioner was given pay protection which was contrary to the circular issued in the year 1978. Learned Counsel explains further, that the other ground on which the purported mistake has been pointed out is that the petitioner did not pass the departmental examination namely the Hindi. Noting and Drafting Examination. This plea is misconceived because the passing of such examination was not required for the petitioner as per the Government Circulars and even if the respondents were entitled to rectify any mistake, they were under obligation to rectify after giving opportunity to the petitioner to explain as to whether there was infact any mistake or not.

6. Per contra, learned Counsel for the respondents would argue that the present application is hit by the principles of constructive res judicata in as much as the same issue was earlier raised by the petitioner before this Court in the earlier writ application. It was only after rectification of the mistake that the excess amount paid to the petitioner was assessed and the same was with-held from payment. It is argued that in the former writ petition the petitioner ought to have taken the grounds expressing his grievance against the manner in which the mistakes were rectified, and the same cannot be agitated in the present writ application.

7. Learned Counsel for the petitioner would explain that the petitioner did

challenge the rectification of the purported mistake on the ground that his pay has wrongly been fixed at a lesser scale. While disposing of the writ application, this Court did not pass any order on merits of the plea taken by the petitioner and had confined its order only to a direction to the respondents not to recover any excess amount paid by mistake. In absence of any finding on the issue regarding the propriety of the manner in which the purported rectification was made, the petitioner cannot be deprived of his right to raise the issue by way of this writ application since the issue relates to the non-application of the principles of equity and natural justice.

8. From the order dated 31.08.2007 passed in W.P.(S) No. 5388 of 2003, it does appear that no finding was recorded nor was any order passed on the issue of the rectification of the purported mistake except an observation that the respondents are entitled to rectify the mistake. It is deemed implied in the order that the authority vested in the respondents should be exercised in a manner which is in consonance with the principles of equity and natural justice particularly, when orders passed are likely to affect the interest of Government employees. It implies therefore that even while exercising its authority to rectify the purported mistake, the petitioner should have been given an opportunity to explain and thereafter, the concerned authorities of the respondents could have taken an appropriate decision on the issue.

9. In the light of the above facts and circumstances, this writ application is disposed of with a direction to the Respondent No. 3 to pass a fresh order on the issue relating to fixing of the pay scale of the petitioner and to pass an appropriate order on the issue only after giving a reasonable opportunity to the petitioner to explain and thereafter, it pursuant to any rectification called upon to be made genuinely and bonafidely, the respondents shall act accordingly in fixing/re-fixing of the pay scale of the petitioner and assess the other monetary benefits to which the petitioner would be entitled.

Such exercise must be carried out by the concerned authorities of the respondents within three months from the date of receipt/production of a copy of this order. The decision taken by the respondents in the matter shall be effectively communicated to the petitioner within the period stipulated above.

With these observations, this writ application is disposed of at the stage of admission itself.

Let a copy of this order be given to the learned Counsel for the respondent State.