

(2016) 07 JH CK 0021
In the Jharkhand High Court
Case No : W.P.(S.) No. 5262 of 2014

Shyam Narayan Dubey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 3 AIRJharR 611 : (2016) 4 JBCJ 127 : (2016) 3 JLJR 543

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : M/s Rajiv Ranjan, Advocate, for the Petitioners; M/s. Jai Prakash, A.A.G, for the Respondents

Final Decision : Allowed

Judgement

H.C. Mishra, J.— Heard learned counsel for the petitioners and the learned counsel for the State.

2. The petitioners are aggrieved by the Order No. 3043 dated 10.09.2014 issued by respondent No. 2, Principal Secretary, Water Resources Department, Government of Jharkhand, as contained in Annexure-17 to the writ application, whereby 1st A.C.P. and 2nd A.C.P., granted to the petitioners, in the higher pay-scales of Rs. 6,500-10,500/- and Rs. 8,000-13,500/- respectively, was substantially reduced to Rs. 5,500-9,000/- and 6,500-10,500/- respectively.

3. The petitioners were initially appointed as Research Assistants under the Water Resources Department, between the years 1972 to 1990 and they have also since superannuated from service. By Order No. 4787 dated 31.12.2005 as contained in Annexure-3 to the writ application, the petitioners were granted 1st A.C.P. in the pay-scales of Rs. 6,500-10,500/- which was the pay scale of the next promotional post of Research Officer, and the 2nd A.C.P. in the pay-scale of Rs. 6,000-13,500/- which was applicable to the next promotional post of Deputy Director (Research). Subsequently, a letter bearing No.2584 dated 15.10.2008,

as contained in Annexure-4 to the writ application was also issued by the Water Resources Department, to the Accountant General of Jharkhand, confirming the same. In the present case, there is no dispute as to the date of the applicability of the 1st and 2nd A.C.Ps. to the petitioners. The only dispute is that whether the petitioners were entitled to be granted A.C.Ps. in the pay-scale of the next promotional posts of Research Officer and the Deputy Director (Research) respectively, or they were entitled to 1st and 2nd A.C.Ps., in the next higher pay scales as provided in the schedule-1 to the resolution of the State Government granting A.C.P. to the State Government employees, which was notified under Memo No 5207 dated 14.08.2002, as contained in Annexure-2 to the writ application. The pay-scale of the petitioners at the relevant time being Rs. 5,000 to 8,000, according to schedule- 1 of the said resolution, the 1st and 2nd A.C.Ps. applicable were in pay-scales of Rs. 5,500-9,000/- and Rs. 6,500-10,500/- respectively.

4. As stated above, the petitioners were earlier granted A.C.Ps. By order dated 31.12.2005 as contained in Annexure-3 to the writ application in the pay-scales of next promotional posts. However, upon objection by the Finance Department, which stated that as per the resolution of the State Government granting A.C.P. to the State Government employees as contained in Annexure-2 to the writ application, the petitioners were entitled to their 1st and 2nd A.C.Ps. in the next higher pay-scales only, and not in the pay scales of the next promotional posts, by order contained in Memo No. 1376 dated 02.03.2013, as contained in Annexure-11 to the writ application, the A.C.Ps. granted to the petitioners were reduced accordingly, in the pay-scales of Rs. 5,500-9,000 and Rs. 6,500-10,500/- respectively.

5. Two of these petitioners preferred writ application in this Court in W.P.(S) No. 93 of 2013, against the aforesaid order dated 02.03.2013, which was allowed by this Court by order dated 13.11.2013, in the following terms:-

"I have heard learned counsel for the parties and considered the facts and materials on record. It is an admitted fact that by order dated 31st December, 2005 (Annexure 3), the petitioners were given the benefits of first and second ACP and their pay scales were fixed in the next higher scales of Rs. 6500-10500/- and Rs. 8000-13500/- respectively. By the impugned order dated 2nd March, 2013 (Annexure 10) the pay scales of the petitioners have been substantially reduced to Rs. 5500-9000/- and Rs. 6500-10500/-, respectively, without giving any notice or opportunity of hearing or representation to the petitioners before such reduction of pay for whatever reason.

Reduction of pay substantially certainly affects the person adversely and any such order cannot be passed without complying with the basic requirements of the principle of natural justice.

For the reasons aforesaid, the impugned order issued by Memo No. 1376 dated 2nd March, 2013 (Annexure 10) cannot sustain and is hereby quashed.

This writ petition is allowed."

6. Pursuant thereto, another show cause notice was given to the petitioners and the other similarly situated persons on 19.6.2014, as contained in Annexure-13 to the writ application, asking them to show cause as to why, the pay scales granted to them under the A.C.Ps., be not maintained in pay scales of Rs. 5,500-9,000/- and Rs. 6,500-10,500/-, respectively, in accordance with the opinion of the Finance Department. The petitioners gave their reply thereto, and considering the same, fresh order was passed, being Order No. 3043 dated 10.09.2014 by the respondent No. 2, as contained in Annexure-17 to the writ application, whereby, again the petitioners have been given 1st and 2nd A.C.Ps., only in the next higher pay scales of Rs. 5,500-9,000 and Rs. 6,500-10,500/- respectively, which has been impugned in this writ application. As to the reasons denying the 1st and 2nd A.C.Ps. to the petitioners in the pay-scales of the next promotional posts, it is stated in the impugned order that the cadre Rules of the Research Assistants have been framed and notified by the State Government on 13.10.2012, which had no retrospective effect, and as such the A.C.Ps. could not be granted to the petitioners taking into consideration the said Rules. It is also stated in the order that the opinion of the Finance Department was obtained in the matter, and in the financial matters the opinion given by the Finance Department has the supremacy and accordingly, the A.C.P. was granted to the petitioners in accordance with the opinion of the Finance Department.

7. Before coming to the submissions of the learned counsels for the parties, few more facts need to be mentioned. In the erstwhile State of Bihar a notification was issued on 02.02.1980, whereby the cadre of the Research Officers/ Employees in the unified Irrigation Department was reconstituted. This notification has been brought on record as Annexure-1 to the writ application, and it speaks about filling up certain percentage of posts of Deputy Director (Research) by promotion from the post of Research Officer and filling up certain percentage of posts of Research Officer from the post of Assistant Research Officer. The document has been brought on record to show that in course of time the post of Assistant Research Officer, falling in between the posts of Research Officer and Research Assistant, was abolished and the post of Research Officer was being filled from the post of Research Assistant directly. Subsequently, in the year 2012, the State Government in the Department of Water Resources has framed the Cadre Rules for Research Assistants, which provide that the post of Deputy Director (Research) shall be filled up by promotion from the post of Research Officer and the post of Research Officer shall be filled up by promotion from the post of Research Assistant, whereas the post of Research Assistant shall be filled up by direct recruitment. The said rules have been notified by the State Government under Memo No. 5870 dated 13.10.2012, and has been brought on record as Annexure-6 to the writ application.

8. The State Government had framed the scheme for grant of A.C.P. to its employees in the year 2002, which has been brought on record as Annexure-2 to

the writ application. According to the said scheme, the 1st and 2nd A.C.Ps. are applicable to the State Government employees upon completion of their 12/24 years of satisfactory service in a particular cadre, one of the conditions being that the A.C.P. would be granted to the employees in the pay-scale of next promotional post, but in cases where the promotional posts are not fixed, or in the promotional post less than two posts are earmarked for promotion, in such cases the benefit of A.C.P. shall not be given in the pay-scale of the next promotional post, rather it shall be given in the next higher pay-scale as detailed in schedule-1 to the said resolution. There was yet another provision in the said resolution, stating that in case of single post and such cluster/cadre of posts in which only some percentage of posts are earmarked for being filled up by promotion, in such cases also, the A.C.P. benefit shall be given in the next higher pay-scale as mentioned in Schedule-1 to the resolution. However, this provision has been withdrawn w.e.f. the date of resolution itself, by a subsequent amendment which was issued on 5.2.2007 and has been brought on record as Annexure-10 to the writ application.

9. Learned counsel for the petitioners have submitted that the petitioners were rightly granted 1st and 2nd A.C.Ps., in the pay-scales of the next promotional posts by the earlier order No. 4787 dated 31.12.2005 as contained in Annexure-3 to the writ application, which was illegally withdrawn by the State Government. It is submitted that though the Cadre Rules have been framed by the State Government in the year 2012 clearly prescribing the promotional posts of the cadre of Research Assistant as Research Officer and Deputy Director (Research), but prior to that also the petitioners were being governed by the executive order issued in this respect by the State of Bihar in the year 1980 itself, as contained in Annexure-1 to the writ application, and according to this order also, the first ladder of promotion for the post of Research Assistant was Research Officer and the second ladder of promotion was to the post of Deputy Director (Research), even though the cadre rules were not specifically framed. Learned counsel accordingly, submitted that there being availability of the promotional posts of the cadre of Research Assistants, the petitioners were rightly granted 1st and 2nd A.C.Ps. in the pay scales of the next promotional posts of Research Officer and Deputy Director (Research) respectively. There was no reason for withdrawing the said benefit of the A.C.Ps. granted to the petitioners in the pay-scales of the next promotional posts and reducing the same to the next higher pay-scales as mentioned in schedule-1 of the scheme of A.C.P., applicable to the State Government employees. Learned counsel submitted that the said order was successfully challenged by the petitioners in W.P.(S) No. 93 of 2013 and the notification reducing the A.C.P. benefits to the petitioners was quashed by this Court by order dated 13.11.2013, as contained in Annexure-12 to the writ application. However, after the said order, show cause notices were issued to the petitioners and again the impugned order dated 10.09.2014 as contained in Annexure-17 to the writ application has been issued, whereby the reduction in the A.C.P. has been maintained by the State Government. It is submitted by the

learned counsel for the petitioners that though it is stated in the impugned order that the Cadre Rules of the Research Assistants framed in the year 2012 had no retrospective effect and the A.C.P. could not be granted to the petitioners on the basis of the said Rules, but at the same time the respondent State is absolutely silent about the promotional avenues mentioned in the order issued by the erstwhile State of Bihar in the year 1980 itself, as contained in Annexure-1 to the writ application. It is also submitted that the impugned order clearly shows that A.C.Ps of the petitioners have been reduced only in view of the opinion of the Finance Department, which has been treated, to be the paramount, in the financial matters. Learned counsel accordingly, submitted that the impugned order is absolutely illegal and arbitrary and the same cannot be sustained in the eyes of law.

10. Learned counsel for the State on the other hand opposed the prayer and has submitted that prior to the framing of the Cadre Rules in the year 2012 as contained in Annexure-6, there was no cadre rules for promotion of Research Assistant. It is submitted that in view of the fact that there was no cadre rules, as also there was no fixed promotional post for the post of Research Assistant, according to the scheme of granting A.C.P. to the State employees, the petitioners were entitled to 1st and 2nd A.C.Ps. only as per schedule-1 of the said resolution and not in the pay scales of next promotional posts. Learned counsel accordingly, submitted that as the Cadre Rules framed in the year 2012 had no retrospective effect, the benefit of the same could not be given to the petitioners.

11. Having heard learned counsels for both the sides and upon going through the record, I find that it is an admitted fact that according to the Cadre Rules as contained in Annexure-6 to the writ application, the promotional avenues of the cadre of Research Assistant have now been prescribed to be the post of Research Officer and subsequently, to the post of Deputy Director (Research). It is an admitted fact that prior to the said Rules the executive order issued in the year 1980 as contained in Annexure-1 to the writ application, was applicable. In the counter-affidavit filed on behalf of the respondent State, it is stated as follows:-

"10. That is humbly stated and submitted that during the unified period of Bihar, there was no such cadre rule for Research Assistant. In fact certain % (percentage) of post was earmarked for promotion to their respective post as mentioned in the Resolution No. 243 dated 02.02.1980 annexed as Annexure 1 of the writ application."

"28. That with regard to the statement made by the petitioners in paragraph 19, in the instant writ petition under reply, it is humbly stated and submitted that vide resolution dated 02.02.1980 (annexure 1 of the writ application) this does not define the Cadre Rule for the Research Assistant, as such Water Resources Department, Government of Jharkhand after taking advice of Law Department, Finance Department, etc. notified the Cadre Rule of Research Assistant under Water Resources Department, Government of Jharkhand vide letter No. 5870

dated 13.10.2012 with immediate affect (Annexure 6 of the writ application)."

"29. That with regard to the statement made by the petitioners in paragraph 20, in the instant writ petition under reply, it is humbly stated and submitted that prior to Cadre Rule of Research Assistant under Water Resources Department, Government of Jharkhand notified on dated 13.10.2012, there was no such Cadre Rule for Research Assistant, as such even after granting the promotional post of Research Officer, Deputy Director by virtue of their seniority and other necessary requirement for promotion, they cannot be termed as cadre promotional post in want of Cadre Rule prior to said resolution dated 13.10.2012, as such the contention of petitioner is denied."

"36. That with regard to the statement made by the petitioners in paragraph 27, in the instant writ petition under reply, it is humbly stated and submitted that there were post like Research Assistant, Research Officer, Deputy Director on regular establishment post as well as Silt Analysis, Junior Research Assistant, Assistant Research Officer, Research Officer in work Charge Establishment during the 5th Pay Revision Commission, where the resolution dated 02.02.1980 (Annexure 1 of the writ application), but there was no Cadre Rule for Research Assistant prior to Resolution dated 13.10.2012, as such the contention of petitioner to above mentioned Research Officer/Deputy Director post is denied."

12. Thus, from the averments made in the counter-affidavit also, it is apparent that the stand of the State Government for denying the 1st and 2nd A.C.Ps. to the petitioners in the pay-scales of the next promotional posts is only that the Cadre Rules were framed only in the year 2012 and they had no retrospective effect. However, the fact remains that the existence of the executive order issued by the State in the year 1980 is also admitted in the counter affidavit, and it is also admitted that promotions were given to the Research Assistants on certain parentage of earmarked posts of Research Officers and Dy. Director (research), though it is stated that such promotions were granted by virtue of seniority and other necessary requirements for promotion, which could not be termed as cadre promotional posts for want of Cadre Rules, which was framed only in the year 2012.

13. The petitioners had earlier approached this Court in W.P.(S) No. 93 of 2013 challenging the reduction of their A.C.Ps., which was quashed by this Court, by order contained in Annexure-12 to this application, as the same was issued without giving any opportunity of being heard to the petitioners. Pursuant thereto the notice was given to the petitioners by the respondent authorities and upon considering their representation the same order has been maintained. However, only two grounds have been given by the respondent No. 2, for denying 1st and 2nd A.C.Ps. to the petitioners in the next higher promotional posts. The first reason being that the rules framed on 13.10.2012 had no retrospective effect and the benefit of the same could not be given to the petitioners. The second reason being that the opinion of the Finance Department is paramount in financial matters which had to be followed. It is apparent from

the impugned order as contained in Annexure-17 to the writ application that the executive order issued by the erstwhile State of Bihar in the year 1980 as contained in Annexure-1 to the writ application, had not at all been taken into consideration and the impugned order has been passed stating that the opinion of the Finance Department is paramount in the financial matters. This cannot be a valid answer for denying the due benefits to the petitioners. The opinion of the Finance Department had to be supported by valid reasons, which ought to have been detailed in the impugned order itself. The respondent State must have shown the specific reasons in the impugned order dated 10.09.2014 as contained in Annexure-17 to the writ application, as to why the promotional avenues as mentioned in the executive order dated 02.02.1980, contained in Annexure-1 to the writ application, were not taken into consideration. The existence of the said order dated 02.02.1980 is admitted in the counter affidavit filed on behalf of the respondent State and it is also admitted that some percentage of the posts in the higher posts of Research Officer and Deputy Director (Research) were earmarked to be filled up by promotion from the post of Research Assistant. The impugned order contained in Annexure-17 to the writ application has been passed without taking into consideration these facts, which were necessary to be taken into consideration. The impugned order clearly shows that the petitioners have been denied of their legitimate right without any application of mind and only in view of the opinion of the Finance Department, stating it to be paramount in the financial matters.

14. In my considered view the impugned order passed by the respondent No. 2, contained in Annexure-17 to the writ application, is absolutely illegal, having been passed without taking into consideration the earlier executive order of the State Government issued on 02.02.1980, as contained in Annexure-1. As such, the impugned order is absolutely illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India, which cannot be sustained in the eyes of law.

15. Accordingly, the impugned order as contained in Memo No. 3043 dated 10.09.2014, as contained in Annexure-17 to the writ application, is hereby quashed. The result being that, the earlier order issued by the State Government bearing No. 4787 dated 31.12.2005, as contained in Annexure-3 to the writ application and the subsequent letter bearing No.2584 dated 15.10.2008, as contained in Annexure-4 to the writ application, shall stand revived. The petitioners shall be entitled to all the benefits thereof with retrospective effect from the date of issuance of the said order/letter.

16. It is further directed that the benefit of this order shall be given to other similarly situated officers also, irrespective of the fact whether they are still in service, or retired, without unnecessarily forcing them to approach this Court for the same relief.

17. This application is accordingly, allowed with the directions as above.