
(2008) 09 JH CK 0110
In the Jharkhand High Court
Case No : Writ Petition (S) No. 25 of 2008

Sita Ram Sanchi	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Bihar/Jharkhand Pension Rules, 1950 — Rule 43

Citation : (2009) 57 BLJR 633 : (2009) 1 JCR 189

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : M.K. Dey, for the Appellant; I. Sen Choudhary, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The petitioner was appointed as Typist-cum-Copyist on temporary basis on 15.7.1970 in the establishment of Deputy Commissioner, Hazaribagh. Thereafter the petitioner went on working without any break. Meanwhile, Deputy Secretary, Government of Bihar, Revenue and Land Reforms Department issued a letter, vide memo No. 245/R(a) dated 19.3.1996 (Annexure 3) stipulating therein that the service period of the Typist and Copyist shall be counted from the date of their appointment and the time bound promotion shall be given to them accordingly. Pursuant to that letter, petitioner was given first time bound promotion with effect from 13.1.1986 and the second time bound promotion with effect from 16.7.1995. Subsequently, under memo No. 1247 dated 2.12.1996 (Annexure 5) the date of granting of first time bound promotion was reviewed and it was made effective with effect from 1.4.1981 Instead of 13.1.1986. In due course, when the service record of the petitioner was sent for verification with respect to time bound promotion, Revenue and Land Reforms Department gave concurrence of granting of second time bound promotion with effect from 16.7.1995. Thereafter under memo No. 601 dated 19.6.2003 service of the petitioner was confirmed with effect from 8.7.1980 and after one year, petitioner got retired from service on 30.6.2004 and the pension of the petitioner

was fixed at Rs. 5325/-. However, after more than two years of the retirement, Joint Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Ranchi, respondent No. 2 Issued a letter addressed to Deputy Commissioner, Hazaribagh, respondent No. 5, under memo No. 2623 dated 10.8.2006 (Annexure 10) communicating therein that the petitioner is entitled to first time bound promotion with effect from 9.8.1999 In stead of 1.4.1981 and second time bound promotion with effect from 8.7.2004 in stead of 16.7.1995 as the services of the petitioner has been confirmed with effect from 8.7.1980 and therefore, excess payment made to the petitioner be recovered. Accordingly, respondent No. 5 vide his letter an contained in memo No. 2097 dated 26.11.2007 (Annexure 13) communicated the same to the petitioner and directed the concerned official to recover the excess amount from the pensionary benefit of the petitioner.

2. Being aggrieved with the said letters as contained in Annexures 10 and 13, this writ application has been filed wherein prayer has been made to quash both the letters.

3. Learned Counsel appearing for the petitioner submits that admittedly the petitioner was given first time bound promotion and also second time bound promotion with effect from 1.4.1981 and 16.7.1995 without there being any misrepresentation and, therefore, it was not open for the respondent to recall that order and that respondent is not entitled to recover the amount said to have been drawn in excess from the amount of the pension without initiating any proceeding under Rule 43(b) of the Bihar Pension Rules, 1950.

4. The stand taken on behalf of the State is the same as it is under Annexures 10 and 13.

5. Having heard learned Counsel appearing for the parties, it appeals that it is never the case of the respondent that first time bound promotion and second time bound promotion was given to the petitioner with effect from 1.4.1981 and 16.7.1995 on the mis-representation of the matter by the petitioner and therefore it is not open for the respondent to recall the order under which time bound promotions were given and as such orders impugned are quite illegal. Other aspect of the matter it was found by the respondent that the petitioner is not entitled to first time bound promotion and second time bound promotion with effect from the dates on which it had earlier been given, the order has been passed for recovery of the excess amount drawn by the petitioner but the question is whether the authority is entitled to recover the said amount under the teeth of the provision as enshrined under Rule 43 of the Bihar/Jharkhand Pension Rules.

6. The provision as contained in Rule 43(b) of the Pension Rules does stipulates that no amount can be recovered from the pension except in accordance with procedure prescribed therein, i.e, except in case the pensioner is found in departmental or judicial proceeding to be guilty of grave misconduct; or to have

caused pecuniary loss to Government by misconduct or negligence, during his service.

7. When similar issue fell for consideration before the Full Bench of this Court in a case of State of Jharkhand and Ors. v. Padmolochan Kalindi and Anr. 2007(4) JLR 451, this Court after taking into consideration the provision as contained in Rule 43(b) of the Bihar/Jharkhand Pension Rules and also taking into consideration the ratio laid down by the Hon"ble Supreme Court in the case of Sahib Ram v. State of Haryana and Ors. 1995 (Suppl.)(1) SCC 18; Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. has held that no amount can be recovered from the provisional/final pension or from the gratuity except by an order passed under Rule 43(b).

8. In the instant case, the respondent without resorting to the provision of Rule 43(b) of the Bihar/Jharkhand Pension Rules has sought to recover the amount said to have been drawn by the petitioner in excess which is quite illegal and hence, the orders as contained in Annexures 10 and 13 are hereby set aside.

9. In the result, this application is allowed.