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(2002) 05 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (S) No. 409 of 2002

Sri Lakshmi Narain Das APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Citation : (2002) 05 JH CK 0011

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Kaushalendra Prasad, for the Appellant; Ritu Kumar, G.P. IV, for the Respondent

Judgement

Tapen Sen, J.—The orders dated 12.10.2001 as contained at Annexure 1 and 1/1 (Memo No. Pen-311-10842 and Pen-1/GPO/10845) passed by the Accountant General, Bihar, Patna fixing the pension and gratuity of the petitioner on a lower seale instead of Rs. 5,700/- p.a, have been challenged in this writ application and a prayer has been made for a direction that the respondents should be directed to fix his pension on the basis of last pay drawn and gratuity should also be fixed accordingly and proportionately. The petitioner has also prayed for a direction that the respondents be directed to pay part arrears of salary in the new revised scale from 1.1.96 and to pay arrears as per Annexure 2 from 8.7.91 on the basis of first time bound promotion.

2. The petitioner has stated that he retired from the post of correspondence Assistant (clerk) on 31.8.1999 from the office of the Executive Engineer, Road Construction Department, Dumka Division, Dumka. He has also stated that he had also passed Primary Accounts Paper I and II held in October, 1990 and the results were published on 27.7.91. The petitioner has also stated that he passed the Primary Accounts Paper No. I arid II also which was communicated to the respondent No. 6 by letter dared 5.10.1991. He was granted first time bound promotion in the scale of Rs. 1,320--2,040/-from 8.7.1991 and that promotion was revised to Rs. 1,400--2,300/- instead of Rs. 1,320--2,040/- by Annexure 2

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and therefore, he says that he is entitled to the arrears pertaining to that scale also. At para 8 the petitioner has stated that the respondents have not paid him part of gratuity, the arrears of new revised scale from 1.1.96, arrear of salary as per Annexure 2 and that there is neither any departmental proceeding nor any criminal proceeding pending against the petitioner. At para 9 the petitioner has stated that Accountant General (Respondent No. 2) has issued a letter to the respondent No. 7 returning the service book of the petitioner vide Annexure 3 on the ground that there was no entry regarding passing of the Accounts Examination in the service book of the petitioner. The petitioner has stated that he had drawn the attention of the respondent No. 7 in relation to the aforementioned letter of the Accountant General and he has stated that as per the order of the Hon''ble Patna High Court passed in the case of Jai Krishna Jha. for purposes of time bound promotion passing of a departmental examination is not necessary. He has stated that necessary action be taken so that his grievances are redressed.

3. The petitioner has stated that although he superannuated on 31.8.1999 and provisional pension was granted upto November, 2000 but thereafter it has been stopped and the petitioner is starving and facing hardship. The petitioner has also stated that he has come to learn that the respondent No. 7 had already sent the service book to the respondent No. 2 but without making any correction and entries regarding passing of the Accounts examination. According to petitioner, such acts are harassing in nature and, therefore, he is entitled to the relief that he has prayed for. Finally the petitioner has stated that earlier he has tiled a writ petition being W.P. (S) No. 3047/2001 and an Hon''ble single Judge of this Court had disposed off the writ petition by order dated 16.7.2001 (Annexure 6/1) directing the respondents to finalise the matter in the manner indicated in the said order.

4. A counter affidavit in this case has been filed by the Assistant Accounts Officer. At paragraphs 6 and 7 of the counter affidavit it has been stated that the petitioner has claimed to have passed the Primary Accounts Paper I and II but he did not pass the final examination although he was allowed the first time bound promotion w.e.f. 6.7.91 without passing the final examination and it was, therefore, that the service book was returned.

He has stated that since the petitioner did not pass the final examination he was not entitled to time bound promotion and therefore, there was no occasion for the petitioner to reach the stage of Rs. 5,700/-. He has further stated that the department again sent the case vide letter dated 5.7.2001 after cancelling the above promotion and revising the pay position in the service book and pension papers but nothing was mentioned regarding adjustment of excess payment of pay and allowances.

5. In view of the fact that the petitioner has stated at paragraphs 23 and 24 that he has filed a contempt petition on 20.11.2001, vide Contempt Case (Civil) No. 899 of 2001, which is pending, this Court is not inclined to interfere in any

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manner with that matter. However, the stand of the respondents to the effect that since the petitioner did not pass the requisite departmental Accounts Examination, therefore, he was not entitled to promotion or any other post retiral dues cannot be said to be a proper ground.

6. Reference has been made to the case of Ganesh Prasad v. State of Bihar, reported in 2000 (1) PLJR 623, wherein it has been held that it is not in dispute that retiral benefits such as pension or gratuity has to be fixed in terms of the Bihar Pension Rules, 1950. It has also been held that it is so fixed taking into consideration the pay of certain months and the last pay drawn and the power to curtail or withhold pension/gratuity is stipulated only under Rule 43 or Rule 139 of the said Bihar Pension Rules, but there is no power delegated to either curtail or lower down or withhold pension/gratuity for any other reason than the grounds mentioned in the aforementioned Rules. No provision has been made to curtail or withheld any amount from pension or gratuity or other retiral benefits for non-passing of requisite examination. Therefore, the stand taken in the counter affidavit cannot be held to be proper.

7. In that view of the matter, the matter is once again remitted to the respondents with a specific direction to fix pension and gratuity of the petitioner taking into consideration his last pay drawn and also to act strictly in accordance with the judgment passed in the earlier case of the petitioner, i.e. W.P. (S) No. 3047/2001. This last part of the observation is being made on account of the fact that the petitioner has himself admitted that for violation of the said earlier order passed by Hon''ble Mr. Justice S.J. Mukhopadhaya, contempt application is pending.

The matter stands disposed off.

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