
(2010) 02 JH CK 0104
In the Jharkhand High Court

Sri Sushil Kumar Mishra and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 02 JH CK 0104

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Sri Ananda Sen, learned Counsel for the petitioner, while introducing the case of the petitioners in this writ application by way of his preliminary submissions, explains that the petitioners grievance is against the impugned letter (Annexure-21) issued by the Respondent No. 2 namely the Secretary, Finance Department of the State of Jharkhand which in effect, has lowered down the scale of pay of the petitioners, who happen to be the Officers of the Jharkhand High Court and thereby denying them the benefits of the pay scale which was fixed for them earlier.

2. Learned Counsel explains that the petitioners have challenged the impugned letter of the Respondent No. 2 inter-alia on the following grounds:

(i) That the Respondent No. 2, namely the Principal Secretary, has no authority to lower down the scale of pay of the Section Officers of the Jharkhand High Court. Since the pay scale of the petitioners was fixed in pursuance of the Government's Resolution adopted by the State Cabinet, the Principal Secretary (Respondent No. 2) had no authority to override the decision of the Government.

(ii) Such order, having been passed without granting opportunity of hearing to the petitioners, is illegal.

3. Learned Counsel explains that the petitioners are working as Section Officers in the Jharkhand High Court and they have completed more than four years of service. The scale of pay of the petitioners who are to the non-judicial officers/staff of the Jharkhand High Court, is governed by the same nouns and Rules as

applicable for the officers and staff of the State Secretariat.

4. The Government of India vide its notification date 25.01.2006 had granted non-functional pay scale at Rs. 8000 - 275 - 13,500/- to the Section Officers and Senior P.As of the Central Secretariat Service on completion of four years on such posts.

5. The above Resolution of the Central Government was duly adopted and given effect to by the State of Jharkhand by virtue of this Resolution (Annexure-1) and pursuant to such adoption, the non-functional pay scale to the Section Officers of the State Secretariat, on their completion of four years of service as Section Officers, was fixed at Rs. 8,000 - 275 - 13,500/-. The substantive pay scale of Section Officers at the entry level was fixed at Rs. 6,500 - 10,500/- and those who have completed four years as such, were given the new non-functional scale of Rs. 8,000 - 275 - 13,500.

6. The Jharkhand High Court received a letter from the State Finance Department and in terms of the advice contained in the letter, informing that the Jharkhand High Court is well competent to implement the said non-functional pay scale in respect of its Section Officers after getting concurrence of the Chief Justice, the matter was considered and the Chief Justice of the High Court had accorded concurrence to the Resolution of the State Government on 21.08.2007 and as a consequence thereof, the scale of pay of the Section Officers who had completed four years in their post, was fixed at Rs. 8,000 - 275 - 13,500/- notionally with effect from 15.09.2006 and actually, with effect from 01.05.2007.

7. Learned Counsel explains further that consequent upon the recommendations of the 6th Pay Revision Commission, and the recommendations of the Fitment Committee constituted by the State Government, the revised pay scale was declared by the State Government for all the Government employees.

8. Referring to Clause 7 of the State Government's Resolution dated 28.02.2009, learned Counsel submits that a declaration has been made therein that when a Government servant has been placed in a higher pay scale between 01.01.2006 and the date of this order (Resolution), on account of promotion, up gradation of pay scale etc the Government servant may elect to switch over to the revised pay structure from the date of such promotion, up gradation, etc. Learned Counsel explains that in the light of the above proviso, the petitioners had the right to elect either to switch over to the revised pay scale or continue in the higher pay scale which they used to draw in between the dates on and from 01.01.2006 and the date of Resolution. Yet, by the impugned order, the higher pay scale which the petitioners have been drawing, is now being sought to be withdrawn on a misconceived and misleading ground that such higher pay scales have not been given to the employees of the State Secretariat.

9. At this juncture, learned Counsel for the respondent State prays for time to enable him to obtain further instructions on the above issues raised by the petitioners and to file a supplementary counter affidavit to explain the meaning

of the benefits reserved in the second proviso to Clause - 7 of the Government Resolution and also on the issue as to whether the Respondent No. 2 was vested with authority to downgrade the pay scale of the petitioners in the manner declared in the impugned letter and also to inform as to on what basis has the impugned order been issued, by the Respondent No. 2 for withdrawal of the benefits of the higher pay scale, which the petitioners have been enjoying.

10. Considering the above, let this case be posted on Friday of the next week (i.e. on 19.02.2010) under the same heading.

11. Let a copy of this order be given to the counsel for the parties.