
(2019) 12 JH CK 0030

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 152 of 2018

State of Jharkhand And Ors

APPELLANT

Vs

Param Hans Jha

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 12 JH CK 0030

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Anup Kumar Agrawal, A.K. Sahani

Final Decision : Allowed

Judgement

1. The present intra court appeal is under Clause 10 of the letters patent appeal, against the order dated 08.02.2017 passed in W.P.(S) No.8059 of 2012 by which the orders dated 25.10.2010 (Annexure-4), 25.08.2012 (Annexure-7) and 25.08.2012 (Annexure-8) have been held to be not sustainable and accordingly quashed and set aside.

2. The brief facts of the case of the petitioner before the writ Court was that he joined services on 02.04.1980 as Store Keeper in the Drinking Water and Sanitation, Mechanical Division at Jamshedpur, was granted benefit of upgradation under the time bound promotion scheme while decision was taken under Memo No.808 dated 28.10.1991 on the scale of Rs.1320-2040 with effect from 02.04.1990. The respondents thereafter, has granted the benefit of first upgradation under Assured Career Progression scheme vide letter as contained under Memo No.384 dated 28.03.2008 on the scale of Rs.5000-8000/- with effect from 09.08.1999 and further the benefit of second Assured Career progression Scheme to the scale of Rs.5500-9000/- has been extended with effect from 02.04.2004 vide Memo No.385 dated 28.03.2008 and on the basis of the same, the pay scale of the petitioner was fixed vide office order no.36 dated 23.05.2008.

The respondents have come out with a decision as contained in order no.77 dated 25.10.2010 by cancelling the benefit extended to the petitioner of time bound promotion and in consequence thereof, the pay scale of the petitioner has been refixed by taking decision of recovery, reason being that the petitioner has not passed Accounts examination.

3. Learned counsel for the respondents-State of Jharkhand at the outset, has submitted that he is not pressing the part of the order whereby and whereunder the learned Single Judge has quashed the order of recovery.

Such submission has been made on the basis of the ratio laid down by the Hon'ble Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) and Ors. reported in (2015) 4 SCC 334.

However, submission has been made that when the order has been passed for refixing the pay scale which has been set aside by the learned Single Judge, the pension has been fixed on the basis of last pay drawn but as would be evident from the order dated 28.03.2008 as contained in Annexure-2, whereby and whereunder the petitioner has been granted benefit of upgradation under the Assured Career Progression Scheme on the basis of the recommendation of the screening committee issued by the Finance Department as contained in Circular No.5207 dated 14.08.2002 by which the benefit of first upgradation under the Assured Career Progression Scheme has been given with effect from 09.08.1999 to the scale of Rs.5,000-8,000/ till the availability of the cadre post and since according to the State no such hierarchy has been created for promotion to the higher post, the decision has been taken to place the petitioner on the scale of Rs.4500-7000/ vide impugned order dated 25.08.2012 and therefore, the learned Single Judge before interfering with the decision fixing the pay scale of Rs.5000-8000/ has not considered the vital aspect of the matter that even though the post which the writ petitioner was holding at the time of service, it was single cadre post and therefore, if the impugned order would be allowed to continue, it will be nothing but allowing the illegality to be perpetuated which will be against the settled position of law that the illegality cannot be allowed to be perpetuated.

4. Per contra, Mr. A.K. Sahani, learned counsel for the respondent-writ petitioner submits that when the respondents-State of Jharkhand is taking plea of non-assailing the part of the order pertaining to recovery of the amount, nothing remains to be decided since the pension has been fixed on the basis of last pay drawn and as such when the recovery part has been forgone by the respondents-State of Jharkhand, the petitioner would be allowed to get the pension on the basis of the last pay drawn which is based upon the pay scale prior to refixation.

Further submission has been made by referring to the order dated 28.03.2008 that the benefit of the upgradation under the first Assured Career Progression Scheme to the pay scale of Rs.5000-8000/ has been decided to be paid from the date of passing of the Accounts Examination which the petitioner has passed on

21.03.2007 and hence from 21.03.2007 the pay scale of Rs.4500-7000/ has been sanctioned to be paid to the petitioner and on the said pay scale the pension of the petitioner has been fixed and therefore, gross illegality has been committed by the respondent authorities and taking into consideration the aforesaid aspect of the matter, the learned Single Judge has interfered with the impugned decision by allowing the writ petition.

5. This Court after having heard learned counsel for the parties and on appreciation of the rival submissions, found some undisputed facts that the writ petitioner has got the benefit of time bound promotion with effect from 28.10.1991 which he continued to get till the benefit of time bound promotion has been recalled by virtue of recommendation of the 5th pay revision committee and in pursuance thereto, the State of Jharkhand has taken decision for cancellation of the benefit of time bound promotion but without any recovery.

Subsequently decision has been taken by virtue of the Circular No.5207 dated 14.08.2002 implementing the benefit of Assured Career Progression Scheme notionally with effect from 09.08.1999 and actual payment with effect from 15.11.2000.

It is evident from Annexure-2, dated 23.08.1998 that the petitioner has been granted the benefit of Assured Career Progression Scheme notionally with the condition that the benefit would be paid after passing of the Accounts examination.

The authorities have come out with order dated 25.10.2010 referring therein that as on 28.10.1991, when the petitioner had been given the benefit of first time bound promotion, he was not passed in the Accounts examination rather he has passed the Accounts examination on 20.03.2007. The respondent thereafter issued an order on 25.08.2012 by shifting the date of benefit of first Assured Career Progression Scheme from 09.08.1999 to 21.03.2007 in the pay scale of Rs.4500-7000/ and subsequent decision was taken on 25.08.2012 for recall of the pay scale which has been fixed by way of the benefit of second Assured Career Progression Scheme.

The aforesaid orders have been challenged by the writ petitioner and upon consideration of the rival submissions of the parties, the learned Single Judge has passed order on 08.02.2017 against which the present appeal has been filed.

6. Learned counsel appearing for the State of Jharkhand is not pressing the direction of the learned Single Judge regarding recovery of the excess amount rather confining the appeal with respect to quashing of the order dated 25.08.2012 by which the pay scale of the writ petitioner has been reduced from Rs.5,000-8000 to Rs.4,500-7000/ as also the office order no.47 dated 25.08.2012 for cancellation of second Assured Career Progression Scheme from Rs.5500-9000/-.

It is evident from the earlier decision dated 28.03.2008 whereby and whereunder

the benefit of first upgradation under the first Assured Career Progression Scheme has been granted in favour of the petitioner by upgrading the pay scale to Rs.5,000-8000/ with the condition that the arrears of salary would be passed after passing of the Accounts Examination, it would be evident that the screening committee has considered the fact about the date of regular appointment which is dated 02.04.1980 and by virtue of the revision in pay scale the pay scale of the petitioner has been reduced to Rs.4,000-6000/ which has been authenticated at the level of the competent authority.

The petitioner has been granted the benefit of time bound promotion after completion of 12 years of service granting it from 02.08.1980 i.e. with effect from 02.04.1992 and as such he has been granted the benefit of upgradation of the pay scale to the scale of Rs.4,000-6000/ in pursuance to the decision as contained in Circular no.660 dated 08.02.1999 on the ground that against the post which the petitioner was holding there was no cadre for promotion, but subsequent to the aforesaid decision the respondent authorities have taken decision on the basis of Circular No.5207 dated 14.08.2002 by placing the petitioner on the pay scale of Rs.5,000-8000/ till the date when he is placed to the cadre post with the condition that if it would be found that any error is in the said upgradation the money paid would be recovered.

7. This Court has found from the order dated 28.03.2008 as contained in Annexure-2, that the petitioner was holding therein the post of Store Keeper (Correspondence Clerk) which had having no cadre post for promotion to the next higher grade being single cadre post and therefore, the authority while acting upon the decision as contained under Circular No.5207 dated 14.08.2002, has granted the benefit of upgradation to the petitioner on the pay scale of Rs.5000-8000/ till the availability of the cadre post. The said letter suggests that there is no hierarchy of promotion to the post of Store Keeper (Correspondence Clerk).

It is evident from the Circular No.5207 dated 14.08.2002, applicable with effect from 09.08.1999 that the benefit of upgradation in the pay scale is to be granted to the pay scale of next higher cadre if such post is having avenues of cadre promotion but in case of single cadre post the arrangement has been made in Circular No.5207 dated 14.08.2002. In such circumstances the pay scale as provided under the Schedule-I to the said circular would be extended accordingly.

The said pay scale as contained under Schedule-I is the next higher pay scale, meaning thereby, the upgradation would be in the next higher pay scale, not equal to pay scale of the next promotional post under the cadre since the post is the single cadre.

It is the admitted case of the writ petitioner that as yet the post of Store Keeper (Correspondence Clerk) is the single cadre post, as such according to us the petitioner would be entitled to get the pay scale of Rs.4500-7000/ in place of Rs.5000-8000/-, therefore, on the basis of the said factual aspect which is not in

dispute, this Court is of the view that if the State authorities have cancelled the pay scale of the petitioner of Rs.5000-8000/ and Rs.5500-9000/ by fixing at the scale of Rs.4500-7000/ and Rs.5000-8000/ vide orders dated 25.08.2012, no illegality has been committed.

Learned counsel for the petitioner has contended that there cannot be any recovery since there is no misrepresentation on the part of the writ petitioner and the writ Court by putting reliance upon the judgment rendered in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) and Ors. reported in (2015) 4 SCC 334 has quashed the decision of the State authority by which the order of recovery has been directed to be made.

Since the respondents-State of Jharkhand, the appellants herein at the outset, has submitted that they are not assailing the order by which the learned Single Judge has quashed the order pertaining to recovery, therefore, this Court is not proceeding with respect to the said issue.

8. This Court on the basis of the discussions made hereinabove pertaining to the fixation of pay scale as also the pension, is of the view that if any illegality has been committed, it has to be rectified the moment it came to the notice of the authority and if such endeavour has been taken, it cannot be said to be unjust and improper for the reason that the illegality cannot be allowed to be perpetuated.

In this regard reference is required to be made of the judgment of the Hon'ble Apex Court rendered in the case of State of Orissa and Anr. vs. Mamata Mohanty reported in (2011) 3 SCC 436, wherein the Hon'ble Apex Court has been pleased to hold that if any illegality has been committed, the same is to be rectified the moment it came to the notice of the authorities and if such exercise would not be resorted it will amount to perpetuating the illegality.

The Hon'ble Apex Court in the said judgment, at paragraphs 56 and 57 has been pleased to hold:

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, Yogesh Kumar v. Govt. of NCT of Delhi, Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P., Krishan Bhatt v. State of J&K, Upendra Narayan Singh and Union of India v. Kartick Chandra Mondal.)

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. observed as under: (SCC p. 551, para 12)

"12. ... '2. ... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in *Pierce v. Delameter* at p. 18:

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".

(See also Ministry of Information & Broadcasting, *In re, Nirmal Jeet Kaur v. State of M.P. and Mayuram Subramanian Srinivasan v. CBI.*)

The Hon'ble Apex Court in the case of *Union of India v. Narendra Singh* reported in (2008) 2 SCC 750, wherein at paragraph 32 it has been laid down, which reads hereunder as:

"32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In *ICAR v. T.K. Suryanarayan* it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules."

9. In view of the facts as stated hereinabove and relying upon the judgment rendered by the Hon'ble Apex Court in the case of *State of Orissa and Anr. vs. Mamata Mohanty & Union of India v. Narendra Singh* (supra) as also after going across the impugned order, we are of the conscious view that learned Single Judge has failed to appreciate this aspect of the matter about the nature of post having no promotional avenues being a single cadre post, basis upon the same the consideration about the pay scale as contained in Schedule-I to the Circular No.5207 dated 14.08.2002 has also not been considered under which the pay scale by way of first upgradation is to be granted at the scale of Rs.4500-7000 and second upgradation at the scale of Rs.5000-8000, but wrongly the pay scale of Rs.5000-8000 and 5500-9000 has been granted.

10. In that view of the matter, the order passed by the learned Single Judge to the extent for quashing the order no.46 dated 25.08.2012 (Annexure-7) and order no.47 dated 25.08.2012 (Annexure-8) are quashed and set aside.

Accordingly, the instant appeal is allowed to the extent indicated herein above.