
(2015) 01 JH CK 0027

In the Jharkhand High Court

Case No : I.A. No. 8008 of 2013 and L.P.A. No. 364 of 2013

State of Jharkhand and Others

APPELLANT

Vs

Kiran Kumar Sharma and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Citation : (2015) 2 JLJR 83

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : Shravan Kr., for the Appellant; Mahua Palit, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order dated 19th July, 2013 delivered by the learned Single Judge in W.P.(S) No. 6878/2005, whereby the petition preferred by Respondent No. 1 (original petitioner) has been allowed and therefore, the original Respondent No. 1 has preferred this letters patent appeal.

2. It is submitted by counsel for the appellant that Respondent No. 1 (original petitioner) was appointed on the post of Helper with effect from 8th November, 1978 in the pay-scale of Rs. 165-204/-, which was enhanced to a pay-scale of Rs. 180-242/-. Thereafter, it was revised to Rs. 375- 480/- and it was again revised to Rs. 800-1150/-. This was again slightly modified because on account of first time bound promotion instead of Rs. 375-480/- it should have been Rs. 400- 500/- and therefore, instead of Rs. 800- 1150/- it was revised correspondingly to Rs. 825-1200/- and thereafter, it was again revised to Rs. 2650-4000/-. In this hierarchy of the pay-scales given to the Respondent No. 1 (original petitioner) an error was committed by the Government to the effect that instead of Rs. 825-1200/-, the pay-scale should have been fixed at Rs. 775-1025/- and therefore, subsequently, revision should have been in the pay-scale of Rs. 2550-3200/-. This is the major contention of the State Government

and it is submitted by the counsel for the appellant State (original Respondent No. 1) that this aspect of the matter has not been properly appreciated by the learned Single Judge. The revised replacement scale of the State cadre employees has been sanctioned according to the post to post, not from scale to scale, hence the judgment passed by the learned Single Judge deserves to be set aside and the petitioner is entitled to the pay-scale of Rs. 2550-3200/- instead of pay-scale of Rs. 2650-4000/-.

3. It is submitted vehemently by counsel for the Respondent No. 1 (original petitioner) that no error has been committed by the learned Single Judge in allowing the petition filed by the original petitioner and grant of the pay-scale of Rs. 2650-4000/- is absolutely in consonance with the recommendation of the Pay Commission/Fitment Committee Report. It is further submitted by the counsel for the respondents that the State Government has never withdrawn the pay-scale of Rs. 825-1200/- given to the original petitioner. Similarly, the previous scale of Rs. 800-1150/- was also not withdrawn by the Government. Thus, if these two pay scales remain undisturbed, as they are, then Rs. 2650-4000/- will be the pay-scale corresponding to the earlier pay-scale of Rs. 825-1200/-, as per recommendations of the Pay Commission/Fitment committee Report, which is at Annexure A to the counter affidavit (Page No. 24). It is submitted by the counsel for the Respondent No. 1 (original petitioner) that there can not be an error in the revision of the earlier pay-scale to Rs. 2650-4000/- because unless the Government withdraws its previous corresponding pay-scales of Rs. Rs. 800-1150/- and 825-1200/- (the slightly modified on account of the first time bound promotion), which have been made effective from 01.01.1986, the subsequent pay scale of Rs. 2650-4000 can not be withdrawn by the Government because the last pay-scale of Rs. 2650-4000/- is nothing but replacement for earlier pay-scale of Rs. 825-1200/-. There is not a single averment made in the counter affidavit filed by the State of Jharkhand in the writ petition that earlier pay scale of Rs. 825-1200/- was wrongly given to the petitioner and therefore in the letters patent appeal no new argument can be canvassed by the appellant State that instead of a pay-scale of Rs. 825-1200/- there ought to have been a pay-scale of Rs. 775-1025/-. This argument can not be canvassed in the Letters Patent Appeal because there are no such factual averments in the counter affidavit filed in the writ petition nor this type of argument was ever canvassed before the learned Single Judge at the time of final hearing of the writ petition.

Moreover, pay scale of Rs. 825-1200/-, which has been revised because of the first time bound promotion as per Resolution No. 10770 of the Finance Department, has been made effective from 01.01.1986 and therefore, today, i.e. after approximately quarter of a century, this pay-scale can not be revised and that too upon oral argument of the government. Once the earlier pay-scale of Rs. 825-1200/- is considered from 1.1.1986, then as per recommendations of the Pay Commission/Fitment Committees report, corresponding pay scale at Rs. 2650-4000/- is correct and this fact has rightly been appreciated by the learned

Single Judge and hence this letters patent appeal may not be entertained by this court.

4. Having heard counsel for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this letters patent appeal mainly for the following facts and reasons:

"(I) The present Respondent No. 1 is the original petitioner, who was appointed as a Helper in the pay-scale of Rs. 165-204/- to serve the State Government with effect from 8th November, 1978.

(II) Thereafter, from time to time, this pay-scale has been revised. The details regarding pay-scales are given in para No. 7 of the judgment of the learned Single Judge, a summary of which is given as under:

(III) Contents of the aforesaid table is given in paragraph 7 of the judgment delivered by the learned Single Judge, which is based upon paragraph 7, 8 and 9 of the counter affidavit filed by the appellants (original respondents). Thus, it appears that the Government of Jharkhand is changing the pay-scale from Rs. 2650-4000/- to Rs. 2550-3200/- mainly on the ground that the State Government has taken a decision to revise the pay-scales according to the post to post and not from scale to scale.

This contention is not accepted by this court mainly for the reason that the pay-scale of Rs. 825-1200/- and the previous pay scale of Rs. 800-1150/- have never been withdrawn by the State of Jharkhand. These pay-scale are not replaced by the pay-scale of Rs. 775-1025/-. Further, in the counter affidavit filed by the State in the writ petition never a stand was taken by the State of Jharkhand that the petitioner was wrongly given earlier pay-scale of Rs. 825-1200/- although he was entitled to the Pay-scale of Rs. 775-1025/-. This contention was neither raised before the learned Single Judge in the counter affidavit nor at the time of arguments, meaning thereby that there is no grievance ventilated by the State that pay-scale of Rs. 825-1200/- was wrongly given to the petitioner. If this is the position, then simply looking to the recommendation of the Pay Commission/ Fitment Committee report, if the earlier pay-scale is of Rs. 825-1200/-, Rs. 2650-4000/- is the next revised pay-scale w.e.f. 01.01.1996.

(IV) The counsel for the appellant State has submitted that pay-scale of Rs. 2550-3200/- is in fact the corresponding pay scale of the earlier non-revised pay-scale of Rs. 775-1025/-, which was meant for the post of Helper and therefore, a Helper should get a pay scale of Rs. 2550-3200/- with effect from 01.01.1996.

This argument is also not accepted by this court mainly for the reason that the contention regarding pay scale of Rs. 775-1025/- was never raised before the learned Single Judge. On the contrary, looking to the counter affidavit, especially paragraph 7, 8 and 9, it is categorically mentioned therein by the appellants of this Letters Patent Appeal that the petitioner was given time bound promotion in the pay-scale of Rs. 825-1200/-. This pay-scale has remained as it is. The pay-

scale of Rs. 825-1200/- has never been withdrawn nor it has been replaced by the pay-scale of Rs. 775-1025/-. If this is the position then no error has been committed by the learned Single Judge in granting pay scale of Rs. 2650-4000/- because earlier pay scale in dispute is at Rs. 825-1200.

5. Therefore, in the light of the aforesaid facts and reasons, there is no substance in the Letters Patent Appeal as no error has been committed by the learned Single Judge in allowing the writ petition. We, therefore, upheld the impugned judgment given by the learned Single Judge, especially the direction contained in para 11 of the impugned judgment regarding grant of pay-scale of Rs. 2650-4000/- and refunding the amount already deducted from the salary of the petitioner for the period between 16.11.2000 to June, 2003. The amount to be refunded shall be refunded within four weeks from the date of receipt of the order.

6. The Letters Patent Appeal is, accordingly, dismissed.

7. I.A. No. 8008 of 2013 is rejected since the L.P.A. is dismissed.