
(2013) 01 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2309 of 2012

Uday Shankar Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) 3 AJR 215 : (2013) 4 JLJR 616

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : M.M. Pal, Dr. S.N. Pathak, Indrajit Sinha, Sanjay Kr. Tiwari, Suchitra Pandey and Leena Mukherjee, for the Appellant; Ajit Kumar, AAG, A.K. Singh, J.C. to G.P.V. and B.N. Tiwary, J.C. to G.P. II, for the Respondent

Final Decision : Disposed Off

Judgement

Narendra Nath Tiwari, J.—In these writ petitions, the petitioners have prayed for quashing the order issued by letter No. 838 dated 16.03.2012 by the Law Secretary, Government of Jharkhand, whereby the monetary benefit paid on account of Modified Assured Career Progression (MACP for short) has been sought to be recovered from the salary of the petitioners. The petitioner have also prayed for quashing the order issued by letter No. 985 dated 27-03-2012, whereby the confirmation of grade pay of Rs. 4200/- fixed on the basis of the benefit of MACP has been cancelled. The petitioners are the employees of civil j Courts. They were given benefit of MACP. On that basis their grade pay was fixed at Rs. 4200/-. The order was confirmed by the Department. By the impugned order dated 27.03.2012, the confirmation order has been cancelled. By another impugned order dated 16.03.2012, the amount of the MACP paid to the petitioners has been sought to be recovered from the salary of the petitioners in one go.

2. The impugned orders have been challenged on the ground that the order reducing the pay scale of the petitioners without informing them any reason and giving them any opportunity to explain is arbitrary and illegal and the same is

violative of principle of natural justice. The order of recovery of the amount paid on the basis of pay fixation in view of the benefit of MACP, is punitive in nature and the same cannot be passed without following due process of law and the principle of natural justice. The orders are vitiated and unsustainable in law.

3. Learned AAG appearing on behalf of the respondents, although opposed the writ petitions, has not disputed the said contentions and legal position. He has explained that though no reason was assigned in the impugned orders, the same have been explained in the counter-affidavit.

4. I have heard learned counsel for the parties and perused the records. By order dated 16.03.2012, the amount, which has been paid as the benefit of MACP to the petitioners has been sought to be recovered from the salary of the petitioners in one go, on the ground that the benefit was wrongly given. By order dated 27.03.2012, the confirmation order giving benefit of MACP has been cancelled.

5. On going through the orders, it is clear that the orders have been passed without informing and assigning any reason to the petitioners. Admittedly, no opportunity has been given to the petitioners to explain the position. The effect of the order is reduction of the pay scale of the petitioners and recovery of amount-which are punitive in nature.

6. It is well settled that any punitive order much-less any order reducing pay cannot be passed without informing the reason to the person concerned and without giving him opportunity of representation/hearing. Though the respondents have tried to justify the order by supplementing reason in the counter-affidavit, that does not comply with the requirement of the principle of natural justice. It has been repeatedly held in judicial pronouncements that the order itself is to be supported by the reason. Any kind of supplement by way of counter-affidavit or by the subsequent statement does not cure the infirmity of the order.

7. For the reasons afore-mentioned, the impugned order issued by letter No. 838 dated 16.03.2012 as also by letter No. 985 dated 27.03.2012 being violative of principle of natural justice, cannot sustain in law. The same are, accordingly, quashed.

8. However, the respondents are at liberty to pass order in accordance with law and after following the process of law, if so warranted.

9. It is made clear that any recovery made pursuant to the said order is unjustified and illegal and the petitioners are entitled to get refund of the same, forthwith. All the writ petitions are, accordingly, disposed of.