
(2016) 11 JH CK 0058
In the Jharkhand High Court
Case No : W.P.(S) No. 5208 of 2016

Umesh Kumar Yadav

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Citation : (2017) 2 JBCJ 214

Hon'ble Judges : Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Sachin Kumar, Advocate, for the Petitioner; Ms. Ruchi Rampuria, J.C. to Sr. S.C. I, for the Respondents

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—Grievance of the petitioner is that without issuing any notice/show-cause notice, order contained in Memo No. 279 dated 30.03.2016 has been passed where under date of 2nd MACP has been shifted to 24.08.2018 in place of 24.08.2010, and on the basis of the aforesaid order, the respondents have re-fixed the salary of the petitioner vide office order dated 25.04.2016.

2. Vide order dated 03.10.2016, four weeks' time was granted for filing counter-affidavit. The learned counsel for the State states that counter-affidavit is ready, however, due to the instructions issued by the Court where under any affidavit must be filed 48 hours before the date of hearing, he could not file the counter-affidavit.

3. During the course of hearing it has been brought to the Court's notice that against order dated 30.03.2016 as contained in Memo no. 279 another similarly situated employee namely, Uday Kumar Singh came to this Court in W.P.(S) No. 2638 of 2016 and vide order dated 05.09.2016 the writ petition was partly allowed in the following terms :

8. "The case of the petitioner, who admittedly is a Class-III employee of the

State Government, is fully covered by the decision of the Apex Court in Rafiq Masih's case (supra). In that view of the matter the impugned order contained in Memo No. 279 dated 30.03.2016 issued by the respondent No. 3, the Director, Employment and Training, Government of Jharkhand, Ranchi, brought on record as Annexure-3 to the writ application, so far as it directs the recovery of the excess payment made to the petitioner, from his salary, cannot be sustained in the eyes of law, and the same, is hereby, quashed.

9. It is made clear that this Court has not expressed any opinion about the legality or the otherwise about the shifting of the dates of the grant of benefits of the 2nd A.C.P. and 3rd M.A.C.P. to the petitioner by the impugned order, as contained in Annexure-3 to the writ application. Since the impugned order was issued without giving any opportunity to the petitioner and without assigning any reasons, the petitioner, is hereby, given an opportunity to give representation to the respondent No. 3, The Director, Employment and Training, Government of Jharkhand, placing his claim for grant of 2nd A.C.P. and 3rd M.A.C.P. w.e.f., the dates they were originally granted to the petitioner. The representation shall be disposed of by the respondent No. 3 by speaking order and if it is found that the benefits of 2nd A.C.P. and 3rd M.A.C.P. had been wrongly granted earlier, and the dates thereof have been rightly shifted by the impugned order, the reasons for the same and shall be communicated to the petitioner, which the petitioner shall be free to challenge in the appropriate forum, if not satisfied with the reasons assigned. If it is found that the petitioner was entitled the benefits of 2nd A.C.P. and 3rd M.A.C.P. w.e.f., the dates they were originally granted to the petitioner, or any dates, other than those mentioned in impugned order contained in Annexure-3, the same shall accordingly, be modified considering the representation of the petitioner. The respondent No. 3, is directed to dispose of the representation of the petitioner with reasoned order, positively within the period of four weeks from the date of filing of the representation, if any."

4. In view of the identical facts pleaded in the present proceeding, I am not inclined to give further time to file counter-affidavit. Only difference in both the cases is that in the instant writ petition the grant of 2nd MACP is an issue whereas, in W.P.(S) No. 2638 of 2016 claim for grant of 2nd and 3rd MACP, both, were agitated. The learned State counsel submits that objections which were taken in W.P.(S) No. 2638 of 2016 have been raised in this writ petition also. Accordingly, it is ordered that order passed in W.P.(S) No. 2638 of 2016 shall govern the instant writ petition also, in so far as, Memo dated 30.03.2016 is concerned. It is further made clear that subsequent order dated 25.04.2016 which has been passed consequent upon order dated 30.03.2016 also stands quashed, however, with a liberty to the respondent-State to proceed in the matter, in accordance with law, after affording reasonable opportunity of hearing to the petitioner.

5. In the result, the writ petition is allowed in the aforesaid terms.