

(2019) 09 JH CK 0091

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2711 of 2014

Vijaya Lakshmi

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Citation : (2019) 09 JH CK 0091

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saurabh Shekhar, Vishal Kumar Singh

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Saurabh Shekhar, the learned counsel appearing for the petitioner and Mr. Vishal Kumar Singh, the learned A.C. to G.A.-II appearing on behalf of the respondent-State of Jharkhand.

2. The petitioner has preferred this writ petition for quashing the order dated 11.02.2012 whereby the scale granted to the petitioner in the pay-scale of Rs.5000-8000/- has been modified and up-gradation in the pay-scale of Rs.4000-6000/- has been made. The petitioner has further prayed for a direction to provide the enhancement in the pay-scale of Rs.5500-9000/- alongwith interest. It is further prayed for a direction to forthwith release the entire recovered amount in favour of the petitioner.

3. The petitioner had joined his service as Laboratory Assistant on 01.05.1981. It is stated that the petitioner has not been granted any regular promotion although she became eligible to be considered for promotion to the higher post. The petitioner was granted 2nd A.C.P. with effect from 01.05.2005 in the pay-scale of Rs.5000-8000/-.

Subsequently, the petitioner was made Research Assistant by order dated

03.10.2006 in view of the Circular dated 08.11.1999 and finally she has superannuated from service on 31.01.2013.

4. The learned counsel appearing for the petitioner submits that a decision was taken by the competent authority vide Annexure-2 dated 08.11.1999 whereby it was decided that the post of Laboratory Assistant will be re-designated by its merger with the post of Research Assistant and the Laboratory Assistants, who were working, will be re-designated as Research Assistants phase-wise and after that the petitioner was not granted any regular promotion from the post of Laboratory Assistant. He further submits that the petitioner ought to have been granted the second up-gradation under the Assured Career Progression Scheme in the pay-scale of Rs.5500-9000/-. He also further submits that instead of giving promotion to the petitioner, the concerned Department has re-called all the benefits vide order dated 11.02.2012 from the petitioner on the ground that there is no Recruitment/ Promotion Rules as per clause-3(x) of the Circular dated 14.08.2002. He also referred to the clause-3(x) of the Circular dated 14.08.2002 which provides the up-gradation of the pay-scale. This was done pursuant to the decision taken vide office order dated 08.11.1999. By office order dated 11.02.2012 the benefit granted to the petitioner has been cancelled and he has been directed to be placed in the scale of Rs.4000-6000/- with recovery of the amount excess paid. The petitioner retired on 31.01.2013 whereas the impugned order of recovery dated 30.11.2013 has been passed wherein it is stated that the salary paid in excess sought to be recovered from the admissible post-retiral dues of the petitioner. Mr. Saurabh Shekhar, the learned counsel for the petitioner assailed the impugned action of the respondents on the ground that the impugned order has been passed without application of mind and relying on the conditions given in Clause-3(x) in the Resolution dated 14.08.2002. He submits that the said condition is not at all applicable to the petitioner. He submits that in view of Clause-3(vii) the petitioner is entitled for scale of Rs.5500-9000/- as there are specific recruitment and promotion rules governing the service conditions of the petitioner. He further submits that in Annexure-2 at serial no.7 the Research Assistant post is prescribed and the pay-scale is shown as Rs.5000-8000/- and the mode of recruitment is 'Direct' and 'Promotion' both. He further submits that in view of letter dated 30.01.2008 the post of Lab. Assistant was directed to be merged with the post of Research Assistant and it is submitted that in view of Clause-4 dated 08.11.1999 the petitioner is entitled for pay-scale of Rs.5500-9000/- as it has been merged with effect from 08.11.1999.

5. On the other hand, Mr. Vishal Kumar Singh, the learned A.C. to G.A.-II appearing on behalf of the respondent-State submits that the petitioner joined the service as Laboratory Khalasi and got promoted to the post of Laboratory Assistant and also given the various consequential benefits and order dated 11.02.2012 is the outcome of the departmental proceeding and in view of that the recovery order has been passed.

6. Having heard the learned counsel for the parties, this Court finds that the

petitioner was initially joined the service on the post of Laboratory Assistant and in view of Circular dated 14.08.2002 the Assistant of Finance Department of the Government of Jharkhand providing up-gradation in the pay-scale by which the conditions have been mentioned for grant of up-gradation in the pay-scale for the same. There is specific clause of the conditions as contained in column-3(x) providing eligibility conditions for up-gradation in the pay-scale which is at par with the regular promotion to be given on the basis of Recruitment and Promotion Rules governing the service conditions of the members of the service. There is specific recruitment and promotion rules formulated on 08.11.1999 as contained in Annexure-2 which has been adopted by the respondent-State of Jharkhand and pursuant to that the petitioner has been granted the scale of Rs.5000-8000/- that is why pay-scale of Research Assistant the next higher post to the post of Laboratory Assistant and second up-gradation in the pay-scale of Rs.5500-9000/- which is the pay-scale of the post of Assistant Research Officer the next higher post to the post is Research Officer.

7. In view of Clause-3(vii) and taking into account the Recruitment Rules contained in Annexure-2, the petitioner is entitled for the scale of Rs.5500-9000/-. Accordingly, the respondent-State is directed to provide pay scale to the petitioner in the pay-scale of Rs.5500-9000/- along with consequential benefit. In that view of the matter, the impugned order cannot sustain in the eye of law. The impugned order dated 11.02.2012 is quashed. In view of the interim order of this Court, the recovered amount which has been recovered from the petitioner, the petitioner is entitled for return of the same. Accordingly, the respondent-State is directed to refund the recovered amount in favour of the petitioner within 8 weeks from the date of receipt/ production of a copy of this order. As the scale of the petitioner going to be fixed at Rs.5500-9000/-, the respondent-State will pass a consequential order so that the other benefits with regard to pensionary benefits may be extended to the petitioner within the aforesaid period.

8. With the aforesaid observations and direction, the writ petition stands disposed of.