

Binod Kumar Sinha Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jan-18-2017

Appellant : Binod Kumar Sinha

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 7787 of 2011 Binod Kumar Sinha, S/O-Late S.N. Sinha, resident of E.W.S. 16/6, Road No. 10, Adityapur -2, P.O. & P.S.-Adityapur, District- Saraikela-Kharsawan Petitioner - V e r s u s- 1.The State of Jharkhand. 2.Secretary to the Government, Department of Finance, Jharkhand, Ranchi, having Office at Project Building, P.O. + P.S.-Dhurwa, District-Ranchi. 3.The Dy. Commissioner, East Singhbhum, Jamshedpur having Office at Sakchi, P.O. + P.S.-Sakchi, District-East Singhbhum. 4.The Executive Engineer, Building Construction Department, Building Division, C.H. Area, P.O. + P.S.-Sakchi, Jamshedpur, District-Singhbhum East. 5.The Superintending Engineer, Building Construction Department, Chhotanagpur Circle, Near Court Compound, P.O.- Ranchi, P.S.-Sadar, District-Ranchi.

6. The District Accounts Officer, P.O. & P.S.-Sakchi, Jamshedpur, District-Singhbhum East. Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - Mr. Manish Kumar, Advocate. For the Respondent-State: - Mr. Binod Singh, S.C. (L&C). Mr. Sarvendra Kumar, J.C. to S.C. (L&C). 12/18.01.2017 In the captioned writ application, the petitioner has, inter alia, prayed for quashing the Memo No. 713, dated 20.05.2011 (Annexure-8), issued by

the Superintending Engineer, Building Construction Department, Chhotanagpur Circle, Ranchi (Respondent No. 5), whereby the 2nd A.C.P. granted to the petitioner with effect from 09.08.1999 has been cancelled and further direction has been made for recovery of the amount from the pensionary benefits of the petitioner. The petitioner has further prayed for direction to the respondents to pay his pension in the revised pay scale with effect from 01.1.2006 as per the 06th Pay Revision Committee Report and the difference of Earned Leave, difference of gratuity and dearness allowance for period from 1.1.2009 to 31.3.2009 alongwith the interest.

2. The short facts, as emanated in the writ application, is that the petitioner, while continuing as the Correspondence Clerk, was granted 2 the first time bound promotion on 31.03.1984 and on 09.09.1999, the second ACP has been granted to the petitioner vide order dated 20.12.2006 and subsequently, grant of second ACP has been confirmed by the order of the Commissioner on 24.05.2007, which is evident from the impugned order dated 20.05.2011. The petitioner retired from the Government service on 31.12.2008 on attaining the age of superannuation. Since the benefit accruing from the 06th Pay Revision was not granted to the petitioner, the petitioner earlier approached this Court in W.P. (S) No. 1607 of 2010 and this Court vide order dated 28.06.2010 after hearing the parties, has been pleased to dispose of the writ petition by directing the Executive Engineer, Building Construction Department, Building Division, Jamshedpur (respondent no.

4) for redressal of the grievances of the petitioner. Therefore, in pursuance to the directions of this Court, dated-28.06.2010, the impugned order dated 21.05.2011 has been passed by cancelling the grant of second A.C.P., which is impugned in this writ application.

3. Learned counsel for the petitioner during course of hearing has submitted with vehemence that the impugned order dated 20.05.2011 is assailable on the ground that the analogy which has been given in the impugned order that the A.C.P., which was granted irregularly and illegally to one Shiv Chandra Singh, who stands on the same footing as that of the petitioner, has been withdrawn but the learned counsel for the petitioner submits hat the said Shiv Chandra Singh has

approached this Court in W.P. (S) No. 2562 of 2010 and the order cancelling the grant of A.C.P., therein, has been quashed by this Court vide order dated 03.08.2015 in the aforesaid writ petition and the case of the petitioner is squarely covered by the aforesaid decision. Learned counsel for the petitioner by referring to the another decision of this Court further submits that in W.P. (S) No. 5400 of 2006 in the case of Bankateshwar Pandey, wherein the grant of first time bound promotion was cancelled, has already been decided in favour of the petitioner, therein, namely, Bankateshwar Pandey vide order 3 dated-27.01.2016. Learned counsel for the petitioner further submits that it is nobody's case that the petitioner has resorted to any fraudulent means by filing a false representation or any misrepresentation or committed any fraud while first time bound promotion or the second A.C.P. has been granted in his favour and therefore, the action of the respondents, for recovery of the amount from the pensionary benefits of the petitioner after retirement of the petitioner after grant of second A.C.P., is not legally sustainable and the impugned order is liable to be set aside. Learned counsel for the petitioner further submits that in similar situation after retirement of the petitioner from Government service, the impugned order dated 21.05.2011 (Annexure-8) could not have been passed without resorting to the provisions of Rule 43 (b) of the Jharkhand Pension Rules.

4. A counter affidavit has been filed by the respondents controverting the averments made in the writ application. In the counter affidavit, it has been submitted that the first time bound promotion and the second A.C.P. has been cancelled on the basis of failure on the part of the petitioner to clear the accounts examination. It has further been submitted that benefit of A.C.P. is already a subject to condition that in case of excess payment adjustment will be made through deductions from the salary/pension/gratuity. It has further been submitted that during confirmation of 02nd A.C.P., District Accounts Office, East Singhbhum, Jamshedpur revealed that the petitioner has not passed the final level of first paper of accounts examination. It has been further stated that since an objection has been raised by the District Accounts officer, East Singhbhum, Jamshedpur during confirmation of 2nd A.C.P. given by the Commissioner, South Chhotanagpur Division, Ranchi vide letter No. 3130, dated 10.08.2010 of the District Accounts Officer, East Singhbhum, Jamshedpur as evident from

Annexure-B to the counter affidavit, the cancellation of the second A.C.P. has been accorded by the Additional Finance Secretary, Finance Department, Jharkhand, Ranchi vide letter 4 dated 03.06.2011 as per Annexure-C to the counter affidavit and therefore, the second A.C.P. has been cancelled owing to the prevalent provisions and Rules.

5. Mr. Binod Singh, learned S.C. (L&C) appearing for the Respondent-State more or less reiterated the submissions made in the counter affidavit. Learned counsel for the Respondent-State further submits that the impugned order has been passed in view of the strict conditions meant for grant of second A.C.P. Learned counsel for the Respondent-State further submits that passing of the Accounts Examination is a condition precedent for grant of second A.C.P. and since the petitioner has not passed the said examination, therefore the impugned order has been passed, which is justified in the facts and circumstances of the case.

6. Having heard the learned counsel for the respective parties and on perusal of the records, I am of the considered view that the impugned order dated 21.05.2011 (Annexure-8) is assailable on the following grounds : - (i) Admittedly, the petitioner was granted the first time bound promotion with effect from 31.03.1984 and it is not in dispute that the second A.C.P. has been granted to the petitioner on 09.08.1999 vide order dated 20.12.2006, which has been confirmed by the Commissioner vide order dated 24.05.2007 and the impugned order has been passed on 21.05.2011 almost more than two years after retirement of the petitioner without issuance of any show cause notice or without giving opportunity of hearing to the petitioner. (ii) Indisputably, the first time bound promotion as well as the second A.C.P. has been granted to the petitioner neither on account of any fraud played on the part of the petitioner nor on account of any misrepresentation on his part. Since the benefit of 06th Pay Revision was not extended to the petitioner, the petitioner approached this Court in W.P. (S) No. 1607 of 2010, which was disposed of on 28.06.2010, but, subsequently, as disclosed from the counter affidavit, it was detected that the petitioner has been illegally granted the second A.C.P., which has resulted in issuance of the impugned order dated 21.05.2011. However, the Circular of the Government envisages that after completion of 50 years of age, one is exempted from undergoing the departmental

examination and since the age of the petitioner in the relevant year, was more than 50 years, he was also entitled for exemption from undergoing the departmental examination, i.e. one of the grounds, which is in favour of the petitioner. (iii) Since the petitioner has already retired on 31.12.2008, the respondents are precluded from taking any action with regard to recovery of the alleged excess payment made to the petitioner in absence of any misrepresentation on the part of the petitioner or in the absence of any proceedings under Rule 43 (b) of the Jharkhand Pension Rules. (iv) In this context, reference may be made to the case of Raj Kishore Prasad Vs. The State of Jharkhad & Ors., reported in 2015 (1) JCR339(Jhr). The aforesaid case has been disposed of by referring to the Full Bench decision of this court rendered in the case of Smt. Normi Topno Vs. State of Jharkhand and Ors. reported in 2008 (1) JCR381 Relevant paragraph of the aforesaid judgment is quoted hereinbelow:- "The Full Bench of this Court in the case of Smt. Normi Topno(Supra) has held that after retirement there is no relation ship of employ errand employee and as such no recovery can be made from the retiral benefits without following procedure of law as provided under Rule 43(b) of the Bihar Pension Rules. Without fulfilling the conditions under Rule 43(b) and without cancelling the order of promotion after enquiry by the competent authority, pension 6 and other retrial benefits can not be recovered that too without giving opportunity to the retired employee and without giving any finding with reference to the misrepresentation or misconduct on the part of the concerned employee. ".

7. On cumulative effect of the facts, reasons and judicial pronouncements, the impugned order dated 21.05.2011 (Annexure-8) being not legally sustainable, is hereby quashed and set aside.

8. Resultantly, the writ petition stands allowed. (Pramath Patnaik, J.) APK

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