

Ato Singh and Anr Vs. Forest

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Court : Jharkhand

Decided On : Sep-15-2017

Appellant : Ato Singh and Anr

Respondent : Forest

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 4137 of 2012

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1. Ato Singh, son of late Lurhu Singh, resident of village Sondh, P.O. Sandi-Chitarpur, P.S. Rajrappa Project, District Ramgarh, Jharkhand.

2. Sachida Nand Pandey, son of late Deonandan Pandey, resident of village Sisai, P.O. Khodaiya, P.S. Tandwa, District Chatra, Jharkhand. Petitioners VERSUS1
The State of Jharkhand.

2. The Principal Secretary, Forest & Environment Department, Govt. of Jharkhand, Ranchi.

3. The Principal Chief Conservator of Forest, Doranda, Ranchi. ... Respondents.

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For Petitioners : Mr. Rajendra Krishna, Advocate Mr. Jai Shankar Tiwari, Advocate
For Respondents : Mr. D.K. Dubey, Sr. SC-I

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK08 15.09.2017 Heard

learned counsel for the petitioners and learned for the respondents.

2. The petitioners have approached this Court with a prayer for a direction upon the respondents to release the benefits of upgradation in pay-scale (both under ACP Scheme w.e.f. 09.08.1999 in the pay-scale of Rs.4,000-6,000 and w.e.f. 14.01.2003 in the pay-scale of Rs.6,500-10,500 and further the benefits of third upgradation under MACP w.e.f. 14.01.2009) and to release the entire arrears of salary as also to fix and finalize the pension, on the basis of enhanced revised pay-scale along with interest as also other consequential benefits, so far it relates to petitioner No.

1. Further prayer has been made for a direction upon the respondents to release the benefits of upgradation in the pay-scale w.e.f. 09.08.1999 in the pay- scale of Rs.4,000-6,000 and w.e.f. 22.01.2003 in the pay-scale of Rs.6,500- 10,500 and also for grant of benefits of 3rd upgradation in the pay-scale under 2 MACP in the pay-scale of Rs.9,300-34,800 G.P. Rs.4600/- w.e.f. 22.01.2009 and to release the entire arrears of difference of salary and to further fix and finalize the pension, on the basis of the revised pay-scale along with other consequential benefits as also interest, so far it relates to petitioner No.

2.

3. The factual exposition as has been delineated in the writ petition is that the petitioner No. 1 was appointed as Forest Guard on 14.01.1979 and retired from service w.e.f. 31.01.2011 from the said post itself. Likewise, petitioner No. 2 was also appointed as Forest Guard w.e.f. 22.01.1979 and retired from service on 31.05.2011. The State of Jharkhand has issued one circular dated 14.08.2002 whereby, upgradation in the pay-scale under ACP Scheme has been implemented. Subsequently, by virtue of the recommended of 5th Pay Revision Commission, the concept of MACP Scheme has been implemented and by virtue of the said circular, since the petitioners have completed 30 years of regular service from the date of their initial appointment, they became entitled to get 3rd upgradation in the pay-scale. Since the grievances of the petitioners have not been redressed, the petitioner No. 1 made a representation on 29.03.2012 for redressal of his grievance. Likewise, petitioner No. 2 has also made a

representation on 28.03.2012 for redressal of his grievance. However, inspite of their representations and also after their retirement, their grievances have not been redressed, the petitioners knocked the door of this Honble Court for redressal of their grievances.

4. Mr. Rajendra Krishna assisted by Mr. Jai Shankar Tiwary, learned counsels appearing for the petitioner, strenuously urges that the cases of the petitioners ought to have been considered from the date they were entitled for financial upgradation i.e. first ACP from 09.08.1999 and second ACP from 22.01.2003. Mr. Rajendra Krishna further argued that it was the respondents who were responsible for not sending the petitioners for training at the relevant time. It is not the case that the petitioners refused to attend the training and as such, responsibility cannot be fixed on the petitioners that they denied to attend the same. When the respondents itself provided the training to the petitioners in the year 2005, the petitioners cannot be held responsible for delay in imparting training and in view of the rules and guidelines for ACP, the ACP has to be granted to the petitioners from the date it was due i.e. first ACP from 09.08.1999 3 and second ACP from 22.01.2003.

5. Per contra, counter-affidavit has been filed by the respondents. Mr. D.K. Dubey, learned Sr. SC-I assisted by Mrs. Nilam Tiwary, learned counsel appearing for the respondent-State submits that there is no illegality in consideration of the cases of petitioners from the year 2005. As per the rules and guidelines of ACP, the benefits of ACP was granted from the date the petitioners got training i.e. 2005 and as such, no illegality or infirmity has been committed in consideration of their cases for grant of ACP from 2005..

6. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the cases of the petitioners need consideration. As per the Rules and Guidelines for grant of ACP, the Petitioners are entitled for benefits of ACP from the due date i.e. 09.08.1999 for 1st ACP and 2003 for 2nd ACP. So far as training is concerned, the respondents were responsible for not sending the petitioners for training on the due date and as such, it cannot be said that petitioners willfully not attended the training and hence,

are not liable for benefits of ACP from the year 1999. The said proposition of law has already been considered in the case of Jharkhand Police Association, Wireless, Jharkhand, Ranchi through its Secretary, Thakur Ajit Kumar versus State of Jharkhand & Ors., reported in 2007 (4) JCR443Jhr, which reads as under:- I have heard learned Counsel appearing for the parties. No doubt that the Training is a compulsory part for grant of promotion under the A.C.P. Scheme. However, it is the Department, who has to depute a person for the Training and the concerned employee has no choice. In the present case, it is stated that only thirty seats were available for imparting Training in the Institute established in the district of Hazaribagh. The Training is for a period of six months. Non-passing of the Examination within 12/24 years is not within the control of the employee as he is to be deputed for the Training by the employer. Therefore, if there is any delay in deputing an employee for Training either due to non-availability of seats in the Training Centre or for any other reason, he cannot be deprived of the benefit of A.C.P. subsequently, when he is considered for such benefit after undergoing Training. On Acquiring Training, such an employee is entitled to the benefit of A.C.P. Scheme retrospectively on completion of 12/24 years of service, irrespective of the fact whether he had acquired such a Training within 12/24 years or not. In the State of Jharkhand, the benefit is to be granted from the cut-off date i.e. 09.08.1999 or after 4 completion of 12/24 years of service whichever is later. The stand of the Respondents to deny the benefit of A.C.P. from the cut-off date on the ground of acquiring Training later in the lime is not justifiable. This writ petition, accordingly, succeeds and impugned order dated - 25th July, 2005 is hereby quashed to the extent it denies benefit of the A.C.P. to the A.S.I.s of the Wireless Department with effect from the date of completion of 12/24 years of service or cut of date i.e. 9.8.99. Accordingly, Respondents are directed to grant benefit of the A.C.P. Scheme with effect from the cut-off date as provided under the A.C.P. Scheme or completion of 12/24 years which ever be later.

7. As a cumulative effect of the aforesaid rules, guidelines and observations, I hereby direct the respondent-authorities to consider the cases of the petitioners for grant of ACP from the due date i.e. 09.08.1999 for 1st ACP and 22.01.2003 for 2nd ACP and also for consequential benefits, for which they are entitled for, within a period of six weeks from the date of receipt/ production of a copy of this order.

8. Resultantly, the writ petition stands allowed. (Dr. S.N. Pathak, J.) kunal/-

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