

**Ram Chandra Ram Vs. State of Bihar and ors.**

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**Court :** Jharkhand

**Decided On :** May-19-2009

**Reported in :** 2009(57)BLJR2147

**Judge :** Ajit Kumar Sinha, J.

**Acts :** Bihar Pension Rules - Rule 43; [Constitution of India](#) - Article 14

**Appeal No. :** C.W.J.C. No. 3462 of 2000 (R)

**Appellant :** Ram Chandra Ram

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** Rajesh Kumar Mahta, J.C. to S.C.I

**Advocate for Pet/Ap. :** M.M. Pal and; Leena Mukherjee, Advs.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Ajit Kumar Sinha, J.**

1. The present writ petition has been preferred for following reliefs:

A) For quashing the order dated 9th August, 2000 issued by the respondent No. 2 whereby and whereunder the Dy. Commissioner, Giridih was directed to re-fix the pay scale of the petitioner in the scale of Rs. 5500-9000/- w.e.f. 1.1.96 as they are able to recover the excess amount after holding that the petitioner has been paid wrongly the scale of Rs. 6500-10500/-.

B) The respondents be directed not to give effect to the order dated 9th August, 2000 and to re-fix his pay scale in the scale of Rs. 8000-13500/- on the basis of Notification dated 13th Feb., 1999 of Finance Deptt. and to give all consequential benefits thereon.

C) The respondents be directed to pay super selection grade which has been arbitrarily withheld since 1994 even after the office order dated 18th Aug., 1994.

D) The respondents be directed to fix his pension finally after re-fixing his pay scale of Rs. 8000-13,500/- w.e.f. 1.1.96 and to pay all the arrears without any further delay.

E) The respondents be directed not to deduct any amount alleging excess payment alternatively and be directed to pay his all legal dues within a reasonable period.

2. The facts, in brief, are set out as under:

The petitioner was initially appointed on 1st March, 1966 as a supply officer under the Food and Civil Supply Department, Bihar, Patna and was promoted from time to time. The petitioner was promoted to the post of Asstt. Marketing Officer vide order dated 30.4.76 and vide office order dated 6th August, 1983 he was promoted to the post of Marketing officer. When the petitioner was posted as Marketing officer his pay scale was revised as per recommendation of Fifth Pay Commission in the pay scale of Rs. 2000-3800/- w.e.f. 1.1.1986 vide Finance Notification dated 23.10.90 and the same was informed by the Dist. Accounts Officer vide his letter dated 11.12.90. That vide another office order dated 16.12.85 the petitioner was given the Senior Selection Grade w.e.f. 1.4.81 in the pay scale of Rs. 2400-4150/- and vide office order dated 18th August, 1994 he was posted as Asstt. Supply officer at Lohardaga. The petitioner along with five

others were transferred and posted to the post of Dist. Supply Officer against the vacant sanctioned posts vide an office order dated 17.12.1996 and continued till the date of superannuation i.e. on 31.1.2000 and he worked as Dist. Supply Officer at Giridih in the pay scale of Rs. 6500-10500/-. After retirement his admissible dues was paid after calculating all the benefits in the scale of Rs. 6500-10500/- and not in the revised pay scale i.e. Rs. 8000-13500/- as revised by the Notification dated 13th February, 1999 of Finance Department. Being aggrieved the petitioner moved several times before authorities concerned by way of representation for grant of benefit as per revised pay scale but all went in vain. During the pendency of his representation a letter dated 9.8.2000 was issued by the respondent No. 2 i.e. Dy. Commissioner, Giridih whereby and whereunder it was informed that the pay scale of the petitioner as Dist. Supply Officer is mentioned as Rs. 6500-10500/- w.e.f. 1.1.96 whereas the petitioner was not promoted to that scale and was originally in the post of marketing officer and accordingly his pay was to be fixed in the pay scale of Rs. 5500-9000/- w.e.f. 1.1.96 and also directed to refix his pay scale at Rs. 5500-9000/- w.e.f. 1.1.96 and to recover the excess amount and to fix and correct the pension paper accordingly which is sought to be challenged in the present writ petition.

3. During the pendency of the present writ petition petitioner filed an amendment petition (Interlocutory Application No. 2804 of 2007) by which he has sought for a direction commanding upon the respondents to modify the promotion order dated 22.6.2007 with retrospective effect w.e.f. 1.1.96 including monetary benefit as well as to refix his pensionary benefit on the basis of the revised pay scale of Rs. 8000-13500/- w.e.f. 1.1.96. It was also pointed out that a notification was issued on 22nd June, 2007 by the Deputy Secretary to Government, whereby as many as 15 persons, including the petitioner, were notionally promoted to the post of Dist. Supply Officer in the pay scale of Rs. 6500-10500/- with effect from 1st January, 1996.

4. The main contention raised by the learned Counsel for the petitioner is that the recovery made from the pension was illegal and against the provisions of Section 43(b) of the Bihar Pension Rules and also in violation of a Full Bench Judgment of this Hon'ble Court, rendered in the case of Laxman Prasad Gupta v. The State of

Jharkhand as reported in 2007(4) J.L.J.R. 459. The second aspect of the matter is that once the pay has been fixed in the scale of Rs. 6500-10500/-, the pension should have been accordingly fixed with effect from 1st January, 1996 with all benefits and not with effect from 1997 since the promotion order of 2007 itself discloses with effect from 1st January, 1996.

5. The learned Counsel appearing on behalf of the respondents submits that by a considered order the respondents have rejected the prayer of the petitioner to that extent since the promotion order of 2007 was notional in nature and the petitioner was incorrectly allowed pay scale of Rs. 6500-10500/- in stead of pay scale of Rs. 5500-9000/- which was the revised pay scale of Marketing Officer. It is further submitted that after fixation of pay scale of the petitioner to which the petitioner was entitled, for recovery of excess amount if drawn by the petitioner, no show cause notice was required.

6. I have considered the pleading and the rival submissions. The order of recovery is punitive in nature and involves civil consequences and, thus, the cardinal principle of natural justice has to be mandatorily complied with and in absence of the same it is violative of Article 14 of the [Constitution of India](#). It is further relevant to point out that there is a statutory bar also under Rule 43(b) of the Bihar Pension Rules, which has been considered by a Full Bench of this Hon'ble Court. In the instant case neither the Government nor the competent authority has initiated any proceeding under Rule 43(b) nor any proceeding was initiated during service period for recovery. The proceeding under Rule 43(b) cannot be initiated beyond the prescribed period of limitation.

7. Be that as It may, the fact remains that the petitioner officiated on the post of District Supply Officer, Giridih with effect from 17.12.1996 but due to laches on the part of the respondent the promotion order was not issued. However, the same was, rectified by issuing promotion order dated 22.6.2007 notionally with effect from 1.1.1996. Thus, the respondent cannot take the benefit of their own default and order recovery after retirement. The petitioner along with 14 others were finally promoted notionally with effect from 1st January, 1996 and thus the respondents cannot withhold the benefit of promotion with effect from 1.1.1996

more so when others have been given the said benefit with effect from 1st January, 1996 itself.

8. Considering the aforesaid facts and circumstances of the case, the order of recovery dated 9th August, 2000 issued by respondent No. 2 is hereby quashed and the pension should be accordingly fixed as per the last pay drawn in the pay scale of Rs. 6500-10500/-, as determined by the authorities themselves. In case if any recovery is made then the same shall be refunded within a period of three months from the date of receipt of a copy of this order.

This writ petition is accordingly allowed to the extent indicated hereinabove.

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