

Narayan Singh Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Dec-05-2003

Reported in : 2004(52)BLJR480; [2004(1)JCR324(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : Service Laws; [Constitution of India](#) - Article 226

Appeal No. : C.W.J.C. No. 2421 of 2000(P)

Appellant : Narayan Singh

Respondent : State of Bihar and ors.

Advocate for Def. : Anil Kr. Sinha, AG

Advocate for Pet/Ap. : Dharmendra Kumar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.J. Mukhopadhaya, J.

1. This writ petition has been preferred by the writ petitioner for a direction on the respondents to pay him the retiral benefits, such as, regular and revised pension, leave salary, gratuity and G.P.F. along with 18% penal interest, besides statutory

interest, as also cost of litigation of Rs. 10.000/-.

2. According to the petitioner, he was appointed as Karmchari and thereafter, promoted to the post of Circle Inspector. Ultimately he retired from the services of the State on 30th June, 1996 as Circle Inspector, Khuntpani Circle, Chaibasa. He filed several representations for payment of regular pension and pension in the revised scale of pay as also the other retiral benefits but most of them were not paid. On the other hand, the Accountant General, Bihar, Patna, vide memo No. Pen-7-190, dated 4th June, 1997 directed for recovery of certain amount from the petitioner on account of his non-passing of Hindi Noting and Drafting Examination,

3. The stand taken by the Accountant General, Bihar, is that due to some major objections, the service book and pension papers of the petitioner were returned to the Department vide letter No. Pen-7-189, dated 30th May, 1997 for rectifying the objections. Reminder was also given to the Deputy Commissioner, Chaibasa, with a copy to the Circle Officer, Khuntpani, West Singhbhum, Chaibasa, vide letter No. Pen-7-851-52, dated 15th/22nd. March, 2000. Request was also made to send the G.P.F. Account number of the petitioner.

4. In the counter affidavit, filed on behalf of the State, general plea has been taken that the retiral benefits, such as, G.P.F., gratuity, leave encashment and group insurance have already been paid to the petitioner, as shown at page 29 :

Sl. No. Item Amount Date

(i)G.P.F.	Rs. 59,980/-	7.10.1996	(ii)Gratuity	Rs. 44,540/-	24.10.1996	(iii)Group
Insurance	Rs. 26,333/-	24.10.1996	(iv)Leave salary	Rs. 14,836/-	23.7.1996	

5. It is also stated that the then Circle Officer sanctioned 90% of the provisional pension of 24 months i.e. from 1st July, 1996 to 1st July, 1998 at the rate of Rs. 957/- per month, out of which the petitioner has been paid provisional pension of 16 months i.e. from 1st July, 1996 to 30th October, 1997, amounting to Rs. 15.312/-on 5th March, 1998.

6. Further case of the respondents is that the office of the Accountant General, Bihar, Patna, vide letter No. Pen-7-483, dated 4th November, 1996 and letter No.

Pen-7-189, dated 4th June 1997 raised four major objections and returned back the entire pension papers of the petitioner and service book to the Circle Officer, Khuntpani.

The first objection is that the petitioner passed the Hindi Noting and Drafting Examination on 28th August, 1983 and, therefore, he was not entitled to get the benefit of salary enhancement during the period of from 15th June, 1968 to 27th August, 1983.

The 2nd objection is that the petitioner having been given the 1st time bound promotion with effect from 1st April, 1991 and 2nd time bound promotion with effect from 29th August, 1993. On 2nd time bound promotion, he was wrongly given the benefit of 12% pay fixation; which ought to have been given after three years of 1st time bound promotion.

The third objection is that the petitioner was promoted to the post of Circle Inspector on 2nd February, 1993 and, as such, he should have been given the maximum benefit of 12% of basic pay in the old pay scale i.e. Rs. 150/- only but contrary to this, he was given Rs. 225/-and thereby his pay was wrongly fixed.

The last and fourth objection is that there were cutting twice and re-writing of the date of birth in the service book of the petitioner.

7. Though the aforesaid objections were raised by the respondents, neither they have enclosed the copy of the service book nor have produced the original service book of the petitioner to find out the allegation of re-writing of date of birth in his service book. In any case, the respondents having accepted the petitioner's date of retirement as 30th June, 1996 and having released pension with effect from 1st July, 1996, now after more than four years of his retirement, it is not open to them to re-open the question of date of birth or date of retirement.

8. So far as wrong fixation of pay on account of non-passing of Hindi Noting and Drafting Examination by the petitioner in time is concerned, the matter now stands settled by different decisions of the High Court as well as Apex Court. In the case of Narvadeshwar Mishra v. State of Bihar and Ors. (C.W.J.C. No. 8910 of 1999) a

Bench of Patna High Court by its judgment dated 8th February, 2000 held that 'if there is no fraud or misrepresentation on the part of the employee, under such circumstances recovery of alleged excess amount is not permissible.'

Similar was the view of Patna High Court in the case of Arjun Singh v. State of Bihar and Ors. (C.W.J.C. No. 6183 of 1996, disposed of on 29th April, 1997). In the said case, the petitioner had not passed the Hindi Noting and Drafting Examination but was allowed increment. The Court taking into consideration the fact that there was no misrepresentation on, the part of the employee, held that the authority can not compel to return the excess amount.

In the case of Sahib Ram v. State of Haryana reported in 1995 Suppl (1) SCC 18, it came to the notice of the Apex Court that the appellant was wrongly granted promotion, though he was not eligible. Taking into consideration the fact that there was no misrepresentation on the part of the appellant, the Apex Court held that the recovery of excess amount was not justified.

9. In the present case there is no allegation made by the respondents that the pay of the petitioner was fixed or increment was released on his misrepresentation. In this background, it is not open to the authorities to recover any amount from the retiral benefits of the petitioner. The petitioner is entitled for retiral benefits as per the rule i.e. Last Pay Drawn by him.

10. Accordingly, the respondents are directed to fix the pension, gratuity and leave encashment of the petitioner on the basis of the Last Pay Drawn by him, taking into consideration the revised scale of pay and to pay the admitted retiral benefits, if found payable, along with 5% interest, within a period of three months from the date of receipt/production of a copy of this order, failing which the respondents will be liable to pay a cost of Rs. 10.000/- in favour of the petitioner.

11. The writ petition is, thus, allowed with the aforesaid observations and directions.