

Prawin Kumar Verma Vs. Building Construction

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Court : Jharkhand

Decided On : Jul-27-2016

Appellant : Prawin Kumar Verma

Respondent : Building Construction

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4317 of 2015
Prawin Kumar Verma Petitioner Versus 1. The State of Jharkhand.

2. The Secretary Building Construction Department, Government of Jharkhand, Ranchi.

3. Superintending Engineer, Building Construction Dept, Building Circle, Hazaribag.

4. Executive Engineer, Building Construction Dept., Building Division, Hazaribag.

5. Accountant General, Jharkhand, Ranchi .. Respondents ----- CORAM :
HONBLE MR. JUSTICE H. C. MISHRA ----- For the Petitioner : M/s Delip Jerath,
Sandeep Verma & Amaritansh Vats, Advocates For the Respondents : Mr. Ajit
Kumar, AAG ----- 9/ 27.07.2016 Heard learned counsel for the petitioner and
learned counsel for the respondent Sate.

2. The petitioner is aggrieved by the order contained in Memo No. 366 dated
14.3.2014 (Annexure-15) passed by Superintending Engineer, Building Circle,

Hazaribag (respondent No. 3), whereby the earlier decision of the State Government to the effect that the petitioner was not entitled to 1st and 2nd ACPs with effect from 9.8.1999, as he had not passed the departmental Accounts examination, has been upheld. By the said order, the action of the State Government directing recovery of the amount already paid to the petitioner due to wrong fixation of 1st and 2nd ACPs was also upheld. This order was passed in compliance of the earlier order of this Court passed in W.P.(S) No. 2751 of 2010.

3. The facts of the case lie in a narrow compass. The petitioner had joined the service as Correspondence Clerk on 23.7.1971. He was given promotion to the Junior Selection Grade with effect from 31.8.1985, which was subsequently corrected with effect from 1.4.1981. The petitioner was given the benefits of 1st and 2nd ACPs with effect from 9.8.1999 and the pay scale of the petitioner was also fixed accordingly. Subsequently, by letter dated 22.1.2010, notice was issued to the petitioner asking the petitioner as to why the ACP benefits given to him be not cancelled on account of non-passing the departmental Accounts examination. The petitioner submitted his reply and after -2- consideration of his reply, order contained in Memo No. 347 dated 13.2.2010 was issued by the respondent No. 3, Superintending Engineer, Building Circle, Hazaribag, whereby the benefits of ACPs granted to the petitioner with effect from 9.8.1999 were cancelled and the recovery was directed to be made from his salary accordingly.

4. The petitioner challenged the said order before this Court in W.P.(S) No. 2751 of 2010, which was allowed by order dated 18.4.2013, as contained in Annexure-13 to the writ application. This Court, relying upon the decision of the Honble Supreme Court of India, in Sahib Ram Vs. State of Haryana & Ors, reported in 1995 Supp (1) SCC18 and also taking into consideration the fact that the petitioner was given the benefits of ACPs, not due to any misrepresentation or any fraud on the part of the petitioner, held that no recovery of amount, which had already been paid, to the petitioner as part of his salary could be made. The respondent State, however, was given the liberty to correct its mistake, if the benefits of ACPs were wrongly given to the petitioner. It was, however, made clear that such correction shall be made in accordance with due process of law and with prospective effect.

5. Pursuant to the aforesaid order passed by this Court in W.P.(S) No.2751 of 2010, the impugned order as contained in memo No. 366 dated 14.3.2014 has been passed by the respondent No. 3, Superintending Engineer, Building Circle, Hazaribag, whereby after considering the entire facts, it has been held that the order recalling the benefits of ACPs to the petitioner was correct as the petitioner was not entitled to the same and the earlier order of recovery of amount from the petitioner was also in accordance with law. This order also shows that pursuant to earlier order dated 13.2.2010 as contained in Annexure-12 to the writ application, the recovery of Rs. 6000/- had already been made from the petitioners salary for two months, but the further recovery was stayed with effect from August 2010, pursuant to an interim order passed in W.P.(S) No.2751 of 2010.

6. Learned counsel for the petitioner has challenged the impugned order dated 14.3.2014 passed by respondent No.3, submitting that the benefits of ACPs, that were given to the petitioner with effect from 9.8.1999, were correctly given, as the petitioner had already passed the other departmental examinations. -3- The only ground on which the benefits have been withdrawn, is that the petitioner had not passed the departmental Accounts examination. It is submitted since the petitioner was not doing any accounting work during his career, there should be no requirement for the petitioner to pass the Accounts examination and accordingly, the benefits of ACPs granted to the petitioner since 9.8.1999 could not be withdrawn, and the impugned order cannot be sustained in the eyes of the law. It is submitted that there should be some nexus in between the work being performed by the petitioner and the requirement of passing departmental examinations. Learned counsel has also challenged the impugned order upholding the earlier decision in the order dated 13.2.2010 as regards the recovery of the amount of ACPs from his salary.

7. Learned counsel for the State, on the other hand, has opposed the prayer submitting that since the petitioner had not passed the departmental Accounts examination, the petitioner was not entitled to the benefits of ACPs and accordingly, there is no illegality in withdrawing the benefits of ACPs wrongly given to the petitioner. It is also submitted by learned counsel for the respondent State that for getting the benefits of ACP, it is mandatory requirement for passing the

departmental Accounts examination, which is the policy decision of the State Government. It is, however, very fairly conceded by learned counsel for the State that since there was no misrepresentation or fraud on the part of the petitioner in getting the benefits of ACPs, there could be no recovery of any amount already paid to the petitioner, in view of the order 18.4.2013 passed by this Court in W.P. (S) No. 2751 of 2010, as contained in Annexure-13 to this writ application.

8. Having heard learned counsels for both the parties and upon going through the record, I find that so far as the recovery part is concerned, this Court has already held the same to be illegal by order dated 18.4.2013 in W.P.(S) No. 2751 of 2010, as contained in Annexure-13 to the writ application. The said order has attained its finality and in that view of the matter, the respondent No. 3 could not have gone behind the order of this Court, so as to uphold his earlier order of recovery of the amount already paid to the petitioner.

9. As regards, the challenge of the petitioner to the withdrawal of the benefits of ACPs on the ground that the petitioner was not required to pass the -4- departmental Accounts examination, as there was no nexus in between the work of the petitioner and passing of Accounts examination, I do not find any force in the ground advanced by the learned counsel for the petitioner. If it is the policy decision of the State Government, making it a mandatory requirement for all its employees to pass the departmental examination, including in Accounts, for getting promotion, and consequently the benefits of ACPs, the same cannot be challenged on the ground that examination in a particular paper had no nexus with the working of a particular employee.

10. In view of the aforesaid discussions, I find that there is no illegality in the impugned order holding that the petitioner was not entitled to the benefits of ACPs as he had not passed the required departmental examination. However, the impugned order, so far as it relates to the recovery of the amount already paid to the petitioner, cannot be sustained in the eye of the law.

11. Accordingly, that portion of the impugned order contained in memo No. 366 dated 14.3.2014 passed by respondent No. 3, Superintending Engineer, Building Circle, Hazaribag, as contained in Annexure-15 to the writ application, so far it

directs that the amount already paid to the petitioner be recovered, is hereby, quashed. It is made clear that no recovery of the amount already paid to the petitioner by way of salary shall be made by the State Government and it is also directed that the amount of Rs. 6000/-, which has already been recovered from the salary of the petitioner, be also refunded back to the petitioner within a period of four weeks from the date of communication / production of this order.

12. This writ application is accordingly, allowed in part, with the directions as above. (H. C. Mishra, J.) R.Kr.

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