

(2008) 07 JH CK 0002**Jharkhand High Court****Case No:** None

Ajit Kumar Mahato

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 11, 2008**Citation:** (2008) 3 JCR 650**Hon'ble Judges:** Ajit Kumar Sinha, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

This writ petition has been preferred for issuance of a writ to quash the Office order issued vide memo No. 862 dated 06.4.2002 passed by the District Superintendent of Education, East Singhbhum at Jamshedpur. The main contention raised by the petitioner is that the respondent No. 3 misinterpreted the order passed by this Hon'ble Court dated 02.01.2002 in CWJC No. 1063 of 2000 and erroneously fixed the basic pay scale of Rs. 1400/- which should have been Rs. 1900/- per month with effect from 01.04.1989 as per 5th Pay Commission Revision. It has also challenged the decision of fixing petitioner's basic pay as Rs. 5300/- per month in place of Rs. 6950/- per month with effect from 01.01.1996 as per 6th Pay Commission Revision. In the order dated 02.01.2002 passed by this Hon'ble Court in CWJC No. 1063 of 2002 it has been specifically held as under:

In my opinion, the petitioner is entitled to get revised pay scale with effect from 01.04.1989. The respondents are, therefore, directed to pay the revised pay scale to the petitioner on the basis of time bound promotion, if not already paid from 1st April, 1989.

2. The petitioner submits that even the aforesaid direction has not been complied with till date and rather it was misinterpreted whereas his juniors have been extended the benefit and even promoted and higher scale has been given to one Kamal Kumar Chakrabarti. The respondents, in their counter affidavit have submitted that they have scrutinized the case of the petitioner and also the case of similarly situated persons and accordingly letters dated 30.03.2003 and dated 3.2.2002 were issued. It has also made a statement that vide letter dated 06.6.2003 they asked the petitioner to give service book and pay fixation form. It is also admitted that pay fixation in the revised pay scale shall be made after completion of 12 years from the date of 1st time bound promotion or after completion of 12 years of service whichever is later.

3. After hearing the parties and after going through the brief I find that the respondents have nowhere denied in their counter affidavit about the entitlement of revision of pay scale. However, a lame excuse has been raised that they have asked for the service book and the pay fixation account from the petitioner which also does not stand to reason since the service book and the pay fixation account always remains with the employer. Be that as it may, the fact remains that the petitioner has completed 12 years of service and was thus entitled to get the benefit of promotion with effect from 01.04.1989. Even the finance department ordered that the petitioner shall be entitled to get the benefit of promotion with effect from 01.04.1989 and letter No. 6022 F (2) Para 13 (iii) dated 18.12.1989 was issued by the Department of Finance, Bihar, Patna for extending the benefits of promotion and pay fixation. It is relevant to point out that even this Hon'ble Court vide its order dated 02.01.2002 vide CWJC No. 1063 OF 2000 specifically held that the petitioner was entitled to get the benefit of 1st time bound promotion with effect from 01.04.1989 when he completed 12 years of service and the respondents were directed to fix the scale of pay giving the benefit of revised pay scale. It appears that the respondents misinterpreted the aforesaid orders and fixed the petitioner senior pay scale as per 5th Pay Revision on 01.04.1989 at the rate of Rs. 1400/- per month whereas taking the slab of scale the petitioner was drawing at the relevant time Rs. 800/- per month at the scale of Rs. 680-965/- and thus, in any event the petitioner's revised pay scale should have been at the rate of Rs. 1900/- per month in the pay scale of Rs. 1400-2600/-.

4. The logical consequence, which should follow that in the 6th Pay revision the petitioner's scale of pay should have been Rs. 6950/- with effect from 01.01.1996. The fact remains that Rs. 1400/- is the statutory basic pay in the scale of Rs. 1400-2600/- and the same is obviously erroneous and unsustainable.

5. In the aforesaid background and in particular the resolution of the Finance Department issued vide letter No. 6022 F (2) dated 18.12.1989 and also in view of the order passed by this Hon'ble Court dated 02.01.2000 CWJC 1063 of 2000 the petitioner is certainly entitled to the revised pay scale with effect from 01.04.1989 at

the rate of Rs. 1900/- per month in accordance with 5th Pay revision and further Rs. 6950/- with effect from 01.01.1996 in accordance with 6th Pay revision. The petitioner will also be entitled to arrears and the consequential benefits.

6. The writ petition is accordingly allowed and the order dated 06.04.2002 issued by the District Superintendent of Education, East Singhbhum at Jamshedpur is hereby quashed.