

(2009) 12 JH CK 0020
Jharkhand High Court
Case No: None

Shri Umakant Chakravarty

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Dec. 16, 2009

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.

Heard the learned Counsel for the parties.

2. Petitioner, in this writ application, has prayed for a direction upon the Respondents to pay him the pay-scale of the District Supply Officer on which post he had retired from service on 31.01.1998.

3. The contention of the petitioner is that he was promoted to the post of District Supply Officer on 17.12.1996, and as such, he is entitled to the pay-scale fixed for the post of District Supply Officer, since the date of his joining the promoted post.

4. In the counter affidavit, filed on behalf of the Respondent-State of Bihar, the stand taken is that the petitioner was originally appointed on the post of Senior Assistant Marketing Officer and was drawing the pay-scale of the post of Marketing Officer, which was revised in the scale of Rs. 5500-9000/-. The pay-scale of the Assistant District Supply Officer on the revised scale was fixed at Rs. 6500-10500/- with effect from 01.01.1996. During the pendency of this writ application, the petitioner was granted promotion notionally to the rank of the Assistant District Supply Officer on 15.10.2008 though with effect from 01.08.1996. The Respondent therefore, concedes that the pay-scale of the District Supply Officer would be payable to the petitioner from the effective date i.e. from 01.01.1996.

5. Learned Counsel for the Respondent-State of Bihar would want to explain that the petitioner's claim that he was promoted to the pot of the District Supply Officer

appears to be misconceived. As a matter of fact, though the petitioner was asked to officiate on the post of the District Supply Officer but he was not promoted to the aforesaid post. Vide Annexure-1, upon which the petitioner has based his claim, the petitioner has been asked to officiate the higher post on his existing pay-scale, till further orders.

6. Learned Counsel for the petitioner on the other hand, would want to controvert the statements of the Respondent-State of Bihar by contending that the petitioner was granted the promotional scale with effect from 01.08.1996 for the post of Assistant District Supply officer, carrying the pay-scale of Rs. 6500-10500/-. Thereafter, the petitioner retired from the post of the District Supply Officer, West Singhbhum, Chaibasa on 31.01.1998. The petitioner, therefore, has a legitimate claim for being given the scale of pay applicable to the post of District Supply Officer, which the Respondents cannot deny.

7. From perusal of Annexure-2, which is a letter, issued by the Deputy Commissioner, West Singhbhum, Chaibasa, it appears that upon retirement of the petitioner on 31.01.1998, another person was appointed in his place to officiate on the post of the District Supply Officer. Annexure-2 declares that the petitioner had retired from the post of District Supply Officer.

8. However, except Annexure-1, the petitioner is not able to produce any other document to confirm that he was promoted to the post of District Supply Officer. Annexure-1, on the other hand indicates that the petitioner was made to officiate on the post of District Supply Officer on his existing scale, namely, that of the post of Marketing Officer.

9. As it appears, though the petitioner was asked to officiate on the post of District Supply Officer but he was never given any officiating pay for the higher post on which he had officiated during the entire period of his officiation. No decision was ever taken by the Respondents regarding the promotion of the petitioner to the post of District Supply Officer at the time when he had attained the eligibility for such promotion. It appears that by a belated decision, the Respondents have granted notional promotion to the petitioner on the post of Assistant District Supply Officer on the revised pay-scale of Rs. 6500-10500/- with effect from 01.01.1996. The Respondents have not taken any decision as to whether during the tenure of his office prior to the date of his retirement, the petitioner was entitled for promotion to the post of District Supply Officer. In any case, the petitioner was certainly entitled to officiating pay for the period during which he had officiated on the higher post. The Respondents were, therefore, obliged to give to the petitioner the officiating pay along with his salary, which he had earned on the basis of the scale of pay on his original post. Had the officiating pay been included, then the amount of salary, which the petitioner would have drawn on the date of his retirement, would have been much higher than what has been conceded to him.

10. Considering the aforesaid facts and circumstances, the petitioner cannot be denied the remuneration by way of officiating pay for the period for which he had officiated on the higher post of the District Supply Officer. The Respondents are therefore, directed to assess and pay to the petitioner the officiating pay for the period during which the petitioner had officiated on the post of District Supply Officer prior to the date of his retirement. As far as the computation of the pension of the petitioner, since admittedly, the petitioner was promoted to the post of Assistant Marketing Officer on the scale applicable to the post, the petitioner would certainly be entitled to computation of his pension on the basis of salary, which he would have drawn in accordance with the promotion given to him as notified by the Government at Rs. 6500-10500/-. Accordingly, besides assessing and paying the total amount of officiating pay to which the petitioner was entitled for the period for which he had officiated on the higher post, within two months from the date of this order. The Respondents shall also compute the pension of the petitioner on the basis of the last pay to which he would have been entitled on the revised scale of Rs. 6500-10500/, applicable to the post of Assistant District Supply Officer from the date when the promotion was made effective.

11. Since it has been settled in accordance with the understanding between the two State Governments, namely, the State of Bihar and the State of Jharkhand, that the payments towards pension and arrears of salary in respect of those officers who had retired from service from the areas now falling within the territories of the State of Jharkhand shall be paid by the State of Jharkhand. The Respondent-State of Jharkhand is directed to ensure that the above directions are complied with within the period stipulated in this order.

12. With these observations, this writ application stands disposed of.

13. Let a copy of this order be given to the learned Counsel for the Respondents.