

## **Sri Shiw Kumar Mishra Vs Damodar Valley Corporation and Shri D.K. Yadav, Sr. Scientific Assistant**

**Court:** Jharkhand High Court

**Date of Decision:** Dec. 8, 2009

**Hon'ble Judges:** Dabbiru Ganeshrao Patnaik, J

**Bench:** Single Bench

### **Judgement**

D.G.R. Patnaik, J.

Heard counsel for the parties.

2. The petitioner in this writ application, has prayed for a direction upon the respondents 1 and 2 to correct the anomaly in his pay scale and the

benefits created by the fixation of the pay scale of Shri D.K. Yadav (Respondent No. 3) who is a junior to the petitioner. Petitioner has also

prayed for a direction upon the respondents to pay the balance of the wages since he is senior to Shri D.K. Yadav.

3. The petitioner was appointed under the respondent DVC on the post of Technical Grade-II on 3.7.1975 and was subsequently promoted to the

post of Technical Grade-I on 20.4.1979 and later, to the post of Sr. Scientific Assistant on 25.05.1986.

4. The respondent No. 3 D.K. Yadav, who is claimed by the petitioner to be junior to him, has been given stagnation relief and the higher post of

Sr. Scientific Assistant in the pay scale of Rs. 700-1205 and his pay was fixed at Rs. 950/- per month. Thereafter, the respondent No. 3 was

promoted to the post of Technical Grade-1 on 25.01.1984, whereas the petitioner stood already promoted to the same post on 20.4.1979. The

present revised pay scale of Sr. Scientific Assistant is Rs. 1800-3420.

5. The grievance of the petitioner is that despite the fact that the respondent No. 3 is, in all respect, junior to the petitioner, but he has been allowed

to draw higher salary as compared to the petitioner, from 01.07.1985 to 01.07.1986.

6. Learned Counsel for the petitioner submits that the petitioner is certainly entitled to a higher salary than his junior for the main reason that the

petitioner's promotion to the higher post was given at least five years prior to the date when the respondent No. 3 was given such promotion.

7. Learned Counsel adds further that the petitioner had submitted his representation before the concerned authorities of the respondents namely,

Pay Anomaly Committee. On receipt of the representation, the Superintending Engineer (Electrical) by his order dated 23.7.2002, stepped up the

petitioner's pay scale by re-fixing the same at Rs. 1180/- with effect from 1.7.1985 to bring the petitioner's pay at par with his junior D.K. Yadav.

But in para-2 of the office order, a condition has been imposed that the amount of benefit will be absorbed in his pay from the date of his 1st

stagnation/slide over benefit or promotion, whichever is earlier and at that time, his pay will be fixed in the same stage, if available or in the lower

stage and the balance will be treated as "Personal Pay", which will be absorbed in future increment.

8. The petitioner has challenged the aforesaid condition on the ground of its being discriminatory. Learned Counsel for the petitioner explains that

the stepping up/fixation of the wages in the case of the respondent No. 3, had adversely affected quite a few other co-employees including Shri

S.C. Goswami, Arbind Kumar Singh, Jawahar Singh and H.C. Singh, but when they protested by filing representations for removal of pay

anomaly, their salary was stepped up by way of revision and that too, without imposing any condition similar to the condition imposed in the case

of the petitioner. Learned Counsel explains further that the pay anomaly in the case of the petitioner had occurred on account of re- fixation of the

salary of the respondent No. 3 and the revised pay of the petitioner cannot be deemed to be a stagnation benefit.

9. Learned Counsel for the petitioner submits that the petitioner has submitted his representation afresh pointing out the anomalies and his grievance

is against the condition imposed at the time of his revision of his salary and has prayed for omission of the condition, but the same has not been

answered by the respondents as yet.

10. Counsel for the respondents on the other hand, refers to the counter- affidavit filed on behalf of the respondents. The stand taken by the

respondents is that the petitioner's salary had to be stepped up only to bring him at par with his junior D.K. Yadav with effect from 1.7.1985 and

the condition which has been imposed at the time of re-fixing the petitioner's salary, is in general imposed on all such employees who are given the

benefit of re-fixation by way of stepping up their pay scales in view of their eligibility for stagnation benefit.

11. From the rival submissions, it appears that the petitioner has disputed the condition imposed at the time of revision of his salary on the ground

that such re- fixation of his salary cannot be termed as stagnation benefit. On the other hand, he has claimed that by imposition of such condition,

petitioner has been discriminated since no such condition has been imposed in the case of other coemployees.

12. Considering the rival submissions, this case is disposed of with a liberty to the petitioner to file a fresh representation before the concerned

authorities of the respondents stating his claim and annexing all such grounds in support thereto and, within two months from the date of receipt of

the representation, the concerned authorities of the respondents shall consider the same in the light of the grounds stated therein including the

ground that no such condition was imposed in respect of other employees, and shall take an appropriate decision in accordance with law, by

recording reasons and shall communicate such decision to the petitioner effectively.

13. Let a copy of this order be given to the counsel for the respondent State.