

**(2008) 07 JH CK 0052****Jharkhand High Court****Case No:** None

State of Jharkhand and Others

APPELLANT

Vs

Kartik Chandra Mahto

RESPONDENT

**Date of Decision:** July 29, 2008**Citation:** (2008) 4 JCR 470**Hon'ble Judges:** Gyan Sudha Mishra, C.J; Dilip Kumar Sinha, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

1. This appeal has been preferred by the State of Jharkhand against the order dated 29.8.2006 passed by the learned Single Judge allowing the writ petition partly by directing the respondents-appellants herein-the State of Jharkhand, to refund the amount which had been recovered from the petitioner-respondent herein within a period of two months from the date of receipt/production of a copy of the order passed by the learned Single Judge. The learned Single Judge further ordered that the petitioner's annual increment shall not be withheld before the Departmental Accounts Examination is held and result thereof is declared.

2. To explain the aforesaid position, it may be relevant to state summarily that the petitioner-respondent herein had filed a writ petition before the learned Single Judge seeking a direction that the payment of his annual increments due from 1.4.1997 should be restored to the petitioner-respondent and further sought a direction that the amount paid to him by way of annual increments amounting to Rs. 46,639/-, which accrued from 1.1.1996 and was ordered to be recovered while was also finally recovered, should be refunded to the petitioner-respondent, after quashing the said order.

3. The petitioner-respondent herein is a Junior Accounts Clerk in Subernrekha Project under Water Resources Department where he joined on 31.3.1993. The

petitioner-respondent herein had passed the second paper of Departmental Accounts Examination which was held on 24.11.1994 but he was further required to pass two papers to clear the Departmental Accounts Examination. Thereafter the petitioner-respondent was paid the annual increment from the year 1996 and the amount accruing towards annual increments were continuously paid to him. Suddenly in the year 2003 an order was passed by the Appellant-State of Jharkhand without issuing any show-cause notice to the respondent stating that an amount of Rs. 46,639/- which was paid to the respondent by way of annual increment should be recovered from him as he was not entitled to receive the annual increment.

4. To substantiate this part, it was stated that there was precondition prior to receiving the annual increment and that was the condition to pass the Departmental Examination to be conducted by the Department. Countering this part of the argument, the petitioner-respondent herein had explained it to the learned Single Judge that, in fact, there was no requirement to pass the Departmental Examination in the year 1996 as the circular for clearing the Departmental Examination was issued only in the year 1999 which could not have been made effective ever since 1996. This part of the argument was also successfully countered by the appellant-State as it was stated that although the circular was of the year 1999 for passing the Departmental Examination, the same was made effective from 1996 itself and as the petitioner-respondent had not cleared the Departmental Examination, he was not entitled to avail the benefit of increment.

5. The learned Single Judge, on an appreciation of the case and counter case of the contesting parties, was finally pleased to hold that the respondent-State although might be correct in stating that the increment should be paid only after clearing the Departmental Examination, the fact remains that the Departmental Examination was not held by the Department at all ever since 1999 and hence the requirement to clear the Departmental Examination could not be raised at all so as to contend that the increment which was paid to the petitioner-respondent should be recovered. Besides this, the learned Single Judge also noticed that the order for recovery of the amount paid to the petitioner-respondent was passed without even issuing any show-cause notice to the respondent, yet the order of recovery was passed suddenly in the year 2003 to recover the amount towards the increment paid to the respondent way back from the year 1996. The learned Single Judge, therefore, quashed and set aside the order in so far as recovery of the amount of increment paid to the respondent is concerned but left the liberty to the respondent to clear the Departmental Examination as and when it is held and till that time the petitioner-respondent was held entitled to avail the annual increment.

6. At this juncture, it was informed by the counsel for the respondent that the respondent in the meantime has also cleared all the papers of the Departmental Examination by now and therefore there can be no question for issuing an order for recovery of the amount already availed by the appellant. The impugned order thus

suffers from no infirmity and the view taken by the learned Single Judge to the effect that the amount paid towards increment could not have been recovered without opportunity of hearing especially when the respondent-appellant had not conducted any Departmental Examination could not have been allowed to contend that the order of recovery should be allowed to subsist. Besides this, when the petitioner-respondent has already cleared the Departmental Examination, there can be possibly no reason for the respondent to still insist on recovery of the amount already paid to the petitioner-respondent which has been paid to him by way of arrears.

7. Thus this appeal has no merit and consequently it is rejected at the admission stage itself.