

(2014) 03 JH CK 0056

Jharkhand High Court

Case No: L.P.A. No. 168 of 2013

Saryu Prasad

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: March 26, 2014

Citation: (2015) 1 AJR 97 : (2014) 4 JLR 458

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: Bhaiya V. Kumar, Advocate for the Appellant; Bhola Nath Ojha, J.C. to S.C. III,
Advocate for the Respondent

Judgement

1. The writ petition was filed by the appellant seeking a direction upon the respondents to release pension, arrears and other retiral benefits in revised pay-scale of Rs. 6,500-10,500/- with effect from 01.01.1996 to 30.11.1998. Order dated 27.05.2009 passed by the Finance Commissioner, Jharkhand was also assailed by the appellant in the writ proceeding. The writ petition came to be dismissed by order dated 04.10.2012 and aggrieved thereby, the appellant has preferred the present Letters Patent Appeal.

2. The brief facts of the case are that, the appellant was appointed on the post of Lower Division Clerk (LDC) in Hazaribagh Collectorate on 02.08.1965 in the pay-scale of Rs. 105-155. The appellant was promoted to the post of Upper Division Clerk (UDC) with effect from 24.05.1976 and in the year, 1979 he was transferred to Ranchi Treasury. Before attaining the age of superannuation on 30.11.1998, the appellant was given Junior Selection Grade and Senior Selection Grade also. The appellant superannuated in the pay-scale of Rs. 1,800-3,300/-. After his retirement the appellant claimed that in view of the "Need Based Post", he was entitled to be promoted on the post of Senior Accountant in the pay-scale of Rs. 6,500-10,500/-. The appellant based his claim on the ground that several other persons junior to him namely, Lankeshwar Ram, Shyam Bihari Lal, Jagarnath Prasad Thakur and Kameshwar Lal Das were given pay-scale of Rs. 6,500-10,500/-. Alternatively, the

appellant claimed that even if promotion to the post of Senior Accountant is not given to him, his pay should be protected in order to avoid anomaly in his pay. During the writ proceeding, the Finance Commissioner, Jharkhand was added as party-respondent and this Court directed the Finance Commissioner, Jharkhand to consider the claim of the appellant. By order dated 27.05.2009, the claim of the appellant was rejected by the Finance commissioner, Jharkhand and thus, the order dated 27.05.2009 was also impugned by the appellant before the writ Court.

3. The learned Single Judge dismissed the writ petition holding that there was no material on record to support the claim of the appellant. The reliance of the appellant on Rule 37 of Bihar Board's Miscellaneous Rules and Rules 4, 40 and 60 of the Jharkhand Treasury Code was also found by the learned Single Judge not tenable. Taking note of the stand taken by the respondents that at a particular place a particular post has to be sanctioned in accordance with the need and no post of Senior Accountant was created in Ranchi Treasury, the writ petition was found devoid of any merit and accordingly it was dismissed.

4. We have heard the learned counsel for the parties and perused the documents on record.

5. The learned counsel appearing for the appellant has contended that every department is headed by a person and the office of Treasury is headed by Senior Accountant and the appellant being the senior-most was functioning as Senior Accountant, a post which is a "Need Based Post". It is submitted that the Treasury Officer vide letter dated 23.10.2008 requested the Additional Finance Commissioner, Department of Finance, Government of Jharkhand, for sanctioning payment of higher scale of Senior Accountant, that is, in the pay-scale of Rs. 6,500-10,500/-. The learned counsel further submitted that letter dated 23.12.2008 of the Treasury Officer clearly discloses that there is a post of Senior Accountant existing even prior to 01.04.1981 and therefore, the stand taken by the respondents that no post of Senior Accountant existed in the Ranchi Treasury, is contrary to the Government Circular. Again, placing reliance on Rule 37 of the Bihar Board's Miscellaneous Rules and several provisions of Jharkhand Treasury Code, the learned counsel for the appellant submitted that since the existence of the post of Senior Accountant cannot be denied, the appellant being the senior-most Accountant working in the Ranchi Treasury was entitled for promotion in the rank of Senior Accountant and thus, he should have been given pay-scale of Rs. 6,500-10,500/-. The learned counsel for the appellant has also referred to letter dated 28.03.2001.

6. As against the above, Mr. Bhola Nath Ojha, the learned counsel appearing for the respondents, has contended that the scheme of Assured Career Progression (ACP) was brought into effect from 09.08.1999 and the appellant stood retired on 30.11.1998 even before implementation of the ACP Scheme and as such he was not entitled to get the benefit of ACP Scheme. It is submitted that the other persons said to be junior to the appellant were never given any promotion during their service

period and as such they were entitled for grant of monetary benefits under the ACP Scheme and while so, there is no question of supersession or pay protection of the appellant. It is further submitted that no "Need Based Post" was required in Ranchi Treasury after 01.01.1996 where the appellant was posted as Accountant. It is also submitted that in the Ranchi Treasury, there was no such post of Senior Accountant created.

7. A perusal of the letter dated 28.03.2001 on which the learned counsel for the appellant has placed reliance would indicate that only those posts can be marked in higher pay-scale as "Need Based Post" which were already sanctioned prior to 01.04.1981 in higher pay-scale or the posts which were created with prior approval of the Finance Department. The recommendation of the Treasury Officer sent to the Additional Finance Commissioner, Department of Finance on 23.10.2008 also discloses that only the post of Bill Scrutinize Clerk and Accountant were treated as "Need Based Post" prior to 01.04.1981 and the post of Senior Accountant was only a promotional post. It further appears that after 01.04.1981, there remained no post of Senior Accountant. In the said letter a reference to the Resolution dated 08.02.1999 has been made whereunder the earlier structure of posts has been abolished after 01.01.1996. Admittedly, the appellant superannuated from service on 30.11.1998 whereas, the benefit under the ACP Scheme was made operative with effect from 09.08.1999. The respondents have taken a specific stand that the post of Senior Accountant was not sanctioned as a "Need Based Post" in the Ranchi Treasury. The Finance Commissioner, Jharkhand vide order dated 27.05.2009 rejected the claim of the appellant on the ground that the appellant was granted promotion in Junior Selection Grade and Senior Selection Grade and since he retired on 30.11.1998 before implementation of the ACP Scheme, he was not entitled for benefit under the ACP Scheme. It has also been found that the other persons junior to the appellant were granted benefit under the ACP Scheme because they were never given promotion. The Finance Commissioner has also found that even prior to 01.01.1996, there was no post of Senior Accountant in the Ranchi Treasury and after 01.01.1996, no "Need Based Post" of Senior Accountant was sanctioned or created.

8. In view of the aforesaid, we do not find any substance in the contention of the learned counsel for the appellant that, since the pay-scale of Rs. 6,500-10,500/- has been sanctioned for the post of Senior Accountant, the appellant having retired as the senior-most Accountant, was entitled for the pay-scale of Rs. 6,500-10,500/-. The learned Single Judge has taken note of Rule 37 of Bihar Board's Miscellaneous Rules as well as various other provisions under the Jharkhand Treasury Code and rightly found that the provisions under the Bihar Board's Miscellaneous Rules as well as Jharkhand Treasury Code were not relevant and thus, do not support the case of the appellant.

9. We find no infirmity in the impugned order dated 04.10.2012 and accordingly, the present Letters Patent Appeal is dismissed.