

(2011) 06 JH CK 0029
Jharkhand High Court
Case No: L.P.A. No. 107 of 2011

Najib Neyaz Ahmad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: June 28, 2011

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 103

Citation: (2011) 4 JCR 50

Hon'ble Judges: Prakash Tatia, Acting C.J.; P.P. Bhatt, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. Heard learned counsel for the parties.

2. The petitioner-appellant, who was the earlier appointee in the Adult Education Department, which is the Department of Education of the then State of Bihar, was declared surplus and subsequently had to file a writ petition before this Court and similarly situated also filed writ petitions and following the orders passed in C.W.J.C. No. 5036 of 1992 dated 24th May, 1996 and in M.J.C. Nos. 2884 of 1996 and 3172 of 1996 dated 26.11.1997, appointment orders were issued to 37 employees including the petitioner. However, in the said order dated 22nd January, 1998, a condition was incorporated that the appointment shall be treated as fresh appointment and employees shall not be entitled to the benefit of past services including the pensionary benefit. The petitioner had approached this Court in earlier round of litigation for the relief that he has not been paid the pension, leave encashment, gratuity and arrears of salary. That writ petition was disposed of by this Court in W.P.(S) No. 116 of 2009 directing the respondents to treat the writ petition as a representation and decide the said representation in accordance with law, rules, regulations etc. applicable to the case of the petitioner. The said direction was not complied with. Therefore, the petitioner preferred Contempt Petition being Cont.

Case (C) No. 206 of 2010. wherein it was disclosed that a detailed speaking order had been passed by the respondent ordering to pay the legally payable amount and the same amount has been paid and rest of the amount will be paid within 16 weeks. The contempt petition was, therefore, disposed of. However, the petitioner is aggrieved against the order contained in Annexure 9, whereby he has been denied the pensionary benefit by not counting the service rendered when he was not absorbed/given appointment, vide Annexure-2 dated 22nd January, 1998.

3. The petitioner challenged the said order passed by the department dated 17th April, 2010 along with the order dated 22nd January, 1998 and that writ petition challenging the aforesaid orders has been dismissed on the ground that the petitioner cannot challenge the condition incorporated in Annexure-2 by which he got the appointment and got the benefit arising out of the same order dated 22nd January, 1998.

4. Learned counsel for the appellant submitted that in identical facts and circumstances where the benefit of salary and past services to employees like the petitioner was denied, several writ petitions were preferred and all were allowed, a few of which being W.P.(S) No. 4751 of 2003, W.P.(S) No. 574 of 2008. The same matter was also considered in L.P.A.No.515 of 2004, against which even S.L.P.was preferred by the State and the Hon"ble Supreme Court after condoning the delay dismissed the S.L.P.on merit. Recently, L.P.A. No. 435 of 2010 has been decided by this Court on 28th March, 2011.

5. Learned counsel for the petitioner also drew our attention to other judgments as well as to the Rule 103 of the Bihar Pension Rules, which has been adopted by the State of Jharkhand, to justify the claim of pensionary benefit by taking into account the service rendered by the petitioner when he was in Adult Education Programme.

6. In view of judgments referred above, we are of the considered opinion that petitioner is enforcing his legal rights and, therefore, cannot be stopped from raising the same simply because in the appointment order, a condition has been incorporated, which is contrary to the rules as well as guidelines given by this Court.

7. Therefore, this appeal is allowed. The impugned judgment passed by the learned single Judge dated 4th February, 2011 is set aside and it is held that the petitioner shall be entitled to counting of service which he rendered in Adult Education Programme continuously without treating any break in service because of the reason of his retrenchment of service and reabsorption by order dated 22nd January. 1998. The respondents are, therefore, directed to re-determine the case of the petitioner for grant of pensionary benefit by taking into account of those services referred above, within a period of eight weeks from the date of receipt/production of copy of this order and pay the benefits to the petitioner. It is made clear that the petitioner"s admitted claim shall not be denied and if any amount due to the petitioner has not been paid, the same shall also be paid along

with the said retirement benefits.