

(2013) 11 JH CK 0034

Jharkhand High Court

Case No: Writ Petition (S) No. 70 of 2013

Dr. Rana Pratap

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 11, 2013

Citation: (2014) 2 AJR 2 : (2014) 1 LJLR 151

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Dharmendra Kr. Malityar, for the Appellant; Sudershan Shrivastava for the Respondent No. 4, Mr. Ajit Kumar, AAG and Mr. Prabhat Singh, J.C to AAG for the State of Jharkhand and Mr. Rajneesh Vardhan, J.C to G.A. Bihar for the State of Bihar, for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. The petitioner is a veterinary doctor whose services have been allocated from the successor state of Bihar vide notification dated 25.4.2005 of the Central Government to the successor state of Jharkhand (Annexure-8). The grievance of the petitioner is that under the Successor State of Bihar the Non Practicing Allowance (N.P.A.) which was admissible to veterinary doctors like the petitioner has not been paid to him and is lying outstanding for the period he served under the Successor State of Bihar i.e. from 1.3.2001 to 21.6.2005. The petitioner has however claimed such relief from the respondent- State of Jharkhand on the basis of resolution of the Finance Department, Government of Jharkhand dated 7.12.2007 as also dated 10.4.2012(Annexure-19 and 20 respectively). According to the petitioner the salary and other admissible arrears of pay which were outstanding in the Successor State of Bihar from where the services of the employees like petitioner have been allocated to the successor State of Jharkhand would be payable by the Successor State of Jharkhand. The Successor State of Jharkhand would seek such adjustment from its counter part Successor

State of Bihar in respect of such arrear for the period the incumbent has served the previous government i.e. Successor State of Bihar.

2. The respondent- State of Jharkhand in their counter affidavit have taken a stand that notification upon which the petitioner is placing reliance for payment of N.P.A. dated 15.4.2000 by the parent State of Bihar was withdrawn by the Successor State of Bihar on 20.3.2001 vide letter No. 1647 as also by the Successor State of Jharkhand vide letter No. 1107 dated 2.5.2001 after reorganization of the parent State. However, the State of Bihar continued with the said facility of N.P.A to the veterinary doctors by restoring the earlier order vide notification dated 11.8.2001. The State of Jharkhand however has not restored the said facility of N.P.A to the veterinary doctors who are serving in the State of Jharkhand. In such circumstances, they have denied the admissibility of N.P.A to the petitioner for the period he served under the State of Bihar i.e. from 1.3.2001 to 21.6.2005. The same decision has been communicated to the petitioner vide Annexure-A to the counter affidavit dated 2.1.2013. In such circumstances, the respondent- State of Jharkhand has denied the admissibility of the said amount.

3. Learned counsel for the respondent- the office of Accountant General, Jharkhand has referred to Annexure-22 series at page 89 of the writ petition which is also to the same effect vide information furnished under the R.T.I. by their office to the petitioner. In such circumstances, a stand has been taken by the respondent- State of Jharkhand as well as the office of Accountant General, Jharkhand that the writ petition itself is not maintainable as the claim of the petitioner relates to the period when he was serving the State of Bihar and it is not admissible to the State of Jharkhand. Learned counsel for the office of Accountant General, Jharkhand further submits that since the aforesaid allowance is not admissible under the Successor State of Jharkhand, therefore there are no heads of Account under which such payment can be made and adjustment may be sought from the counterpart, State of Bihar as claimed by the petitioner. In such circumstances, counsel for the respondents have submitted that the cause of action for the petitioner who has approached this Court squarely lies within the territorial jurisdiction of the Patna High Court where the petitioner can pursue his case.

4. I have heard counsel for the parties and gone through the relevant materials on record. The claim of the petitioner is in relation to payment of N.P.A for a period he served under the Successor State of Bihar as veterinary doctor i.e. from 1.3.2001 to 21.6.2005. As per the petitioner's own case his services were allocated to the State of Jharkhand vide notification dated 25.4.2005 of the Central Government to the Successor State of Jharkhand (Annexure-8). He was relieved by the Successor State of Bihar vide Annexure 10 and 10/1 to join the counterpart State of Jharkhand. It is apparent from the stand taken by the respondent- State of Jharkhand that the earlier notification of the parent State of Bihar dated 15.4.2000 granting such N.P.A. to veterinary doctors were withdrawn both by the Successor State of Bihar as well as

State of Jharkhand by letter dated 20.3.2001 and 2.5.2001 respectively. Though the Successor State of Bihar restored the said facility by a subsequent notification dated 11.8.2001 but the State of Jharkhand chose not to do so. In such circumstances, the said allowance cannot be said to be admissible arrear of pay due to the petitioner under the Successor State of Jharkhand for the period of service under the counterpart State of Bihar. In such circumstances, reliance upon Annexure-19 and 20 by the petitioner will not come to his aid. The said notifications apparently permit such admissible claim of the employees allocated to the State of Jharkhand which are relating to salary or other allowances, admissible under the State of Jharkhand. It is also not in dispute that any admissible allowance payable to an employee or a group of employees in any government are made under a particular head of accounts. Since, such payments are not permissible under any heads of account under the Successor State of Jharkhand, therefore the State of Jharkhand rightly cannot be saddled with the responsibility for making such payments and seeking adjustment thereof from the counterpart State of Bihar. Since, the cause of action of the petitioner squarely lies under the Successor State of Bihar and not within the territorial jurisdiction of this Court, the petitioner may have his remedy before the appropriate Court have jurisdiction in the matter. However, the present cause of action raised by the petitioner in the writ petition is not maintainable on the aforesaid ground before this Court. Accordingly, the writ petition is dismissed on the ground of maintainability. However, the petitioner may have liberty to agitate the same before appropriate Court having jurisdiction.