
(2014) 07 JH CK 0025

Jharkhand High Court

Case No: L.P.A. No. 59 of 2014

Basudeo Prasad Triyar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 6, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: R. Banumathi, C.J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: Mahesh Tiwari, Advocate for the Appellant; Shivani Verma, J.C. to A.G., S. Srivastava, Ramit Satender and Rajneesh Vardhan, Advocate for the Respondent

Judgement

Amitav Kumar Gupta, J.

This Letters Patent Appeal has been preferred against the impugned order dated 17.01.2014 passed in W.P. (S) No. 1654 of 2011 whereby, the prayer of the petitioner to quash the order dated 31.08.2010, passed by Deputy Commissioner, Dhanbad rejecting the claim of the petitioner for pensionary benefit for the period of service rendered by him in State of Bihar (now Jharkhand) (Annexure-5) has been rejected and also the prayer for issuance of writ in the nature of the mandamus commanding upon the respondent No. 3 to fix the pension of the appellant, considering the period of service rendered by him in the office of Deputy Commissioner, Dhanbad for the period of 12 years 5 months and 18 days and payment of amount which has remain unpaid after his retirement of Bokaro Steel Plant (SAIL) along with statutory interest on the retiral dues benefits, gratuity and the case of litigation has been rejected.

2. The brief facts of the case is that the appellant had filed W.P. (S) No. 417 of 2010 which was disposed of giving liberty to the appellant to file a representation before the respondent No. 3 i.e. Deputy Commissioner, Dhanbad and the appellant inadvertently filed a writ petition prior to the disposal of the representation by the respondent. However, the aforesaid writ was filed against the order dated

31.08.2010 passed by respondent No. 3. It is stated that the appellant was appointed as a clerk on 02.01.1957 and was posted at Circle Office, Dhanbad, where he served for more than 12 years in various offices names in Circle Office, Dhanbad, S.D.O., office, Dhanbad and he also under gone training at Ranchi thereafter, posted at S.D.O. office, Dhanbad and transferred to Chas Block, where he remained in services till 20.06.1969. Accordingly, he rendered his service in the Government of Bihar (now Jharkhand) for a period of more than 12 years from 02.01.1957 to 20.06.1969; that on 21.06.1969 he joined Bokaro Steel Plant and superannuated from service on 31.01.1995; that after joining in Bokaro Steel Plant, he had applied for being relieved from the service of respondent No. 3 and his application was accepted by letter dated 24.09.1969 and he was relieved from service; that the appellant had submitted his representation before the Deputy Commissioner, Dhanbad, who rejected the representation of the appellant by order dated 31.08.2010 stating that the provisions made for the Pension Rules and the modification by the State Government does not provide for counting period of service of the petitioner rendered under the State Government for his entitlement to the pensionary benefits and other retiral benefits.

3. Learned counsel for the appellant has assailed the impugned order passed by the learned Single Judge and the order of Deputy Commissioner inter alia on the grounds that the learned Single Judge failed to appreciate the relieving order (Annexure-3) in correct perspective; that learned Judge failed to appreciate that if an employee completes 10 years regular service of the State Government on a post and thereafter, he voluntarily joins another service and if he has completed the qualified period, he is entitled to pensionary and other benefit which he is entitled for next service. It is contended that the appellant is entitled for the retiral benefits and pension since he has qualified the minimum pensionable service of 10 years as required under the circular number 3014 of the State Government dated 31.07.1980 issued by the Ministry of Finance. The rejection of the representation of the appellant by respondents is unjustified, illegal, unfair and arbitrary. The respondent cannot deny legitimate claim of the appellant with respect of his retiral benefits, pension and gratuity by not counting period of service rendered under the Government of Bihar (now Jharkhand).

4. In support of the contention learned counsel for the appellant has also relied on the decision of this Court, in the case of Ramayan Prasad Singh Versus The State of Bihar and others in W.P. (S) No. 1257 of 2006 where in similar circumstances the claim was allowed and he has also relied on the decision reported in [D.S. Nakara and Others Vs. Union of India \(UOI\)](#), regarding the classification of revised pension formula and submitted that the act of the respondents is arbitrary and violative of Article 14 of the Constitution of India. It has also been submitted that the learned Single Judge has misconstrued the relieving order to mean that the appellant had tendered his resignation but the same is not factually correct. It has been submitted that pension can only be withheld when it affects public policy and the appellant has

not been involved in any criminal case. On the above grounds it has been argued that the impugned order is bad in law and not in consonance with the statutory provisions of law.

5. On the other hand learned counsel for the State has submitted that the appellant had resigned from his service and he has to verify whether the said decision of the Single Judge in W.P. (S) No. 1257 of 2006 has been challenged by the State or not and also seeks liberty to file a detail reply in the matter.

6. Having heard submissions of the learned counsel for the appellant and on perusal of the impugned order of the learned Single Judge, it is evident that the facts and cases cited before this Court were not placed for consideration and appreciation before the learned Single Judge as the appellant was not present on consecutive dates and the impugned order has not been passed on consideration of the facts as detailed in the statement on record of the writ petition.

7. The order passed in W.P. (S) No. 1654 of 2011 dated 17.01.2014 is set aside and the matter is remitted to the learned Single Judge for consideration of the matter afresh. The parties are at liberty to file supplementary affidavit/additional counter affidavit, if required.

8. With the above said direction this Letters Patent Appeal is hereby allowed and the matter is hereby remitted to the learned Single Judge.