

(2014) 06 JH CK 0018

Jharkhand High Court

Case No: L.P.A. No. 261 of 2013

The State of Jharkhand

APPELLANT

Vs

Bacchu Prasad

RESPONDENT

Date of Decision: June 30, 2014

Acts Referred:

- Bihar Reorganisation Act, 2000 - Section 73

Hon'ble Judges: R. Banumathi, C.J; P.P. Bhatt, J

Bench: Division Bench

Advocate: Rajesh Kumar, G.P.V, Advocate for the Appellant; Ayush Aditya and Shashank Shekhar, Advocate for the Respondent

Judgement

1. This intra-court appeal is preferred against the judgment dated 2.4.2013 passed in W.P.S. No. 6033 of 2007, whereby the learned Single Judge allowed the writ petition directing the appellant to grant the scale of pay of Head Clerk to the respondent from the due date.

2. The brief facts which led to filing of this appeal are as follows:-Initially in the year 1976, the respondent was appointed as a Clerk at the Central Jail, Hazaribagh with effect from 1.6.1976. By the resolution of the State Government dated 28.3.1979, several posts including that of Head Clerk were sanctioned for Jail Training Institute. On the recommendation being made the State Government through its Department of Home (Prison), issued an order contained in memo. No. 4192 dated 23.5.1979, whereby the respondent was appointed on the sole sanctioned post of Head Clerk in the scale of pay of Rs. 284-372/-. Accordingly the respondent joined as Clerk in the Jail Training Institute, Hazaribagh on 28.5.1979 and started working. In the year 1980-81, the pay scale of Clerk working in the Home (Prison) Department and that of the Head Clerk in the Home (Prison) Department were merged. Subsequently by resolution of the Finance Department, Govt. of Bihar, dated 18.12.1999, the pay scale of clerk was fixed at Rs. 4000-6000/- and that of the Head Clerk at RS. 4500-7000/-. When such bifurcation was made in the pay scales by resolution of the

Finance Department dated 18.12.1999, the respondent was being paid the salary in the scale of pay of Head Clerk of Rs. 4500-7000/- and at the relevant time, the respondent was posted at Sub-Jail, Kodenna. The Superintendent, Sub-Jail Koderma wrote a letter dated 9.8.1999 addressed to the Inspector General (Prison) Bihar, Patna, stating that the respondent is being paid the revised scale of Head Clerk, i.e. Rs. 4500-7000/- but no such post of Head Clerk exists in Sub Jail, Koderma.

3. In the meanwhile the respondent submitted a representation dated 1.1.2000 and 25.8.2000 before the Inspector General (Prison), Govt. of Bihar, Patna requesting for confirmation of his appointment to the post of Head Clerk but the matter remained pending. In the meanwhile, the provision of Bihar Reorganization Act 2000 was enforced w.e.f. 15.11.2000 providing for cadre allocation of the employees of the State Govt. and in the tentative final allocation, the respondent was placed as Clerk and he made representation before the Chairman, Advisory Committee, on 19.7.2002. However, in the final allocation, the name of the respondent was not included in the cadre for State of Jharkhand although he submitted his option for allocation for the State of Jharkhand.

4. The respondent filed W.P.S. No. 5471 of 2005 for posting him at a place where the post of Head Clerk exists. The said writ petition was disposed of vide order dated 7.12.2005 observing that the respondent was already getting pay scale of Head Clerk and if he had any grievance, he may approach the Inspector General (Prison), Jharkhand, Ranchi, who shall look into the matter and take a decision in accordance with law. On the representation of the respondent, the Inspector General (Prison) Jharkhand rejected the claim of the respondent vide Memo No. 2198 dated 1.12.2006 and taken a decision that the petitioner shall be treated as Clerk.

5. Thereafter, the respondent filed W.P.(S) No. 6033 of 2007 and the same was allowed, vide order dated 02.04.2013, holding that the respondent has been enjoying the scale of Head Clerk on the basis of the order passed in the year 1979 till the bifurcation of the State and any change in the service condition of the employee is impermissible under Section 73 of the Bihar Reorganization Act without the consent of the Central Government and finally the learned Single Judge directed the appellant-State of Jharkhand to grant the scale of Pay of Head Clerk to the respondent from the due date and further directed for payment of consequential revision in the post retirement benefits and other salary benefits of the respondent resulting therefrom should also be granted to him.

6. Heard Mr. Rajesh Kumar, learned G.P. V for the appellant-State and Mr. Ayush Aditya, learned counsel for the respondent.

7. Learned counsel appearing for the appellant-State submitted that the writ petitioner-respondent was initially appointed on the post of Clerk on 1.6.1976. By referring Annexure-1 to the supplementary affidavit dated 24.06.2014, it is submitted that there cannot be any direct appointment on the post of Head Clerk

since the post of Head Clerk is a promotional post. Learned counsel for the appellant, in this context, has referred to and relied upon the Bihar Gazette (Extra), February 13, 1999 (Annexure 1 to the supplementary affidavit). It is further submitted that the respondent cannot claim as a matter of right that as his initial appointment was made on the post of Head Clerk, he is eligible and entitled to get the retiral benefit considering his initial appointment as Head Clerk. Learned counsel for the appellant by referring to the order passed by learned Single Judge dated 2.04.2013 submitted that the direction given by the learned Single Judge is contrary to the facts as well as the law and, therefore, the same deserves to be set aside.

8. Learned counsel appearing for the respondent by supporting the impugned order dated 2.4.2013 passed by learned Single Judge submitted that initial appointment of the respondent was made on the post of Clerk in the year 1976 and thereafter, in the year 1979 the respondent was appointed on the post of Head Clerk. However, in the year 1999, his scale was fixed on the post of Head Clerk as Rs. 4500-7000/-.

9. Considering the aforesaid rival submissions and having regard to the facts and circumstances of the case, the learned Single Judge has rightly and properly evaluated the facts on records and thereby reached to the conclusion that the petitioner was appointed on the post of Head Clerk in the year 1979 and was getting the pay-scale of Head Clerk right from his appointment. Annexure 2 of the supplementary affidavit filed by the appellant-State also clearly indicates that the respondent was appointed on the post of Head Clerk vide order dated 23.5.1979 in the pay-scale of Rs. 284-372/-. The submission made by learned counsel for the appellant-State that the respondent was appointed purely on ad hoc arrangement and the post of Head Clerk was never confirmed, cannot be accepted as the petitioner was appointed on the post of Head Clerk against the sanctioned post and he got the pay-scale of Head Clerk from the inception of his appointment i.e. at the time of appointment on the post of Head Clerk in the year 1979 in the pay-scale of Rs. 284-372/-, which was revised in the year 1999 in the corresponding pay-scale of Rs. 4500-7000/-.

10. We do not find any reason warranting interference of this Court. This Letters Patent Appeal is dismissed. Since the provisional pension has been stopped pursuant to the impugned order passed by the authorities, the appellants are directed to pay the consequential revision in the pension and other consequential retiral benefits payable to the respondent within a period of three months from the date of receipt of copy of this order. Consequently, the Interlocutory Application, being I.A. No. 1944 of 2014 is closed.