

(2016) 03 JH CK 0041
JHARKHAND HIGH COURT
Case No: Writ Petition (S) No. 2115 of 2015.

Yogendra Mahto, Son
of late Ram Awtar
Mahto, Resident of
village-Kanu
Bhaththa, Nand
Nagar, Bhuiyandih,
P.O. Agrico, P.S.
Sidgora, District-East
Singhbhum,
Jamshedpur-831009 -
Petitioner @HASH The
State of Jharkhand
through the Chief
Secretary, Govt of Jh

APPELLANT

Vs

RESPONDENT

Date of Decision: March 8, 2016

Acts Referred:

- Constitution of India, 1950 - Article 16, Article 226

Citation: (2016) 4 AIRJharR 366 : (2017) 2 LJLR 578

Hon'ble Judges: Rongon Mukhopadhyay, J.

Bench: Single Bench

Advocate: Mr. Anil Kumar Sinha, Sr. Advocate, for the Petitioners; Mr. Prashant Kr. Singh,
G.P. VI, Mr. Yogesh Modi, J.C. to AAG, Mr. Jai Prakash, Advocate, for the Respondents

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. Rongon Mukhopadhyay, J. - Since common questions of law and facts are involved in these writ applications, both are being disposed of by this common

order.

2. The petitioners in these writ applications have prayed for a direction that they are entitled to get the scale of revision of pay as per 5th Pay Revision Committee Report with effect from 1.1.1997 and thereafter as per 6th Pay Revision with effect from 1.1.2006 with all consequential benefits including that of the benefits under Assured Career Progression Scheme as has been granted to the employees of Transport Department and other departments of the State of Jharkhand. A further prayer has been made for payment of arrears of salary and difference of retiral benefits arising out of revision of pay scales such as gratuity, provident fund, group insurance, leave encashment etc.

3. The facts in brief are that the petitioners were employees of Bihar State Road Transport Corporation prior to their becoming the employees under the Transport Department of the State of Jharkhand.

4. In W.P.S. No. 2115 of 2015, petitioners nos. 1 to 30 have superannuated on various dates from the office of District Transport Officer-cum-Divisional Manager, Jamshedpur. Petitioner Nos. 31 to 42 have superannuated from the office of the District Transport Officer-cum-Divisional Manager, Dhanbad. Petitioner nos. 43 to 57 have superannuated from the office of the District Transport Officer-cum-Divisional Manager, Dumka and petitioner nos. 58 to 65 have superannuated from the office of the District Transport Officer-cum-Divisional Manager, Ranchi.

5. The petitioners in W.P.S. No. 2382 of 2015 have also retired from the Transport Department of the State of Jharkhand from the post of Traffic Clerks and Conductors on 31.03.2009, 31.07.2010, 31.03.2009 and 30.06.2010.

6. Further facts, which relate to the background of the prayer made by the writ petitioners, are that the State of Bihar was bifurcated with effect from 15.11.2000. In terms of the Bihar Re-organization Act, 2000, sections 62 and 65 of the Bihar Re-organization Act, 2000 relate to the Bihar State Road Transport Corporation and sub section (3) of Section 62, Central Government was empowered to prescribe a date from which date, Bihar State Road Transport Corporation shall cease to and shall be deemed to be dissolved and consequent upon such regularization, their assets and liabilities were to be divided as mutually agreed upon. Bihar State Road Transport Corporation was deemed to be dissolved by the orders of the Central Government through the Ministry of Road Transport & Highway, Government of India by gazette Notification dated 14.01.2004 with effect from 01.07.2004. An Arbitration Committee was constituted consisting of Justice Saghir Ahmad, which submitted its report and which was accepted by the Hon"ble Supreme Court in Civil Appeal No.7290 of 1994 as noted in the order dated 12.08.2008. A notification was issued by the State of Jharkhand dated 28.02.2009, whereby the assets and liabilities were ascertained and apportioned inasmuch as the cut off date for acceptance of the liability for such Bihar State Road Transport Corporation employees whose

services have been taken in the Transport Department on 1.7.2004. The petitioners" claim that since they ceased to be employees of Bihar State Road Transport Corporation with effect from 1.7.2004 and their services were absorbed by the Transport Department of the State of Jharkhand, the benefits, which were to be bestowed on them, should have been at par with the other employees of the State of Jharkhand and being denied of the said benefits, the petitioners have preferred the present writ application for a direction upon the respondents to give the petitioners pay scale arising out of 5th and 6th Pay Revision along with consequential benefits arising thereto.

7. Heard Mr. Anil Kumar Sinha, learned senior counsel for the petitioners, Mr. Prashant Kumar Singh, learned G.P. VI in WPS No. 2115 of 2015 and Mr. Yogesh Modi, learned J.C. to A.A.G.(Mr. Jai Prakash in W.P.S. No. 2382 of 2015).

8. Mr. Anil Kumar Sinha, learned senior counsel for the petitioners, has submitted that the petitioners were absorbed in Transport Department of the State of Jharkhand and pursuant to such absorption, the petitioners became entitled to all the benefits, which are applicable to an employee of the State of Jharkhand.

9. It has been submitted that in the order dated 12.08.2008, passed in Civil Appeal No.7290 of 1994, the Hon"ble Supreme Court had clearly observed that if the State of Jharkhand does not have any State owned Transport Corporation or wants to terminate the services of the employees allotted to the State, the employees would be entitled to get the benefits in accordance with the provisions of Industrial Disputes Act. It has further been submitted that State of Jharkhand does not own a corporation to run its buses. The services of the employees were never terminated and in fact they were absorbed in the Transport Department of the State of Jharkhand and being employees of the State of Jharkhand, the petitioners cannot be deprived of their legitimate claim. Reference has also been made by Mr. Sinha to Writ Petition (C) No. 337 of 2001 with its analogous cases, in which pursuant to compliance report submitted by the State of Jharkhand, it was indicated that the employees of the Corporation, who were allocated the State of Jharkhand, have been duly absorbed in the service of the State of Jharkhand. Learned senior counsel submits that interlocutory application with respect to payment of salary/arrears to the workmen as per the 6th Pay Commission were withdrawn in view of the order, which was passed on 24.08.2011. It has been argued that the Hon"ble Patna High Court was considering extending the benefits of 5th and 6th Pay Revision to the employees of Bihar State Road Transport Corporation on a writ application so filed, in which it was held that the employees of Bihar State Road Transport Corporation are entitled for such benefits. Learned senior counsel, therefore, sums up his argument by stating that the petitioners being the superannuated employees of Transport Department have been stagnating with 4th Pay Revision benefits for decades and being a welfare State, the State of Jharkhand cannot shirk from its responsibility in extending the 5th and 6th Pay Revision benefits to the petitioners.

10. Mr. Prashant Kumar Singh, learned G.P. VI, appearing for the respondents has stated that the petitioners were the erstwhile employees of the Bihar State Road Transport Corporation and after bifurcation, their services fell in the State of Jharkhand, from where they retired before 24.08.2011. It has been submitted that the petitioners were adjusted in the Transport Department pursuant to Notification No. 176 dated 28.02.2009 on the basis of as is where is and they were never absorbed in the State cadre. Learned State Counsel has also relied upon an order passed by the Hon"ble Supreme Court in a contempt application by submitting that even the Hon"ble Supreme Court had accepted the date of absorption with effect from 24.08.2011. Learned counsel thus submits that since the petitioners had retired much prior to the cut off date i.e. 24.08.2011, no benefits accrue to petitioners with respect of getting their pay scales revised as per the 5th and 6th Pay Revision Committee report. It has been submitted that the petitioners have been duly paid their retiral benefits. Learned counsel further submits that the employees of the Bihar State Road Transport Corporation are still getting the benefits of 4th Pay Revision and therefore the petitioners cannot be extended such benefits, which are not applicable to them as their services were merely adjusted on the basis of as is where is in the Transport Department of the State of Jharkhand.

11. Whether the petitioners on their absorption/adjustment in the Transport Department of the State of Jharkhand were entitled to the benefits of 5th and 6th Pay Revision as well as consequences flowing thereto is the moot question which is to be answered by this Court. Learned senior counsel for the petitioners has stressed much upon the order of the Hon"ble Supreme Court dated 24.08.2011.

Para 7 of the compliance report, which has been quoted in the said order, is once again quoted herein for proper appreciation of the issue at hand:-

"It is also stated and submitted that, all the employees allotted to Jharkhand have been working with the Transport Department, Jharkhand and they are operating the Bus Services and maintaining the Bus Depots which are still functional".

Considering the compliance report, the Hon"ble Supreme Court observed as follows:-

"We read the aforesaid paragraphs to mean that all the employees of the Corporation, who were allocated to the State of Jharkhand, have been duly absorbed in the service of the State Government there".

In the contempt application, which was preferred, an order was passed on 7.4.2015, which reads as follows:-

"It is not in dispute that the petitioners have been absorbed with effect from 24th August, 2011 and their dues have been paid and in some of the instances is in the process of being paid keeping the date of absorption in mind. Learned counsel for the petitioners stressed on the words "duly absorbed" that is subject to various

interpretations which we have in the present Contempt proceedings, we are going to evolve into. The Contempt proceedings are accordingly put to an end without prejudice to the rights of the Petitioners to initiate any proceedings as they find appropriate to claim further rights, if any. The closure of these proceedings will not be indicative of the position that this Court has found that further dues are or are not claimable or payable."

12. The petitioners in both the writ applications have superannuated prior to 24.08.2011. The compliance report filed before the Hon"ble Supreme Court by the State of Jharkhand dated 9.8.2011 reveals that the employees allotted to the State of Jharkhand have been working with the Transport Department, Jharkhand.

13. In terms of Resolution No. 176 dated 28.02.2009, the salary and other benefits of those employees of Bihar State Road Transport Corporation, who were rendering their services within the State of Jharkhand, were to be paid by the State of Jharkhand, with effect from 1.3.2009.

14. The order passed in the Contempt Application on 7.4.2015 by the Hon"ble Supreme Court was with respect to those employees, who had been absorbed with effect from 24.08.2011. The petitioners cannot draw a parallel or claim parity with respect to absorption of those employees who have been absorbed with effect from 24th August, 2011.

15. It has been the consistent stand of the State that the petitioners were merely adjusted in the Transport Department of the State of Jharkhand and cannot be treated to be employees of the State Cadre. The Bihar State Road Transport Corporation had not implemented the 5th and 6th Pay Revision Committee Report and had not extended the benefits of the same to its employees. The employees of the Corporation still continues to languish at the bottom of the ladder by getting the benefits of only 4th Pay Revision whereas the Government employees have climbed up the ladder and are getting the benefits of 6th Pay Revision. No doubt, it is true that the Hon"ble Patna High Court while considering grant of benefits of 5th and 6th Pay Revision to the employees of the Bihar State Road Transport Corporation had directed constitution of a committee comprising of high ranking officials to consider the feasibility of providing package to the Corporation to meet the liability arising out of 5th and 6th Pay Revision Committee recommendation but the applicability of 5th and 6th Pay Revision Committee recommendation has been made on the basis of the report of the Administrator, who has admitted to the entitlement of the benefits to the employees of the Corporation. The facts situation of the present case have been repeatedly stated above are forceful denial by the State in extending the benefits of 5th and 6th Pay Revision Committee Recommendation to the petitioners as claim has been made that they were merely adjusted in the Transport Department. The absorption/adjustment of the employees of erstwhile Bihar State Road Transport Corporation working in the State of Jharkhand does not give the petitioners an automatic right to claim the benefits as prayed for in the writ

application.

16. The factual position has to be appreciated in the context of the entire dimensions of the case. The petitioners have tended to rely on certain absorptions to further their claim but being employees of Bihar State Road Transport Corporation prior to absorption/adjustment in the Transport Department, their rights do not change overnight. The adjustment has been made on the basis of the report of Arbitration Committee and the agreement entered into between the State of Bihar and the State of Jharkhand with respect to bifurcation of assets and liabilities of the Bihar State Road Transport Corporation. The petitioners cannot expect any wind fall merely because of such adjustment in the Transport Department.

17. Viewed thus, the claim of the petitioners does not inspire confidence in view of elaborate discussions made herein above and consequently both the writ applications stand dismissed being devoid of any merit.