

(2016) 06 JH CK 0013

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4399 of 2014.

Ajit Pratap Narayan Singh - Petitioner @HASH State of Jharkhand

Date of Decision : 22-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 JCR 184 : (2016) 4 JLJR 562

Hon'ble Judges : H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. Sanjay Kumar Dwivedi and Mr. Rajesh Kumar Singh, Advocates, for the Petitioner; Mr. J.C. to AAG and Mr. Mirnal Kanti Roy, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed this writ application with a prayer for quashing the part of the order No. 262 dated 15.7.2011 (Annexure-6), whereby the Office Order No. 220 dated 27.6.2011 has been modified to the extent that the services of the petitioner is regularised w.e.f. 26.4.2011. The petitioner has also prayed for counting the period of his services in continuity from the date of his initial joining, as regularised/confirmed, w.e.f. 27.6.1989, and has also claimed for consequential benefits including the benefit of ACP on that basis.

3. According to the petitioner's case, the petitioner was initially appointed as Junior Engineer in Jharkhand State Agriculture Marketing Board pursuant to the decision taken by the Board of Directors on 18.6.1989, which was communicated to the petitioner under Memo No. 4085 dated 27.6.1989, as contained in Annexure-1. This letter shows that the petitioner was appointed as Junior Engineer on daily wages and on temporary basis. Subsequently, by the office order No. 928 dated 22.11.1989, as contained in Annexure-2, the service of the petitioner was adjusted on the prescribed pay scale, but his appointment was made on ad-hoc basis for a period of six months only. Again by the Office Order

No. 636 dated 20.8.1990, as contained in Annexure-3 to the writ application, the service of the petitioner was extended until further orders or until the approval of by the Public Enterprises Bureau.

4. The meeting of the Jharkhand State Agriculture Marketing Board was held on 26.4.2011, in which the service of the petitioner was regularised as Junior Engineer in pay band of Rs. 9300-34800 and grade pay of Rs. 4200/-, and the office order No. 220 dated 17.6.2011 was issued to that effect, which has been brought on record as Annexure-5 to the writ application. Subsequently, the impugned order No. 262 dated 15.7.2011 was issued by the respondent No. 4, Managing Director of the Jharkhand State Agriculture Marketing Board, which is contained in Annexure-6 to the writ application, whereby the order contained in Annexure-5 was modified to the extent that the service of the petitioner was regularised w.e.f. the date of the decision taken by the Board of Directors, i.e., 26.4.2011. The petitioner is aggrieved by this portion of the impugned order.

5. Learned counsel for the petitioner has submitted that earlier the service of the petitioner was regularised by the order contained in Annexure-5, in which, no date was mentioned for regularisation of his service, which would imply that the service of the petitioner was regularised w.e.f. the date of his initial engagement, i.e., 27.6.1989, when the petitioner was appointed on daily wages basis. Learned counsel for the petitioner has submitted that the impugned order has been passed by Managing Director of the Jharkhand State Agriculture Marketing Board without there being any minutes of the Board of Directors to that effect, and the same is absolutely illegal and cannot be sustained in the eyes of law. Learned counsel submitted that once the service of the petitioner has been regularised, it is to be deemed that his service has been regularised w.e.f. 27.6.1989 itself, with all consequential benefits.

6. In support of his contention, learned counsel for the petitioner has placed reliance upon the decision of the Hon"ble Supreme Court in Direct Recruit Class-II Engineering Officers" Association v. State of Maharashtra and others, reported in (1990) 2 SCC 715. Learned counsel has also placed reliance upon the decision of the Apex Court in S. Sumnyan and others v. Limi Niri and others, reported in (2010) 6 SCC 791. Both these decisions related to counting of the period of initial appointment for reckoning seniority. Learned counsel also placed reliance upon the decision of the Supreme Court in M.K. Agarwal v. Gurgaon Gramin Bank and Others, reported in AIR 1988 S C 286, wherein where the petitioner was selected by the Gurgaon Gramin Bank as a Trainee Branch Manager and after training he was appointed as Branch Manager on probation, it was held that if the probationer was not discharged before the expiry of maximum period of probation, nor any express order of confirmation was passed, then it would be an implied confirmation. Learned counsel also placed reliance upon an unreported decision of this Court passed in WP(S) No. 1693 of 2012, Elecius Lakra and others v. The State of Jharkhand and another, decided on 31.7.2013, which relates to calculation of pensionary benefits. The other unreported decision, on

which learned counsel for the petitioner relied, is WP(S) No. 4461 of 2009 and analogous cases, Bijay Kumar Jaisawal and others v. State of Jharkhand and others, which were decided by order dated 13.4.2016, which again relate to counting of past services of the Paid Managers in PACS for the purpose of pensionary benefits. Placing reliance on these decisions, learned counsel for the petitioner has submitted that the impugned order contained in Annexure-6 to the writ application, so far as it states that the service of the petitioner is regularised w.e.f. 26.4.2011, is absolutely illegal and cannot be sustained in the eyes of law.

7. Learned counsel for the Jharkhand State Agriculture Marketing Board has opposed the prayer and has brought on record the minutes of meeting of the Board of Directors as Annexure-C to the counter affidavit, which shows that the meeting of the Board of Directors was held on 26.4.2011, in which the matter of regularisation of services of the petitioner was considered and it was decided to regularise the services of the petitioner. It is pointed out that here is nothing in the minutes to show that the service of the petitioner was regularised with retrospective effect from the date his initial engagement. Learned counsel accordingly, submitted that by the impugned order dated 15.7.2011 as contained in Annexure-6 to the writ application, it has only been clarified that the service of the petitioner has been regularised with effect from the date of taking decision by the Board of Directors. Learned counsel accordingly, submitted that there is no illegality in the impugned order.

8. Having heard learned counsels for both the sides and upon going through the record, I find that the petitioner was initially appointed only on daily wages basis. Subsequently, his service was absorbed in the Marketing Board on ad hoc basis for a period of six months only. The fact, however, remains that the service of the petitioner was extended until further orders by order dated 20.8.1990 as contained in Annexure-3 and on that basis, the petitioner continued in continuous service and his service was regularised on 26.4.2011 by the Board of Directors. In the facts of this case, since the petitioner has continuously worked pursuant to the order dated 28.8.1990 as contained in Annexure-3, I see no reason as to why the benefit of past continuous services to the petitioner should not be granted at least w.e.f. the said date. Admittedly, the minutes of the meeting of the Board of Directors of the Jharkhand State Agriculture Marketing Board held on 26.4.2011, which has been brought on record as Annexure-C to the counter affidavit, shows only that the service of the petitioner has been regularised. Though it is not stated in the minutes that the regularisation shall be from retrospective effect, but it is also not mentioned that it shall be only from prospective effect. The minutes is absolutely silent on that point. The impugned order issued by the respondent No. 4, Managing Director of the Jharkhand State Agriculture Marketing Board, states that the service of the petitioner shall be regularised w.e.f. 26.4.2011, but there is no denial to the fact that the respondent No. 4 has issued the order without there being any minutes of the Board of Directors to that effect.

9. I see no reason for prescribing this date for regularisation of service of the petitioner by the respondent No. 4. If any date is to be prescribed for regularisation of service, the same has to be done by the Board of Directors itself. In the facts of this case, though the decisions cited by the learned counsel for the petitioner are not applicable to the facts of this case, but I do see force in the submission of the learned counsel for the petitioner that respondent No. 4, Managing Director, Jharkhand State Agriculture Marketing Board has acted beyond his jurisdiction in prescribing the date for regularising the service of the petitioner, without placing the matter before the Board of Directors and as such, this Order contained in Annexure - 6 cannot be sustained in the eyes of law.

10. This apart, the fact remains that the petitioner is in continuous and uninterrupted service at least from 20.8.1990 (Annexure-3), which culminated in regularisation of his service by the Board of Directors in the year 2011. There appears to be no reason as to why no decision was taken by the respondent authorities for regularisation of the service of the petitioner for all these long years, yet the work was continuously taken from him. As such in all fairness this long period of continuous service rendered by the petitioner cannot be wholly ignored without any justification.

11. Accordingly, the impugned order dated 15.7.2011 passed by the respondent No. 4 as contained in Annexure-6 to the writ application, which prescribes the date for regularisation of the services of the petitioner, is hereby, quashed. It is however, made clear that respondent authorities shall be free to take appropriate decision in accordance with law with regard to the date of regularisation of service of the petitioner by a reasoned order, taking into account his past continuous service. If no such decision is taken within a reasonable period of maximum six months from the date of communication of the order, it shall be deemed that the service of the petitioner has been regularised with effect from the date of continuous and uninterrupted service of the petitioner, i.e., from 20.8.1990 (Annexure-3), with all consequential benefits.

12. This writ application is accordingly, allowed with the directions as above.