
(2009) 02 JH CK 0090
In the Jharkhand High Court

Basant Kumar Banerjee

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Citation : (2009) 1 JCR 694

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The petitioner was appointed as Tahsil Karmachari on 7.1.1957 at Lohardaga Anchal (iii) at Gamhariya within the District of Ranchi. In course of employment, he was transferred from Lohardaga Anchal to Tamar Circle, Ranchi. However, after rendering services for a period of 11 years 26 days, the petitioner on account of ill health asked for pre-matured retirement and for payment of invalid retirement benefits but the pensionary benefits were not given and, therefore, the petitioner approached this Court, vide CWJC No. 1551 of 2001 seeking direction for payment of pensionary benefits. The said writ application was disposed of by directing the respondents to consider the case of the petitioner for payment of retiral dues. However, the claim of the petitioner for payment of pension was rejected, vide order dated 26.6.2001.

2. Being aggrieved with that order, another writ application being WP (S) No. 1609 of 2004 was filed by the petitioner wherein a counter-affidavit was filed taking the stand that minimum qualifying period of service had not been completed by the petitioner, which stand was found to be contrary to the factual position that the petitioner had put in service for more than 11 years whereas under Rule 86, the minimum qualifying period for getting the pension is 10 years. Under that situation and taking into consideration the facts that the Government in one of its communication dated 22.10.2002 had asked the Deputy Commissioner, Ranchi to consider the case of the petitioner for payment of invalid pension in terms of Bihar Pension Rules 116 to 122. The impugned

order passed on 26.6.2001 was quashed and the respondents were directed to consider the claim of the petitioner for payment of pension in accordance with Bihar Pension Rules 116-120 read with Rule 107 or any other relevant rule and pass appropriate order. On consideration of the case of the petitioner, the claim of the petitioner for payment of invalid pension was again rejected, vide its order as contained in memo No. 717(ii)/stha dated 21.7.2006 (Annexure-7) holding therein that the petitioner had resigned from the service on 31.1.1968 and had never claimed retirement on medical ground in the year 1968 and as such his case could not be put before the Medical Board and, therefore, the petitioner is not entitled to invalid pension.

3. Having heard learned Counsel appearing for the parties and taking into consideration the averment made in the writ application and also counter-affidavit, the grounds on which claim of the petitioner has been rejected, never appear to be tenable. It does appear that the petitioner, vide its application dated 31.1.1968 (Annexure-1) had informed to the Circle Officer. Tamar that he on account of having fracture and also on account of having Fileria is not medically as well as mentally fit to discharge his duties and as such, he may be granted prematured retirement and be paid retiral benefit. On the said application there appears to be an endorsement of receiving the application by one Yugal Kishore Deb. It further appears that the copy of that application had also been sent to the office of Deputy Commissioner, Ranchi. Such averments made in para 8 of the writ application has not been denied in specific terms rather it has simply been stated that the statement made in para 8 of the writ application is denied. Still is has been stated in the impugned order that the petitioner had not made any application, presumably for the reason that the petitioner in other application submitted subsequently had stated that he has resigned from the service and on that account, it has been held that the petitioner on tendering resignation is not entitled to pensionary benefit, but the respondent while rejecting the claim completely overlooked the prayer made in the application filed in the year 1968, when there has been endorsement of receiving the application. Thus factually it appears to be incorrect on the part of the respondents to say that no such application for payment of invalid pension was filed.

4. Having found that the application had been filed for Invalid pension. It has incumbent upon the respondents to get Medical Board constituted in terms of Rule 116 read with Rule 128 of the Bihar Pension Rules for examination of the medical condition of the petitioner but that never seems to have been constituted and hence, on account of non-examination by the Board, the petitioner now cannot be denied the benefit of invalid pension, once he has been found to have completed more than 11 years of the service.

5. Accordingly, the impugned order dated 21.7.2006 as contained in Annexure-7 is hereby quashed. Consequently, Deputy Commissioner, Ranchi respondent No. 3 is directed to take decision in the matter of payment of invalid pension within a period of two months from the date of receipt/production of a copy of this order.

6. In the result, this writ application is allowed.