(2013) 07 JH CK 0171

In the Jharkhand High Court

Case No : Writ Petition (S) No. 228 of 2007

Bhubneshwar Mallick APPELLANT

Vs

CMD, CCL and Others RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 4 LLN 275 : (2013) LLR 1187

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan and S. Gautam, for the Appellant; A.K. Mehta, for the Respondent

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Hear learned counsel for the parties. The petitioner in the resent writ petition is seeking a direction upon the respondents for payment of certain service benefits like (a) LLTC for the Block year 2003-06, (b) arrears leave pending in the account of the petitioner at the time of termination (c) bonus (d) ex-gratia (e) LTC for the block year 2003-06 (f) grant of adequate medical and other Annual Leave w.e.f. 15.05.2001 i.e. approximately 29 days per year and (g) restraining the respondents from making deduction from his salary.

2. Some of the reliefs, which have been referred to hereinabove, were denied by the respondents as per information furnished to him under RTI by letter dated 6.11.2006, Annexure 20 to the writ petition. According to the petitioner, while working on the post of Stenographer under respondent-CCL, he was terminated from service on 15.3.1993 vide Annexure 1 dated 2.5.1996. The termination order was, however, set aside by an award rendered in Reference Case No. 143/1997 dated 15.5.2001 by the Central Government Industrial Tribunal No. II, Dhanbad. It was declared by the learned Tribunal that the petitioner would be reinstated in service with benefit of continuity in service but without back wages.

3. The respondents had challenged the said award in the writ petition, letters

patent appeal and special leave petition, however they failed and the award was upheld. The award was subsequently implemented on account of contempt petition pursued by the petitioner. The petitioner submitted his joining on 29.11.2003.

4. In the background of the aforesaid fact, learned counsel for the petitioner submits that respondents are not justified in refusing the benefits, which he is able to derive because of the order of reinstatement with continuity in service granted by the learned Industrial Tribunal.

5. Counsel for the respondent-CCL, on the other hand, submits that so far as the claim for LLTC for the block year 2003-06 and LTC for the year 2003-06 are concerned, the petitioner has been granted the said benefit. However, so far as the benefits relating to the salary for arrear leave pending on the date of termination is concerned, they have stated in their counter affidavit that no leave was existing in the account of the petitioner on the date of termination.

6. Counsel for the petitioner, however, disputed the same by relying upon Annexure 20 and submitted that the petitioner has the arrear leave to his credit under sick leave category of 18 days.

7. On the question of bonus/ex-gratia, it is stated by the respondents that amount payable under such head is linked to the performance (PLRS) and the eligibility criteria is minimum 30 days physical attendance by an employee during the previous financial year for being entitled for the same. The petitioner obviously had not worked for the period as he remained out of service from the period of his termination till joining in November 2003. Therefore, he was not entitled for such ex-gratia or bonus. In such circumstances it is submitted on behalf of the respondents that the reliance of the petitioner upon the terms of the award by which he was reinstated with continuity in service, does not confer the aforesaid benefits of bonus and ex-gratia which depends upon the actual performance and physical attendance while on duty in a financial year.

8. Counsel for the respondents, therefore, submits that respondents are justified in refusing the other claims relating to salary for the arrears of leave at the date of termination of the petitioner and the bonus/ex-gratia as claimed by him.

9. I have heard counsel for the parties at length and gone through the relevant materials on record. The petitioner''s termination was set aside by the learned Tribunal in reference case by an award dated 25.5.2001 with continuity in service but without back wages. The claims of bonus/ex-gratia made by him, however, depends upon the performance under which an employee has to be physically present for 30 days in a financial year in order to avail the same. The petitioner obviously was not performing his duty though on account of his termination by the respondents and, therefore, the bonus, which is linked to the performance while on active duty, cannot be said to be legally due to him for that period. The respondents have stated that he has been paid the LLTC amount and LTC for the financial year 2003-06. The petitioner, however, rebutted the same by stating

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that his claim for one of the dependent daughter was not considered though her name was indicated in the forms filled up after his rejoining. He also submits that as per Annexure 20 he was having sick leave of 18 days to his credit.

10. The award, which is relied upon by the petitioner, had granted him continuity of service on reinstatement but without back wages. This obviously meant that the learned Tribunal took into account that the petitioner should not be granted the back wages as he has not been able to perform the duty during the said period. The grant of continuity in service by the learned Tribunal can be meant to confer the benefit of continuous service, seniority and post retirement benefits without treating the period out of service as break in service of the petitioner for the aforesaid purposes. The aforesaid benefits would also be meant to entitle the petitioner to claim promotion which he may be entitled on account of his continuity in service and the seniority which he may enjoy in his cadre as his termination was set aside and he had been directed to be reinstated in the employment of the respondents. However, since he had not actually worked for the said period, any such benefits, which were dependent to or related to the actual physical performance or attendance in duty, like bonus/ex-gratia or earning of leave in that period, obviously cannot be said to have accrued in favour of the petitioner. The stand of the respondent therefore, cannot be faulted with on that account.

11. For these claims relating to arrears of leave for 28 days as also the balance amount deducted from LLTC for the financial year 2003-06, the petitioner is at liberty to approach the respondents with a fresh representation for redressal of his remaining grievances. The petitioner may pursue his representation before the respondents for that part of the claim, which shall be considered in accordance with law within a reasonable period, preferably within 12 weeks from the date of receipt of such representation. This writ petition is, accordingly, disposed of.

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