
(2014) 11 JH CK 0061
In the Jharkhand High Court
Case No : W.P.(S) No. 6779 of 2005

Bishwanath Chatterjee and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 11 JH CK 0061

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani, Advocates for the Appellant; S.K. Gautam, J.C. to GP-IV, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.—By Court Learned counsel for the petitioners is permitted to make necessary correction in the provision of law in the cause title, as it has wrongly been filed as application under Article 227 of the Constitution of India instead of Article 226, during course of the day in red ink.

2. Heard learned counsel for the parties.

3. Out of these four petitioners herein three are said to have retired while the petitioner No. 2 is still serving as Assistant. The petitioner Nos. 1 and 4 are said to have retired on 31.12.2012 while the petitioner No. 3 has retired on 31.05.2014.

4. The petitioners came with a grievance that their claim for promotion was denied vide impugned office order No. 111/05 dated 24.06.2005, Annexure-8, passed by the respondent No. 2, Deputy Commissioner, Dumka. They had alleged that one junior namely Sahdeo Prasad Bhagat had been promoted as Head Assistant. The petitioners, three of whom were initially appointed on daily wages vide office order dated 03.05.1978, Annexure-1, were declared Government Servant in Grade-III pursuant to decision taken by the Revenue and Land Reforms Department, Government of Bihar dated 08.07.1980, Annexure-2.

It is, however, submitted that after their services were declared as Government Servant by virtue of Annexure-2 w.e.f. 08.07.1980, these petitioners joined as Assistant on 31.12.1983 as earlier they were working as copyists which was on lower scale of pay. The petitioners claim that though have not been granted benefit of substantive promotion but they are entitled to financial up-gradation in terms of ACP scheme introduced by the State of Jharkhand vide Resolution Dated 14.08.2002. According to the petitioners, 1st ACP has been granted to them w.e.f. 09.08.1999, except the petitioner No. 3, Deo Sunder Pandit, whose case was kept in abeyance due to unsatisfactory service however reckoning their service from the date of joining as Assistant w.e.f. 31.12.1983 ignoring the date from which they were declared Government Servant i.e. on 08.07.1980.

5. Learned counsel for the petitioners has referred to the statements made in the counter affidavit at para-5, 10, 16, 17 and 18 that the respondents do admit that these petitioners were declared Government Servant w.e.f. 08.07.1980, but their seniority cannot be reckoned in the post of Assistant from that date instead from 31.12.1983 only when they joined as Assistant. Learned counsel for the petitioners submits that though for the purpose of seniority in the cadre of Assistant, the contention of the respondents may be justified, but since services of the petitioners stood declared as Government Servant on 08.07.1980 itself, they should be considered for grant of 2nd ACP treating them in service since 08.07.1980 itself. The petitioners, therefore, seek to confine their prayer to their claim for grant of financial up-gradation reckoning their service from the date i.e. 08.07.1980, when they were declared Government Servant.

6. Learned counsel for the respondents has relied upon the contents of the counter affidavit whereunder the petitioners have been treated in the cadre of Assistant since they have joined on 31.12.1983. According to the respondents, scale of pay of copyist be which the petitioners were earlier holding from 08.07.1980, was lesser than that of Assistant and therefore, they could not be allowed to count seniority in the post of Assistant from 08.07.1980. Therefore, their representations were rejected vide order dated 27.05.2005 contained in Memo No. 449, which would apply to the other two petitioners i.e. the petitioner Nos. 1 and 3 as well. On these basis, the impugned order has been justified.

7. Having heard learned counsel for the parties and having considered the narrow grievance to which the petitioners now seek to confine themselves i.e. only in respect of claim of 2nd financial up-gradation, it is deemed appropriate that the petitioners may approach the Competent Authority/the respondent No. 2, Deputy Commissioner, Dumka with a fresh representation for consideration of their grievances duly supported with all necessary facts and documents. The respondent No. 2, Deputy Commissioner, Dumka, on receipt of such representations, shall consider the same in accordance with law and after due verification of the relevant service records of the petitioners as also the orders relied upon by them, pass a reasoned order within a period of 12 weeks thereafter.

8. Needless to say that if such contention of the petitioners are accepted, they may be conferred the benefit of financial up-gradation from the due date as well as consequential benefits arising thereof in the matter of difference of arrears of salary and post retirement benefits.

9. The writ petition is disposed of accordingly.