
(2009) 09 JH CK 0007
In the Jharkhand High Court

Daya Shankar Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Citation : (2009) 09 JH CK 0007

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The petitioner in this writ application, has prayed for a direction upon the respondent State of Jharkhand to punt his service period, from 15th July 1971, till the date of his retirement on 31.10.2000 as the total length of senile period for computing his pensionary benefit and to revise the amount of pension payable to him upon such computation, and also to grant him the monetary benefits of first time bound promotion (ACP).

2. The petitioner was appointed as Extra Clerk in the office of the Sub-Registrar, Leather on 15.07.1971. He was regularized in service with effect from 21.1.1981. While employed at the Sub-Registry office at Dalionganj, he superannuated on 31.1.2000. Upon his superannuation, his pension was though fixed, but op the basis of the period of his service calculated from the date of his regularization i.e. from 21.1.1981.

The grievance of the petitioner is that his service ns Extra Clerk, ought to have been added to the total length of service rendered by him, and the respondents having not done this, the amount of pension which has been fixed and is being paid to him, is far below his actual entitlement.

3. Learned Counsel for the petitioner while referring to Annexure-A to the counter-affidavit filed on behalf of the State of Bihar, would explain that Annexure-A is a notification issued by the State of Bihar in the year 2003, whereby, in exercise of its power under Rule 59 of the Bihar Pension Rules, the State Government had declared that the past services rendered by the

Government Servant as Extra Clerk, shall be added to the total length of his service for the purpose of pensionary benefits and the petitioner is entitled to such benefits.

4. Learned Counsel for the respondent State of Bihar submits that by the aforesaid notification, the period of the past services is to be added to the total length of service rendered by the Government Servants for the purpose of computing their pension, though such length of service will have no bearing or effect on their promotion.

5. Learned Counsel for the respondent State of Jharkhand, on the other hand, would submit that this issue was earlier raised before this Court and by judgment passed by the Division Bench of this Court in the case of *The State of Jharkhand v. Kauleshwar Prasad and Ors.* 2006 (3) JCR (Jhr) and analogous cases. This Court had declared that the entire period of the past services rendered as Extra Clerk, cannot be added to the total length of service and it is only a portion of the period, falling short of the eligibility for pension, may be obtained from the past services and added to the total length of service.

6. Counsel for the petitioner would want to inform that no doubt, the aforesaid judgment it was passed in terms of submission which the learned Counsel for the State of Jharkhand has submitted, but it would be necessary to note that the said judgment was passed on the basis of a Circular dated 16th January 1979 which was purported to have been issued by the State of Bihar by way of guideline under Rule 3(a) of the Bihar Pension Rules. However, after having considered the various judgments of the Patna High Court on the issues relating to the demand of the employees for adding their past services as Extra Clerks, the Government of Bihar had taken decision and had notified, its resolution (Annexure-A) whereby the controversy has been finally resolved and the entire length of the past service as Extra Clerks, has been allowed to be added to the total length of service of the Government Employee. Learned Counsel would add further that the petitioner had retired from service prior to the bifurcation of the erstwhile State of Bihar and, hence, his services were guided by the aforesaid notification of the State of Bihar Issued in the year 2003. Learned Counsel adds further that since the petitioner had retired from Daltongauj within the State of Jharkhand, and since pursuant to the direction of this Court passed in several earlier judgments, the State of Jharkhand, has been paying pension to the petitioner, it is for the State of Jharkhand to consider appropriately the fixation of the amount of pension payable to the petitioner by adding (the past services rendered by him as Extra Clerk.

7. Having considered the rival submissions, as it appears, the notification (Annexure-A) issued by the State of Bihar in the year 2003, does provide a definite relief to the claim in as much as, the entire period of the past services rendered, as a Extra Clerk, has to be counted to the total length of service of the Government Servant. On reading the judgment passed in the case of *The State of Jharkhand v. Kauleshwar Prasad* (Supra), as rightly pointed out by the learned

Counsel for the petitioner, the aforementioned notification of the State Government (Annexure-A) was neither placed or referred to before this Court and as such, the decision of the court was passed only on the basis of the earlier notification of 1979.

8. In the light of the above facts and circumstances, the petitioner may, within ten days from the date of this order, file a fresh representation, annexing a copy of the Circular (Annexure-A) along with the copy of this order, before the concerned authorities of the respondent State of Jharkhand and, within a period of two months from the date of receipt of the representation, the concerned authorities shall take a decision on the petitioner's claim for adding his past services as Extra Clerk, to the total length of his services, for the purpose of computing and reassessing the amount of pension and communicate such decision effectively to the petitioner.

As regards the petitioner's further claim for the monetary benefits of the first time bound promotion/ACP, the stand taken by the State of Jharkhand in its counter-affidavit is that a report has been received from the concerned District Sub Registrar which reveals that the petitioner's case for his promotion was considered by the appropriate authorities on 15.7.1996 and on the ground that his services were not found satisfactory, as per the report which was received earlier from the Department vide letter dated 22.11.1988, he was not granted promotion.

9. Learned Counsel for the petitioner would controvert the aforesaid submission, by stating that the report referred to by the learned Counsel for the respondent State of Jharkhand, does not indicate as to on what ground, was the petitioner's service not found satisfactory and neither was any such ground, informed to the petitioner. Learned Counsel adds further that the petitioner was eligible for his first time bound promotion on his completing 10 years of service from the date of his regularization in service and here could be no other qualifying condition for refusing the benefit of the first time bound promotion to him.

10. Considering the above facts, the respondent authorities may also reconsider as to whether the petitioner was in fact, refused the first time bound promotion on any tenable ground and whether, any such ground was earlier communicated to the petitioner and, after reconsidering his issue, take an appropriate decision on the issue and communicate the same effectively to the petitioner, within the period stipulated above.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State of Jharkhand.