
(2013) 09 JH CK 0015
In the Jharkhand High Court
Case No : WP (S) No. 7083 of 2012

Dharam Shah Oraon

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 4 JLJR 452

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : D.K. Dubey, for the Appellant; Abhijeet Kr. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Shree Chandrashekhar, J.—The petitioner has approached this Court with the following prayers:--

a. To issue appropriate writ in the nature of mandamus, directing the respondents to issue promotion order in respect of the petitioner to the rank

of Deputy Secretary in the pay scale of Rs. 12,000-16,500/- with all consequential benefits in view of the decision taken by the Departmental

Promotion Committee (DPC for short) in its meeting held on 22.6.2004, whereby and whereunder, the petitioner was found fit for promotion to

the said rank;

b. To issue further appropriate writ in the nature of mandamus directing the respondents authorities to consider the case of the petitioner for grant

of benefit of ACP from his due date with all consequential benefits;

c. To issue further appropriate writ, order or direction on the respondents to revise the pensionary benefits of the petitioner on account of granting

promotion in the rank of Deputy Secretary as also granting the benefit of ACP, as

claimed by the petitioner in the instant writ application; and

d. For any other relief or reliefs for which the petitioner is legally entitled in the facts and circumstances of the case.

The brief facts of the case are that, the petitioner was appointed on 15.6.1970 in the office of the Accountant General, Orissa and thereafter, he

was transferred in the office of the Accountant General, Bihar at Ranchi. In a meeting of the Departmental Promotion Committee on 22.6.2004,

the candidature of the petitioner for promotion was found justified and accordingly, recommendation was made however, the petitioner

superannuated from service on 30.6.2004 and therefore, such benefit was not accorded to the petitioner. The petitioner has also approached this

Court for grant of benefit under the ACP and the consequential reliefs on such grant.

2. A counter affidavit has been filed stating as under:--

10. That most humbly and respectfully it is stated and submitted that the Departmental Promotion Committee found the petitioner fit for ADM &

Eqv. Posts (Dy. Secretary etc.) and forwarded its recommendation for promotion on 22.6.2004. The recommendation was put up for approval of

the Government, which was received back in the Department after October 2004 and order of the promotion was issued on 1.11.2004. Till then

the petitioner had superannuated from the services of the Government on 30.6.2004. Hence, as after superannuation he could neither hold the post

of promotion nor could get monetary benefit, the petitioner was not granted promotion.

11. That most humbly and respectfully it is stated and submitted that for grant of 2nd ACP 24 years of regular service is required. The petitioner

was completing 24 years of service on 4.4.2007, but prior to that he had already superannuated from the service. Hence he did not have the

entitlement of 2nd ACP.

3. Heard the counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that it is an admitted position that the petitioner was found fit for promotion in the

Departmental Promotion Committee's meeting held on 22.6.2004 and therefore, the grant of the benefit of promotion, at least the notional

promotion should be given to the petitioner, so that the petitioner would get the monetary benefit. It has further been submitted by the counsel for

the petitioner that though the benefit of the Junior Selection Grade was given to the petitioner way back in the year, 1993 however, the petitioner

was not given the benefit under the ACP, for which the petitioner is legally entitled.

5. On the other hand, learned counsel appearing for the respondents relying on the counter-affidavit filed on behalf of the respondents, has

submitted that since the petitioner superannuated from service within a week of the recommendation of the Departmental Promotion Committee,

the said benefit of promotion could not have been given to the petitioner. He has further submitted that for grant of ACP, minimum regular service

of 24 years is required however, the petitioner would have completed such length of service only on 4.4.2007 and therefore, the petitioner is not

entitled for grant of ACP.

6. Replying to the submission made by the learned counsel appearing for the respondents, the learned counsel for the petitioner has submitted that

the petitioner has joined the service in the year, 1970 and thereafter, he was appointed on the post of Deputy Collector in the year, 1983 and he

rendered services in the office of the Accountant General within the jurisdiction of the Central Government and therefore, he has completed the

minimum requisite length of service of 24 years and therefore, he is entitled for the grant of ACP.

7. On a perusal of the documents on record and more particularly, the counter-affidavit filed on behalf of the respondents and supplementary

affidavit filed by the petitioner, I am of the opinion that in so far as the prayer of the petitioner for grant of promotion pursuant to recommendation

by the Departmental Promotion Committee on 22.6.2004 is concerned, it cannot be granted because, the petitioner had superannuated from

service w.e.f. 30.6.2004. As the recommendation of the Departmental Promotion Committee was made on 22.6.2004, it could not have been

given effect to within one week. In such a situation, the prayer made by the petitioner for grant, of benefit of promotion is not tenable, as the

petitioner superannuated from service within one week of such recommendation made by the Departmental Promotion Committee.

8. In so far as the prayer of the petitioner for grant of ACP is concerned, the petitioner has made a statement in paragraph No. 21, which is

extracted below:--

21. That it may be stated that the service rendered by the petitioner in the office of the Accountant General, Orissa and Bihar has already been

taken into account by the authority while granting the pensionary benefits. In that view of the matter, the petitioner has served the department more

than 33 years and during the long period of 33 years of service, the petitioner has only been granted only Junior Selection Grade as back as in the

year 1993 with effect from 1.4.1990, except that till his retirement, no regular promotion or benefit of ACP has been granted to the petitioner.

9. From the aforesaid paragraph, it appears that the benefit of Junior Selection Grade was given to the petitioner way back in the year, 1993 and

thereafter, the petitioner did not agitate his claim for grant of ACP, in the supplementary affidavit filed on behalf of the petitioner, a plea has been

raised that since the petitioner was appointed in the year, 1970 and thereafter, he was appointed on the post of Deputy Collector in the year, 1983

and he rendered services in the office of the Accountant General within the jurisdiction of the Central Government and therefore, he would have

completed the minimum length of 24 years" of service, which is prescribed for grant of ACP I find that in the writ petition or in the supplementary

affidavit, no specific date with respect to his entitlement for ACP, has been mentioned by the petitioner and there is a dispute with respect to total

length of his service, therefore, this claim of the petitioner cannot be decided in the present proceeding. However, in the interest of justice, the

petitioner is granted a liberty to make a representation to the Respondent No. 2, in so far as the claim for grant of ACP is concerned.

10. The petitioner is directed to make such representation within a period of four weeks and the Respondent No. 2 is directed to decide the claim

of the petitioner within a period of next six weeks. The present writ petition is disposed of with the aforesaid direction.