
(2009) 07 JH CK 0121
In the Jharkhand High Court

Duja Soren

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0121

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Mr. Kumar Niles, learned Counsel for the petitioner and J.C. to Sr. S.C.I for the Respondent-State.

2. The petitioner in this writ application, has prayed for issuance of a direction to the Respondents to pay him the arrears of salary from May, 2002 to September, 2007 and to quash the Memo No. 102 dated 04.02.2006, passed by the Circle Officer, Tundi, Dhanbad to the extent, whereby the date of the petitioner's retirement has been declared as 31.12.2007, whereas the petitioner's actual date of retirement is 31.12.2015

3. Learned Counsel for the petitioner would submit at the outset that the petitioner confines his prayer only to the first relief, namely, for the payments of arrears of salary from May, 2002 till the date of his retirement i.e. till 21st September 2007.

4. The petitioner's case in brief is that he was appointed on the post of Chowkidar in the year 1990 and he continued to perform his duties and had drawn his salary till April, 2002. Later on, his salary was not paid.

Learned Counsel would explain that after the petitioner's induction in service, he was referred to the Civil Surgeon-cum-Chief Medical Officer, Dhanbad for medical examination for ascertaining his age. As per the medical assessment, his age as on 07.09.1990 was assessed at 35 years.

Later, the petitioner was served with a notice by the Circle Officer, intimating therein, that he would retire in the year 1999 itself, although according to the age assessed, the petitioner would have continued in service till the year 2015.

5. The petitioner had submitted his protest by way of filing his representations. The decision on the petitioner's representation-cum-protest was not taken promptly and had continued to be postponed and ultimately, the Respondents came out with a clarificatory statement that there was a mistake in the calculation of the retirement date of the petitioner and by rectification of the error, the Respondents came on with a statement that the petitioner's actual date of retirement, should be 31.12.2007.

Learned Counsel explains further, that during the entire period when the aforesaid mistake remained unrectified, the petitioner, despite reporting for his duty, was not allowed to perform his duties and ultimately after rectification of the purported mistake, the Circle Officer had allowed him to join his duties in the month of September, 2007 and was allowed salary for the three month's period i.e. from September, 2007 to December, 2007 before his retirement. The grievance of the petitioner is that for no fault of his, neither was he allowed to resume his duties nor any work was offered to him despite the fact that he had presented himself regularly offering his services. The Respondent cannot therefore, deny him the salary for the period during which the Respondent did not take his services.

6. Counter affidavit has been filed on behalf of the Respondent-State, in which it is sought to be explained that the petitioner cannot claim any salary for the period for which he did not attend to his duties on the ground of "No work no pay". From the statements contained in the counter affidavit, it does appear that the Respondents have acknowledged the fact that by an earlier communication, the petitioner was informed that his date of retirement was December, 1995, although he was allowed to continue in service even till April, 2002. The petitioner raised a dispute regarding the correctness of the date of his retirement. It appears that the matter remained pending for consideration before the concerned authorities of the Respondents and after about five years, a decision was taken by the Respondents making rectification of the error in calculating the date of retirement as December, 2007.

7. The petitioner has specifically claimed that from May, 2002 onwards he was regularly presenting himself for duty but he was not assigned any work. The reason for not offering any work to the petitioner, was the controversy regarding the petitioner's actual date of retirement which remained unresolved and pending during the entire period and ultimately, the Respondents have acknowledged that the petitioner's actual date of retirement was 31.12.2007. Apparently, the Respondents had erroneously chosen not to allot any work to the petitioner in spite of the fact that there was no fault whatsoever on his part. Admittedly, the petitioner was neither discharged from his services nor terminated in any manner during the relevant period.

Under such circumstances, the Respondents cannot deny the salary for the period on the principles of "no work no pay", when they had erroneously chosen not to allot any work to the petitioner.

8. In the light of the above discussions. I find merit in this writ application. Accordingly, the same is allowed to the extent that the petitioner is held entitled to claim and receive arrears of salary with effect from May, 2002 to September, 2007. The Respondents-authorities are directed to assess the entire amount of arrears of salary and pay to the petitioner the assessed amount within two months from the date of receipt/production of a copy of this order. If the amount is not paid within the period stipulated, the same shall carry interest @ 12 per cent per annum to the petitioner, which shall commence from the date when such payment fell due and till final payment.

9. with these observations, this writ application stands disposed of.

10. Let a copy of this order be given to the learned Counsel for tin: Respondent-State.