
(2015) 01 JH CK 0070
In the Jharkhand High Court
Case No : Writ Petition(S) No. 4682 of 2005

Gurusharan Mahto

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 1 JLJR 753 : (2015) 2 AJR 348 : (2015) 144 FLR 910

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Sumeet Gadodia, for the Appellant; Prabhash Kumar, C.G.C.,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In this writ application, the petitioner has, inter alia, prayed for issuance of an appropriate writ (s)/order(s)/direction(s) to the respondents to allow the pro rata pension after reckoning the period of service on Muster Roll from 01.01.1974 to 01.09.1986 and further prays that notwithstanding the order of learned Central Administrative Tribunal in O.A. No. 320 of 2004, prayer of the petitioner for extending the benefit has not been acceded to but the same has been rejected vide Annexure 2 to the writ application.

2. The facts, as revealed and stated in the writ application in a nutshell, are that the petitioner was appointed on Muster Roll for the period 01.01.1974 to 06.04.1977 under Coal Mines Welfare Organization and thereafter from 06.05.1977 to 11.11.1979 on monthly rated scale and basic scale, on which, the petitioner has also availed the Dearness Allowance as applicable under the Coal Mines Welfare Organization. Thereafter, the petitioner was given the post of Fitter from 19.11.1979 to 19.11.1984 and finally merged with Central Coalfields Limited and the petitioner was posted at Jawahar Nagar in Generator Room, Kanke, Ranchi as such the petitioner rendered the "entire service from the very inception exceeding 12 years and hence, the petitioner is entitled to pro rata

pension, as per the norms and Rules fixed by Ministry of Coal and Mines, Government of India. It is stated in the writ application that the petitioner moved the learned Central Administrative Tribunal by filing an application bearing O.A. No. 320 of 2004 with a prayer to allow pro rata pension to the petitioner as he has rendered services exceeding 12 years, which was disposed of vide order dated 20.12.2004, under Annexure 1. to the writ application, with a direction to the respondents to give due consideration of the case of the applicant/writ petitioner with reference to record as available with them and also with reference to the decision given by Tribunal in O.A. No. 1015 of 2002 within a period of six months. In pursuance to direction of the learned Central Administrative Tribunal in O.A. No. 320 of 2004, Government of India, Ministry of Coal vide its office order dated 21.05.2005, under Annexure 2 to the writ application, has been pleased to pass order rejecting the claim of the petitioner. It is further stated in the writ application that one P.C. Mallik, Executive Engineer, C.M.W. Works, Dhanbad issued a Memorandum- dated 7.5.1977, under Annexure 3 to the writ application, wherein the date of appointment of the petitioner on Muster Roll is shown as 01.01.1974 and in the column (7) of the said Memorandum, it has been stated that for the purpose of service seniority and pensionary benefit, the service shall be counted on and from 01.01.1974 forenoon. The Government of India, Ministry of Labour addressed a letter to Coal Mines Welfare Commissioner, Dhanbad dated 25.10.1975, under Annexure 3/1 to the writ application, authorizing the said officer, Sri P.C. Mallik, Executive Engineer, C.M.W., Works, Dhanbad to settle all formalities as regards regularization of Monthly Paid Muster Roll employee of the Coal Mines Labour Welfare Organization. After rejection of the case of the petitioner, vide Annexure 2 to the writ petition, the petitioner sent legal notice dated 11.6.2005 to respondents for redressal of his grievance vide Annexure 4, annexing therewith Annexures 5, 5/1 and 5/2 regarding the services rendered by him in different capacity to stake his claim for pro rata pension. In the writ petition the petitioner has also annexed the order passed in O.A. Nos. 214, 215 and 216 of 2003, Annexure 6, wherein similar benefit has been extended to show that his case stands on the same footing like the applicants in the aforesaid Original Applications. On the aforesaid facts and documentary evidences, the petitioner has prayed for issuance of writ of mandamus to the respondents for redressal of his grievance.

3. Heard Mr. Sumeet Gadodia, learned counsel for the petitioner and Mr. Prabhash Kumar, learned counsel appearing for respondents-Union of India.

4. Learned counsel for the petitioner has strenuously urged that as per Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the C.C.S. Rules, 1972) since the petitioner has rendered minimum admissible length of services of nine years nine months, the petitioner is entitled for pro rata pension. The entire case of the petitioner hinges on Annexure 3, which indicates the date of appointment of the petitioner on Muster Roll from 01.01.1974. Therefore, the respondents ought not have rejected the claim of the petitioner. Learned counsel for the petitioner further submits that after lapse of so many years, the ground

of alternative remedy for adjudication of dispute before the learned Central Administrative Tribunal cannot be pressed into service at this belated stage. So far as claim of availability of alternative remedy is concerned, learned counsel has relied upon the case rendered in the case of Krishan Lal Vs. Food Corporation of India and Others, wherein the Hon"ble Apex Court has held that availability of an alternative remedy for adjudication of the disputes is not a ground that can be pressed into service at the belated stage, accordingly the same has been rejected. The petitioner has further submits that the respondents have sworn two contrary affidavits to negative the claim of the petitioner in this respect, he has referred to decisions reported in the case of B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, and specially on paragraph 12 of the said judgment.

5. On the contrary, learned counsel for, the Union of India has repudiated the assertions of the petitioner by referring paragraph 5 of the counter affidavit wherein it has been stated that the petitioner did not work regularly as stated in the writ petition. The respondents have stated that the petitioner did not work continuously from 1st January, 1974 to 06.05.1977 and the said certificate under Annexure 3 contains contradictory entries in paragraphs 2 and 7. Learned counsel for the Union of India has drawn attention of this Court to Annexure D to the counter affidavit, which is a letter dated 05.10.1991 relating to list of those employees taken over in CCL, who have not completed 10 years of service, wherein the name of the petitioner also finds place and the date of joining employment has been mentioned as 06.05.1977 as a fitter. The learned counsel for the respondents-Union of India has also referred Annexure B to the supplementary counter affidavit, wherein the name of the petitioner finds place at serial No. 284 and the date of appointment has been mentioned as on 06.05.1977. Learned counsel for Union of India further referred to Annexure C to the said affidavit, which is service book of the petitioner wherein the date of appointment of petitioner is mentioned as 19.11.1979 as cleaner. It is further stated in paragraph 11 of the said counter affidavit that document marked as Annexure 3 of the writ petition is a forged document issued by P.C. Mallik, the then Executive Engineer after his retirement and the said P.C. Mallik was in the habit of issuing such false and fabricated certificate in back date to help the employees of Central Government for qualifying minimum eligibility of 9 years and 9 months for pro rata pension under C.C.S. Rules, 1972. It has further been submitted by learned Central Government Counsel that the office of respondents found that all the certificates issued by said, P.C. Mallik is false and backdated, for which, an F.I.R. has been lodged in Dhanbad Police Station on 30.11.2011 bearing Case No. 979 of 2011, under Annexure D to the supplementary counter affidavit annexing some fake certificates issued in respect of Sri A.K. Mishra and Sri M.P. Rao, which are Annexures E and F to the supplementary counter affidavit and vide Annexure G to the supplementary counter affidavit, this fact has been brought to the knowledge of the Dhanbad Police Station.

6. Learned counsel for the petitioner has filed rejoinder to the supplementary

counter affidavit filed by respondent Nos. 1 and 2 stating therein that the supplementary affidavit filed by the respondents is contrary to the counter affidavit filed earlier as back as on 28.02.2006. It has been vehemently submitted by counsel for the petitioner that it would be evident from the earlier counter affidavit that the petitioner was working with respondents with effect from January, 1974 was not denied by the respondents and it was only stated that the petitioner was not working regularly and continuously from 1st January, 74 to 06.05.1977. Learned counsel for the petitioner further submits that from perusal of the earlier counter affidavit, it is evident that even the contents Annexure 3 has been admitted by respondents by stating inter alia that the said document has been prepared only with a view to consider the eligibility of the Muster Roll employees for regular employment and no pleadings whatsoever was ever made by respondents that the document contained in Annexure 3 of the writ application is a forged document. Therefore, it has been submitted by counsel for the petitioner that the Annexure 3 is not a forged document and the same was issued by the then Executive Engineer after verifying the necessary document relating to petitioner's service. The counsel for the petitioner has further submitted that the petitioner is in possession of the original certificate issued to him in order to demonstrate that the said document is not forged and the statement and lodging of F.I.R. on the Executive Engineer, Mr. P.C. Mallik do not have any bearing with the case of the petitioner and accordingly the counsel for the petitioner has urged before this Court to reject the contention made in the supplementary counter affidavit. Counsel for the petitioner reiterated his submission by stating that the petitioner has continuously worked with the respondents for a period from 01.01.1974 to 05.05.1977 thereafter he has discharged his duties on monthly rated Muster Roll employee and thereafter as a regular employee and is thus entitled for payment of pro rata pension benefit as his total length of qualified service is much more than 9 years and 9 months, as provided under CCS Pension Rules, 1972.

7. During the course of argument, the counsel for the respondents has referred to reply to the rejoinder filed by the petitioner by submitting that so far as paragraph of the supplementary counter affidavit is concerned, there is no contradiction at all to the earlier counter filed on 24.02.2006. When the matter came to the light that the said P.C. Mallik, the then Executive Engineer, With ulterior motive issued forged certificate to the employees putting the Central Government i.e. Ministry of Coal to irreparable loss and injury, an F.I.R. was lodged against said P.C. Mallik for his illegal act and as such there was reasonable apprehension that Annexure 3 of the writ petition is also forged and fabricated. This fact can be verified from the seniority list under Annexure B and Service Book; under Annexure C that the date of appointment is 06.05.1977 and date of regularization on 19.11.1979. Therefore, the question of appointment since 1974 does not arise. Moreover, the petitioner was sent for medical examination on 30.04.1977, which will apparent from Annexure A to the supplementary counter affidavit and the said document, itself is an ample proof

that petitioner somehow or other is trying to take advantage by annexing fabricated document, Annexure 3 to the writ petition for ulterior gain and motive. The counsel for the respondents, by referring to reply to rejoinder has further submitted that Annexure 3 to the writ petition has never been brought on record before the learned Central Administrative Tribunal in O.A. No. 320 of 2004 (Annexure 1), which itself indicates that Annexure 3 is a paper fraudulently obtained under a pre-planned conspiracy. Counsel for the respondents has further submitted that Annexure 2 to the writ petition, the rejection order, has attained its finality and Annexure 2 ought to have been challenged before learned Central Administrative Tribunal and therefore, writ petition is not entertainable since the alternative remedy is available, for which the counsel for the respondents has relied upon the decision of the Hon''ble Apex Court in the case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, , wherein the Hon''ble Apex Court in paragraph 23 has held that "It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person." Learned counsel for the respondents submitted that since the veracity and genuineness of Annexure 3 is doubtful, the writ petition is not entertainable and the disputed question of fact and document cannot be gone into in a writ Court.

8. Having heard learned counsel for the parties and looking to the facts and circumstances of the case and considering the fact that the case of the petitioner hinges on Annexure 3, which is disputed and- forged document, as alleged by the respondents, the claim of the petitioner is not entertainable for the following facts, reasons and judicial pronouncements:

"(I). That the sole argument canvassed in the writ petition is based on Annexure 3, which appears to be fake, forged, manufactured and disputed document and the genuineness or veracity of the document cannot be proved in a writ petition under Article 226 of the Constitution of India. The Hon''ble Apex Court in the case of City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, of the said judgment has held that the Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a). adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b). the petition" reveals all material facts;
- (c). the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d). person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e). ex facie barred by any laws of limitation;
- (f). grant of relief is against public policy or barred by any valid law; and host of other factors.

Therefore, in view of the above-cited judgment also, this Court is duty-bound to decide as to whether there is disputed questions of facts and whether there is any alternative or efficacious remedy. The case of the petitioner is squarely covered by the aforesaid principles enunciated by the Hon''ble Apex Court.

(II). As disclosed in the reply to the rejoinder filed by the respondents, Annexure 3 document was not a part of record in O.A. No. 320 of 2004 filed before the learned Central Administrative Tribunal. Non-filing of Annexure 3 in the Central Administrative Tribunal creates reasonable suspicion as to why the said document was not filed before the learned Central Administrative Tribunal. Had the said document been filed in the Central Administrative Tribunal then the bona fide of the petitioner would have been proved.

(III). The contention of the counsel for the petitioner that the alternative remedy is no ground for rejecting the claim of the petitioner as per the decisions of Hon''ble Apex Court rendered in the case of Krishan Lal (supra) is of no assistance since the veracity and genuineness of the disputed document cannot be adjudicated in the writ application under Article 226 of the Constitution of India. In normal circumstances, this Court would not have relegated to the matter to the Central Administrative Tribunal but due to facts and circumstances revealed in the supplementary counter affidavit, this Court refrains from entertaining the claims made in the writ application. Annexure 2 to the writ application, the rejection of the claim of the petitioner vide letter dated 21.05.2005, which has attained finality, ought to have been challenged before the Central Administrative Tribunal because as per the decision of the Hon''ble Apex Court in the case of L. Chandra Kumar Vs. Union of India and others, , the Central Administrative Tribunal is the Court of first instance and it is not open for litigants to directly approach the High Courts. Moreover as per Administrative Tribunal Act, 1985, the Central Administrative Tribunal can exercise jurisdiction of the Civil Court. So the veracity and genuineness of document at Annexure 3 can be gone into by the Central Administrative Tribunal.

9. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the writ application being devoid of any merit, is dismissed. However, the dismissal of the writ application will not preclude the petitioner to approach the appropriate forum for redressal of his grievance, if so advised. In that eventuality, if any application is filed by the petitioner before any appropriate forum, the said forum shall decide the case independently strictly in accordance with law, without being influenced by any observations made in the writ application.