
(2022) 06 JH CK 0038
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2305 Of 2015

Jhari Saw

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-06-2022

Acts Referred:

Citation : (2022) 06 JH CK 0038

Hon'ble Judges : Aparesh Kumar Singh, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Md. Anisurzamma Khan, Binod Singh

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.
 2. The instant writ application has been preferred by the petitioner assailing the order dated 12.01.2015 passed by the learned Central Administrative Tribunal, Patna Bench, Patna, Circuit Bench at Ranchi [hereinafter to be referred as "Tribunal"] in O.A. No. 48 of 2013 (R); whereby the application preferred by the applicant-petitioner praying for a direction upon the respondents to release his Pension, Gratuity and Commutation value of Pension has been rejected.
 3. The facts of the case lies in a narrow compass. The applicant was serving as Dresser-cum-Attendant and retired from his service on 30.04.2006. Initially, the petitioner was appointed as Daily Rated Worker. When the petitioner along with other daily rated employees were retrenched, they filed O.A. No. 560 of 1995 before the Tribunal and in pursuant to the order of the Tribunal vide order dated 16.10.1996, the petitioner was reinstated temporarily.
- In pursuance to the order passed by the Tribunal in O.A. No. 991 of 1996, the petitioner vide order dated 16.12.1996 was granted temporary status in the minimum pay scale of Rs. 750-12-870-EB-13- 940 w.e.f 17.12.1996. Thereafter,

petitioner along with others moved before the Tribunal in O.A. No. 572 of 1997 for regularization of their services and the Tribunal vide order dated 25.01.1999 directed the respondents to consider the matter of their regularization and in pursuance of the said order passed by the Tribunal, the respondents vide order dated 01.09.1999 regularized the services of the petitioner in Group-D post w.e.f. 15.07.1999. Further, vide order dated 29.12.2005, the petitioner was confirmed on the post of Dresser-cum-Attendant w.e.f. 15.07.2001.

The grievance of the petitioner is that even though he retired on 30.04.2006, his pension is yet to be fixed and the respondents are not paying him gratuity and commuted value of pension in spite of several representation.

4. Mr. Md. Anisurzamma Khan learned counsel for the petitioner submits that the respondents have acted arbitrarily in not providing the pensionary benefits to the petitioner and they are not correct in saying that petitioner has not completed 10 years of service for pensionary benefits. He further contended that the respondents are bound to count the earlier service rendered by the petitioner as Casual labour. The learned Tribunal erred in law by accepting the contention of the respondents by not counting the whole service rendered by the petitioner under the respondents. The Tribunal should have seen the fact that there is no denial of service rendered by the petitioner with the respondents. He lastly submits that the impugned order passed by the Tribunal may be quashed and set aside and the respondents be directed to immediately and forthwith issue an order for fixing his pension and release the same along with other retiral benefits.

5. Mr. Binod Singh, learned counsel for the respondents submits that the petitioner had worked as a Daily Rated Worker from 01.05.1982 to 31.08.1995 with break in service and was granted temporary status from 17.12.1996 and finally he was regularized w.e.f. 15.07.1999 and as per Pension Rules, since he has only rendered regular service for a period of 6 years 9 months (30.04.2006 minus 15.07.1999) as per Pension Rules, he is not entitled to pension as he has not rendered the minimum eligibility service of ten years required for pension in the Central Government. He further submits that a Central Government Employee after retirement is entitled to receive pension on completion of at least ten years of qualifying service and 50% of service rendered under Temporary Status, would be counted for the purpose of retirement benefits after their regularization. He further referred Article 368 of CSR (Rule 14) and contended that period of service paid from contingencies, did not count as qualifying service for pension. According to the respondents, since the petitioner has not fulfilled the required criteria, he is not eligible to receive pension. He lastly submits that the petitioner is not entitled for any relief as he has been paid gratuity and other admissible retiral dues and the instant writ application deserves to be dismissed.

6. Having heard learned counsel for the parties and after going through the impugned order and other documents annexed with the respective affidavits, it appears that the petitioner was regularized in service w.e.f. 15.07.1999 and as per Pension Rules, since he has only rendered regular service for a period of 6

years 9 months (30.04.2006 minus 15.07.1999) as per Pension Rules, he is not entitled to pension as he has not rendered the minimum eligibility service of ten years required for pension in the Central Government.

It further transpires that the petitioner was regularized in Group 'D' post vide Office Order No.1246 dated 30.12.2005 w.e.f. 15.07.1999 itself and the petitioner accepted the same and sat over the matter. In is only in the year 2013, he woke up and filed an application before the Tribunal. If he was not satisfied with his regularization in Group 'D' w.e.f 15.07.1999, he should have challenged the said order then and there. Now at this end, such a regularization order cannot be challenged for the convenience of the petitioner. This aspect of the matter has been duly considered by the Tribunal who has categorically held that since the applicant was pursuing the litigation at various stages before this Tribunal, the claim of treating the period from retrospective date cannot be entertained at this distance of time being barred by constructive res judicata.

Further, the regularization in Group 'D' post takes place against permanent vacancy in a cadre and such a post has nothing to do with the period of temporary status granted to an employee. Since in the instant case, the petitioner was granted temporary status only with effect from 17.12.1996, the grant of regularization in Group 'D' post from July, 1999 does not seem to be late or unreasonable. Since the applicant does not come under relevant Rules to make him eligible for pension, no direction can be given to the respondents. The learned Tribunal after considering every aspect of the matter rejected the claim of the petitioner for pension. It further transpires from record that the respondents have already paid the gratuity. At the cost of repetition, since the petitioner has not completed 10 years of regular service to make him eligible for pension, his claim of pension has rightly been rejected by the respondents and there is no error, whatsoever, in the order passed by the learned Tribunal.

7. Accordingly, the writ application stands dismissed.