
(2015) 07 JH CK 0090
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5986 of 2010

Kameshwar Prasad Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Citation : (2015) 07 JH CK 0090

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rahul Kumar, for the Appellant; L.C.N. Shahdeo, GP-IV and Pratyush Lala, JC to GP-IV, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J—Heard counsel for the parties.

2. With the amendments incorporated during the pendency of the writ application, surviving prayers on behalf of the petitioner are as follows:

"(i) To direct the respondents to grant the benefit of ACP to the petitioner pursuant to the direction passed in WPS 6337/2005 dated 10.09.2009 (Annexure-3).

(ii) To revise the pension of the petitioner on the basis of last pay drawn and compute and pay the entire retiral benefits consequent thereto.

(iii) For payment of statutory interest on commutation of his pension.

(iv) For quashing the recommendation of the Departmental Screening Committee dated 15.05.2014 whereunder, the claim of the petitioner for 1st ACP with effect from 09.08.1999 has been denied on the ground of pendency of a criminal case against him."

3. The facts which are necessary to be noticed from the pleadings on record in order to determine the controversy, as aforesaid, are being narrated hereunder:

"Petitioner was appointed as Animal Husbandry Officer in the Department of Animal Husbandry and Fisheries, Government of Bihar on 05.10.1983. Two criminal cases were lodged by the CBI on 16.04.1996 being R.C. 47(A)/96(Pat) and RC 48(A)/96(Pat), though petitioner was not implicated as an accused at the relevant point of time. However, charge sheet in two criminal cases were submitted on 08.08.2001 and 27.11.2001 implicating the petitioner as an accused and sanction for prosecution was also granted. Petitioner was placed under suspension on account of his implication in the criminal case on 30.01.2002. He retired on 30.04.2004 from the said post. Thereafter, Departmental Proceeding was initiated against him under Rule 43(b) of Pension Rules on 20.08.2004. However, the said proceedings are kept in abeyance by the respondents authorities on the ground of pendency of a criminal case which has not yet attained finality. It is also submitted by the counsel for the petitioner that pursuant to the direction passed by the Writ Court in WPS No. 6337/2005, petitioner has been paid full pension and gratuity and other post retiral dues on his retirement keeping into regard the ratio laid down in the case of Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director (Director) (Poultry), Animal Husbandry Department and The Accountant General, (2007) 2 BLJR 2847 : (2007) 115 FLR 884 : (2009) 2 SLJ 105 ."

4. In the background of the aforesaid factual details noticed, it is submitted that though, DPC did consider his case for 1st ACP with effect from 09.08.1999 in terms of the Finance Department Resolution dated 14.08.2002, but simply on the ground of pendency of a criminal case, it has not been recommended. It is submitted that on 09.08.1999, petitioner was neither named in the FIR, nor placed under suspension, nor there was charge sheet filed against him in the criminal case, nor any charge memo was issued in the Departmental Proceeding initiated against him. Therefore, the decision of the DPC is in teeth of the judgment rendered by the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 . Respondents should therefore be directed to grant the benefit of first ACP as there was no legal disability against the petitioner on the due date i.e. 09.08.1999. It is submitted that the respondents have only tried to defend their action on the basis of subsequent development of his suspension or implication in the charge sheet filed in 2001 which could not have been made a basis to deny the legitimate claim due from 09.08.1999.

5. Counsel for the respondents, based upon the instructions contained in the counter affidavit, has also defended the impugned order on the said ground that the petitioner was facing criminal prosecution in CBI case popularly known as "Fodder Scam Case". Therefore, DPC did not make its recommendation.

6. I have considered the relevant materials on record in the light of the judgments relied upon by the petitioner. The proceedings of the DPC at

Annexure-12 show that the Screening Committee of the Animal Husbandry Department taking into account the guidelines/principles enumerated in the matters of consideration of cases for grant of ACP/MACP, did not find the petitioner entitled to the same on account of pendency of a criminal case, though it was due on 09.08.1999 on completion of 12 years of service.. The guidelines which are enumerated in Clause 1 of DPC Minutes, deal with different situations where either punishment has been imposed on an officer seeking grant of such financial up-gradation or cases where officers has been placed under suspension or Departmental Proceeding has been initiated by issuance of a charge sheet or there has been sanction for prosecution in a criminal case instituted against such persons or a criminal case is found pending against him. In such cases, DPC has decided not to make recommendation for grant of 1st and 2nd ACP/MACP. In case of financial up-gradation dealt at Clause 3 of the said Minutes, it is indicated that amongst the preceding five years of ACR of the concerned officer from when the ACP has become due, at least three ACR should not contain any adverse entry; that he should have passed the departmental exam and his services are also confirmed. Then only, the Committee could make recommendation in favour of the said candidate. Other conditions contained in Clause 4 and 5 do not apply to the petitioner's case as he had neither been punished in a Departmental Proceeding, nor in a criminal case. It appears that therefore, on the due date i.e. 09.08.1999, petitioner was neither charge sheeted in two criminal cases instituted by the CBI, nor he was under suspension and no charge memo in Departmental Proceeding were either issued against him. All such events have taken place after 09.08.1999, as noticed in the factual details of the case in the earlier part of the judgment. The petitioner therefore did not suffer from legal disability on the date on which he had become entitled for grant of 1st ACP in terms of the Resolution of 14.08.2002 of the Finance Department, Government of Jharkhand. Therefore, such denial on the part of the DPC is in teeth of the judgment rendered by the Hon''ble Supreme Court in the case of K.V. Jankiraman (Supra) para-6 thereof.

7. Counsel for the petitioner has also relied upon the Single Bench judgment of this Court in the case of Binod Shankar Mishra Vs. State of Jharkhand and Others as also Single Bench judgment of Patna High Court in the case of Prantosh Kumar Das Vs. The State of Bihar and Others, (2014) 1 PLJR 25 in support of his contention. He has also relied upon a recent judgment passed by the Division Bench of Patna High Court in Letters Patent Appeal No. 667/2014 dated 19.01.2015 [The State of Bihar & others vs. Prantosh Kumar Das].

8. All these judgments are on the identical point that if the person is not suffering from legal disability on the date on which he is claiming for promotion or financial up-gradation became due, the same should not be denied in the light of the ratio rendered in the case of K.V. Jankiraman (Supra). Therefore, taking into account all these relevant materials on record and decisions on the point, denial of ACP to the petitioner by the DPC in its meeting held on 15.05.2014 is not sustainable in law as well as on facts. Such decision of DPC therefore is

quashed. At the same time, it is made clear that in matters of financial up-gradation, not only the aforesaid conditions are to be looked into by the Departmental Promotion Committee relating to issuance of charge sheet in a criminal case or charge memo in a Departmental Proceeding or suspension of the officer concerned or sanction of prosecution on the date on which the employee/officer was entitled to such financial up-gradation, but DPC is also required to be satisfied on the satisfactory service of the concerned officer. As per Clause 3 of the Minutes of DPC dated 15.05.2014, it is also necessary that in the past five years of the ACR of the officer like the petitioner preceding the date when such ACP has become due, there should not be any adverse entry at least for the period of three years. This exercise perhaps have also not been made by the DPC at the time petitioner's claim was denied. Respondents while taking a fresh decision in the matter, are required to satisfy themselves on these aspects also. If the petitioner is found to be otherwise eligible upon such satisfaction from the due date i.e. 09.08.1999, then the DPC would make necessary recommendation for grant of 1st ACP to the petitioner. Let such exercise be concluded by the respondent authorities within a period of twelve weeks from the date of receipt of a copy of this order.

Dependent upon such decision, if the petitioner is found to be entitled to grant of 1st ACP with effect 09.08.1999, then monetary and consequential benefits arising thereof in matters of arrears of salary and post retirement dues be also released thereafter without any unreasonable delay.

9. The writ petition is therefore allowed in the aforesaid terms.