(2010) 03 JH CK 0041

In the Jharkhand High Court

Kishori Mohan Sinha APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Citation : (2010) 03 JH CK 0041

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The petitioner in this writ application, has prayed for quashing the order as contained in letter No. 7118 dated 31.12.2003 (Annexure-7), issued by the Deputy Secretary, Personnel and Administrative Reforms, Rajbhasa Department, Government of Jharkhand, Ranchi whereby a direction was issued to pay the petitioner?s salary equal to his last basic pay minus pension and the amount which was paid to him in excess of the last basic pay, has been directed to be recovered/adjusted against his future pension.

The petitioner has made a further prayer to direct the respondents to forthwith release the arrears of salary with effect from October, 2003 to 14th May 2004, on the basis of the terms and conditions written in the letter of his appointment and on the basis of the Government Circular dated 14.11.1969.

3. Facts of the petitioner?s case in brief is as follows: The petitioner was employed as Secretary to the Secretary in the joint cadre of Personal Assistants under the State of Jharkhand and he retired from service in September 2001.

4. Pursuant to the decision taken by the State Government for appointment of two Personal Assistants on contractual basis in the State Election Department and in response to the corresponding advertisement, the petitioner had submitted his candidature and upon his selection, he was appointed as Personal

Assistant in the State Election Department on contractual basis for a period of two years. Letter of appointment issued to the petitioner declared that the pay of the petitioner would be the amount of the last pay drawn by him at the time of his retirement from Government service minus pension. The letter of appointment (Annexure-3) which was issued under the signature of the Officer on Special Duty, State Election Commission dated 1.12.2001 contains the terms and conditions of appointment declaring therein that appointment shall be for a period of two years on contractual basis and the incumbent would be paid salary equal to his last pay which he had drawn at the time of his retirement in Government service minus pension. Furthermore, he will also be paid all other allowances as payable to the Government servants.

By a subsequent corrigendum dated 5.2.2002 (Annexure-4) issued by the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand, it was notified that due to typing error, the period of two years of contractual appointment was wrongly mentioned instead of one year and the period of appointment shall be treated as one year and not two years. However, by a subsequent letter, the petitioner''s engagement was extended from one year to two years and was to continue till 11.12.2003. A communication to this effect was issued to the petitioner vide letter dated 10.12.2002 (Annexure-5) and the same was confirmed by the Department of Personal, Administrative Reforms and Rajbhasa, Government of Jharkhand. On the basis of the letter of his appointment and the terms and conditions laid down therein, the petitioner used to receive his pay equal to his last paid salary which he had drawn at the time of his retirement from Government service, together with other allowances. His services were continued to be taken not only till the end of the two years of contractual period, but beyond that period also.

5. In the letter of confirmation of the petitioner''s contractual period of engagement issued by the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand dated 31.12.2003 (Annexure-7), it was clarified that against the services rendered by him, the petitioner shall receive honorarium to the extent of the last basic pay drawn by him minus pension and he shall not be paid any other allowances which are paid to Government Servants. Pursuant to the aforesaid subsequent letter issued by the Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, the impugned order was issued not only for curtailing his pay which used to be paid to him, but also directing for recovery of the purported excess amounts drawn by him. It also appears that even after expiry of the contractual extended period of engagement, the petitioner''s services used to be taken by the concerned department, but his salary from October 2003 till the date of his resignation on 14.5.2004, was not paid to him.

6. The petitioner''s grievance is that since after his superannuation from Government service in September 2001, he was given ''reemployment'' under the State Election Department for a period of two years and since under the

original terms of his engagement, he was assured to be paid the amount of the last pay drawn by him minus pension and he would also be paid all other allowances payable to Government servants, an abrupt and unilateral change in the service conditions reducing the pay of the petitioner and refusing to pay the allowances, is totally arbitrary, illegal and contrary to the provisions of the Bihar (Jharkhand) Pension Rules.

7. Denying and disputing the claim of the petitioner, the stand taken by the respondents is as follows:

i. The appointment granted to the petitioner in the State Election Department, was on contractual basis and not by way of his ''reemployment''.

ii. As per the terms and conditions made applicable by the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand, such persons whose services were engaged on contractual basis, were to be given honorarium to the extent of the last pay drawn by the Government employee before his retirement minus pension.

iii. The term ''last pay drawn'' as indicated in the terms and conditions of appointment, was limited to the amount of last basic pay and did not include the allowances payable to the Government employees.

iv. The letter of appointment issued to the petitioner contains certain conditions which the officer on special duty in the State Election Department, had included on his own without prior consultation with the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand and it is not binding upon the State Government.

8. Upon hearing the counsel for the parties, the main controversy appears to be, whether the engagement of the petitioner in the State Election Department after his retirement from Government service, is deemed a ''reemployment'' as per the provisions of the Jharkhand Pension Rules or, whether such engagement is deemed to be a temporary engagement on contract basis and the petitioner so engaged, is entitled only to the amount of basic pay which he had drawn at the time of his retirement in the Government service?

9. In this context, it would be necessary to refer to the circumstances in which the petitioner came to be engaged by the State Government in the State Election Department.

As per the explanation offered by the respondents in their counter affidavit, after constitution of the newly created State of Jharkhand, several posts were created in the State Election Commission. The matter was referred to the Personnel, Administrative Reforsm and Rajbhasa Department of the State Government for posting of staff in the State Election Commission. A decision was taken at the Government level for appointment of Personnel other than ADM, on contractual basis for a period of one year in compliance with the government''s order and the corresponding letter dated 19.10.2001. It was indicated in the Government decision in this regard that an advertisement should be issued inviting applications for filling up two posts of Personal Assistants and that the engagement on the said two posts, shall be on contractual basis for a period of two years and if such appointed persons are retired Government servants, they will be paid the amount of last pay drawn by them minus pension. Such terms relating to the remuneration payable to the employee, appears to be in consonance with the Government Circular contained in Memo No. 13866 dated 14.11.1969 which lays down guidelines for fixing of pay and pension on reemployment and explaining that the term ''last pay'' will be deemed to be inclusive of special pay, if any, drawn by the employee before retirement from government service. This appears to be the basis on which the Appointing Officer i.e. the OSD of the State Election Commission had issued the letter of appointment to the petitioner affirming therein that besides the last basic pay, the petitioner would also be entitled to other allowances as payable to the Government employees.

10. The other aspect which is equally significant is that admittedly, the petitioner''s engagement was on contractual basis for a temporary period. Such engagement was on the condition that he would be paid honorarium to the extent of the last pay drawn by him at the time of his retirement from Government service minus pension. The nature of engagement of Government servant on contractual basis for a temporary period on payment of honorarium, has been permitted by the Government decision as indicated in the Government letter dated 19.10.2001 (Annexure-1).

Furthermore, it also appears from the Government Notification (Annexure-1) issued by the Department of Personnel, Administrative Reforms and Rajbhasa that the appointment on the post of Personal Assistant on contractual basis was made by way of advertisement inviting applications from the aspiring candidates and it was not confined only to the retired Government servants. Since the retired Government servant was also eligible to apply, a guideline was given in the Government letter as to what should be the amount of remuneration payable to the retired Government servants/retired pensioners. Thus, the engagement of the petitioner as a Personal Assistant in the State Election Commission, cannot be deemed as his reemployment and therefore, he cannot claim any benefit of reemployment as envisaged in Rules 161 and 162 of the Jharkhand Pension Rules. The petitioner therefore cannot take the advantage of the definition of ''last pay'' as given in the Government Circular dated 14.11.1969 issued under the provisions of Rule 161 of the Bihar (Jharkhand) Pension Rules which are applicable to the retired pensioners on their reemployment.

11. However, the main aspect which cannot be ignored, is that from the initial date of his appointment, the petitioner was given to understand that his salary would be the last basic pay together with allowances which he had drawn at the time of his retirement as Government employee, minus pension. Such terms and conditions of his engagement were acted upon by the appointing authority and

the petitioner was allowed to draw his salary in terms of the terms and conditions laid down in the letter of his appointment. It further appears that even though, a copy of the letter of appointment issued by the State Election Department, was forwarded to the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, but no objection was taken during the entire two years period of the petitioner''s engagement by the Department of Personnel, Administrative Reforms and Rajbhasha regarding the petitioner''s eligibility for receiving the amount of allowances which he used to draw along with his basic pay on the date of his retirement from Government service. An abrupt change was sought to be made by the impugned letter issued by the Department of Personnel, Administrative Reforms and Rajbhasha together with an order of recovery of the purported excess amount from the petitioner. The withdrawal of the specific benefits availed by the petitioner abruptly and that too, without any prior notice to the petitioner, is apparently in violation of the principles of natural justice. The purported excess amount was paid to the petitioner not on account of any fraud or misrepresentation practiced by him, but on the basis of the clear understanding given to him by his appointing authority.

Considering the above features, the portion of the impugned order whereby a direction was given to recover the purported excess amount from the pension/ future salary of the petitioner, cannot therefore be sustained in law and as such, the same is hereby quashed.

As regards the petitioner''s claim for arrears of salary for the period during which his services were taken beyond the contractual period, the same cannot be denied to the petitioner since it would be deemed that till the date of his voluntary resignation, the period of contractual engagement was extended.

12. In the light of the above facts and circumstances, this writ application is allowed. The concerned authorities of the respondents shall not recover any amount from the petitioner''s salary/pension pursuant to the direction contained in the impugned letter. The concerned authorities of the respondents shall also pay to the petitioner the amount of arrears of salary legally payable to the petitioner for the period from from October 2003 to 14th May 2004.