
(2006) 08 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2061 of 2004

Kshitish Chandra Mandal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2007) 1 BLJR 164 : (2007) 1 JCR 158

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : R.S. Mazumdar and Afaq Ahmad, for the Appellant; R.N. Sahay, Senior Standing Counsel II, S. Piprawall, Suresh Kumar, JC to G.A. (Bihar), for the Respondent

Judgement

R.K. Merathia, J.—In this writ petition, petitioner had prayed for several reliefs but Mr. Mazumdar, learned Counsel appearing for the petitioner, submitted that the main dispute is with regard to the fixing of the admissible date of joining of the petitioner as 17.7.1973.

2. According to the petitioner, though he was appointed on the non teaching post of Lab Assistant on 4.8.1959, but as he had requisite qualification, by Notification dated 4/8.12.1969 (Annexure-1), along with others, he was promoted by Bhagalpur University with concurrence of Bihar Public Service Commission (BPSC for short) to the teaching post of Demonstrator w.e.f. 1.3.1966. He acquired masters degree on 1.4.1971. By a memo dated 3.8.1972 (Annexure-2) he was sent on lien as lecturer to Godda College for two years by granting him extraordinary leave without pay. He joined on the said post on 4.8.1972. While working, as lecturer on temporary basis, he was absorbed permanently on 17.7.1973 as lecturer by the Governing Body of Godda College, Godda with concurrence of Bihar State University Service Commission. Thereafter, he was promoted as Reader and ultimately he retired on 31.1.1996.

3. It was submitted on behalf of the petitioner that suddenly in 2002, his pension has been reduced treating his admissible dale of joining as 17.7.1973. The

statement at page 28 was referred.

4. The stand of the University and State of Jharkhand is as follows. Promotion from a non teaching post of Lab Assistant to a teaching of Demonstrator was not permissible. Therefore, petitioner could be appointed afresh as Demonstrator. He was temporarily posted as Lecturer on lien on 4.8.1972, where he was confirmed on 17.7.1973. As he did not join back his services, after expiry of the period of lien, his appointment as Lecturer was taken as fresh appointment. Accordingly he was promoted as Reader also on 1.2.1985. Only two promotions are permissible during the service period. If petitioner claims that his service should be counted from 1969 when he joined as Lab Assistant, his promotion as Reader will become illegal as he already got two promotions as Demonstrator and then Lecturer, Thus, either his promotion as Demonstrator is illegal or as Reader is illegal.

5. State of Bihar was the appropriate Government at the relevant time, but it has said nothing on merits. It has only denied and disputed the liability to pay after bifurcation of State.

6. It is difficult to accept the aforesaid stand of the University and State of Jharkhand. It has not been disputed that petitioner was appointed as Lab Assistant on 4.8.1959; he was made Demonstrator w.e.f. 13.1966; he was sent on lien as Lecturer where he joined on the next day on 4.8.1972 and there he was confirmed on 17.7.1973; he was made Reader and then he retired on 31.1.1996. The date of petitioner's joining the service as Lab Assistant cannot be ignored on the ground that he could not be promoted as Demonstrator, though even as per the University and the State he could be appointed afresh as Demonstrator. The service period as Lab Assistant and Demonstrator, cannot be ignored on the ground that he did not join back, after expiry of period of lien, as, both the colleges were under one University. Thus, petitioner's service is to be counted from 4.8.1959.

7. Accordingly, the University is directed to calculate and pay the legally payable amount to the petitioner as per this order within two months from the date of receipt of a copy of this order. The calculation of such amount will also be sent to him.

8. Admittedly, petitioner was getting pension upto 2002 from the University. In view of the judgment reported in 2002 (2) JCR 554 (Bharti Prasad Thakur v. Sidhu Kanhu University) State of Jharkhand will provide such fund, if necessary and the State of Bihar and Jharkhand may determine/ adjust such liability between themselves.

9. With these observations and directions, this petition is disposed of. However, there will be no order as to costs.