(2011) 07 JH CK 0054

In the Jharkhand High Court

Case No : Writ Petition (S) No. 802 of 2011

Lalmani Ekka APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Bihar Pension Rules, 1950 — Rule 58, 59

Citation : (2011) 4 JCR 312

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—Heard learned counsel appearing for the petitioner, A.G. and learned counsel appearing for the State.

2. Learned counsel appearing for the petitioner submits that the petitioner was initially appointed on the post of ''Clerk'' in the Office of District Superintendent of Education, Hazaribagh on 20.08.1976. While he was in service, he applied for appointment on the post of Assistant Teacher, a cadre post under Subordinate Education Service. On being selected for being appointed on the said post, an appointment letter was issued on 09.08.1983. On such appointment, the petitioner was relieved from the Office of the District Superintendent of Education, Hazaribagh on 31.08.1983. Immediately on the next date, the petitioner gave joining as ''Assistant Teacher'' in Govt. High School, Chaibasa. After rendering service to the full satisfaction of the authority, the petitioner got retired on 30.09.2009, but since then the petitioner has not been paid his post retiral dues perhaps for the reason that authorities were in doldrum as to whether the period of service rendered as ''Clerk'' in the Office of District Superintendent of Education, Hazaribagh from 1976 to 31.08.1983 would be considered or not as pensionable period. The petitioner time without number, represented before the authority that the period, in view of the Circular issued by the Finance Department, must be added for the purpose of pension, but ultimately, the Director, Secondary Education, Jharkhand Ranchi vide its letter

No. 4081 dated 01.09.2010 (Annexure-9) decided that since the petitioner had been appointed in the Bihar Subordinate Education Service directly, the period of the earlier service would not be counted for the purpose of pension, which order has been challenged to be bad in this writ application.

3. Learned counsel by referring to Rules 58 and 59 and the Notification No. 12928-F dated 4.9.1962, submits that the period of service rendered in other Government department must be considered as pensionable period which requires to be added to the period of service rendered in Bihar Subordinate Education Service. Keeping in view the said provision, a notification has been issued by the Finance Department as contained in Letter No. 1399 dated 19.3.1990, which is being invariably adhered to by the authority of the State in this type of the cases, but in case of the petitioner, neither the provision of the pension Rule nor the said Notification, as mentioned above, were taken into consideration and hence, the order as contained in letter No. 4081 dated 1.9.2010 (Annexure-9) is fit to be set aside.

4. There does not appear to be any dispute that the petitioner rendered services, before being appointed as Assistant Teacher in Govt. High School, Chaibasa, as Clerk in the Office of the District Superintendent of Education, Hazaribagh from 28.8.1976 to 31.8.1983. On being appointed in the Bihar Subordinate Education Service, he rendered his services from 1.9.1983 until he got retired on 30.9.2009, but the Director, Secondary Education, Jharkhand, Ranchi vide its order as contained in letter No. 4081 dated 1.9.2010 declared that the period of earlier service would not be counted for the purpose of pension, as he had been appointed directly on the post of Assistant Teacher, which decision is never in consonance with certain rule of the Bihar Pension Rules, 1950 particularly Rules 58 and 59.

Rule 58 of the Bihar Pension Rules, 1950 reads as follows:--

The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:--

First--The service must be under Government.

Second--The employment must be substantive and permanent.

Third--The service must be paid by Government.

Further Rule 59 of the Bihar Pension Rules, 1950 reads as follows:

The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled-

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to

impose in each case, direct that service rendered by a Government servant shall count for pension.

5. From the aforesaid provisions, particularly from Rule 58, it does appear that one would be entitled to pension provided he had rendered services against substantive post of the Government and was being paid salary by the Government. Nobody''s case is that the petitioner was not holding the substantive post of Clerk in the Government.

6. Subsequently, the Government vide Notification No. 12928-F dated 4.9.1962 took a decision that temporary service or officiating service under the State Government when followed by permanency whether in the same or any other post should count in full for pension except in respect of-(i) period of temporary service in non-pensionable establishment, and (ii) period of service paid from contingencies.

7. Thus even in a case where one worked on temporary post or in officiating capacity under the State Government and subsequently worked on another post (permanent), the period of temporary posting would be pensionable provided the establishment where one worked or temporary post was pensionable establishment and drew salary from Government revenue. Keeping in view this aspect of the matter, Finance Department had issued a Notification in the year 1990 which takes care of this kind of situation stipulating therein that where an employee is in the service of the State Government or in the Central Government or he worked in one department of the Government or in other, if he switches over the department, he would be entitled to have the period of service earlier rendered counted for the purpose of pension with the service rendered thereafter and the circular is being invariably followed by the respondents.

8. Under this situation, the order, as contained in letter No. 4081 dated 1.9.2010 (Annexure-9), certainly appears to be bad and accordingly, it is set aside.

9. In the result, the respondent is directed to do needful in the matter of fixation of pension, taking into account entire length of service rendered while he was posted as Clerk w.e.f. 20.8.1976 to 31.8.1983. The respondent is further directed to make payment of the post retiral dues within a period of three months from the date of receipt/production of a copy of this order. Accordingly, this writ application is disposed of.