
(2019) 07 JH CK 0141

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2481 Of 2016

Mahendra Prasad Sharma

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Citation : (2019) 07 JH CK 0141

Hon'ble Judges : Dr. S.N.Pathak, J

Bench : Single Bench

Advocate : A.K. Das, Aditya Kumar Jha, Shubham Mishra

Final Decision : Dismissed

Judgement

The petitioner has approached this Court for a direction upon the respondents to pay the benefits of first Upgradation of Scale under under 1st and 2nd Assured Career Progression Scheme along with other dues/arrears as further clarified by the State Government vide Resolution No.1779 dated 21.05.2014.

The case of the petitioner lies in a narrow compass. The petitioner was appointed as Panchayet Sevak in the State Government on 19.01.1968 and was posted at Namkum Block where he served till 31.03.1984. Thereafter, he was transferred to Bero Block, where he continued serving till 30.08.1993 and further, he was posted at different places. Lastly, he joined Arki Block from where he retired from services w.e.f. 30.11.2007. It is specific case of the petitioner that in the entire service career i.e. almost 40 years, no promotion was granted to the petitioner, but in view of Scheme floated by the State Government on the basis of recommendation of 6th Pay Revision Commission, he is entitled to 1st Upgradation of Scale on completion of 12 years of services and thereafter, 2nd Upgradation of Scale on completion of 24 years of serviced and as such, he filed representation before the respondents, claiming therein the financial benefits in terms of upgradation of the pay scale. It is specific case of the petitioner that though he is entitled for the benefit of first upgradation of scale w.e.f.

09.08.1999 and 2nd Upgradation of scale w.e.f. 01.08.2004, the respondents have never extended the said benefits to the petitioner ever after several representations. Hence, the petitioner has been constrained to knock the door of this Court for redressal of his grievances.

Mr. A.K. Das, learned counsel assisted by Mr. Aditya Kumar Jha, learned counsel appearing on behalf of the petitioner submits that petitioner has been denied his legal benefits by the respondents for which he is entitled in accordance with law.

Learned counsel further submits that ACP benefits itself was floated in the year, 2014 and as such, Resolution of the Finance Department dated 21.05.2014 is fully applicable in the case of the petitioner and a direction be given to the respondents to consider the same for granting of financial upgradation of scale of the petitioner. Learned counsel for the petitioner further submits that the respondents have illegally and arbitrarily made out a case that there has been break in service, whereas, from the service records of the petitioner, it appears that there is no break in service as earned leave has to be granted to the petitioner on full pay.

On the other hand, Mr. Shubham Mishra, learned counsel for the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that the petitioner is not entitled for the benefits of financial upgradation of scale and drawing the attention of the counter-affidavit, learned counsel further submits that some of the period of earned leave has been granted with full pay while some of period has not been considered for granting full pay as he had willfully remained absent from duty without any information. Learned counsel further submits that even assuming that there was no break in service, but the petitioner has approached this Court after a long delay as the petitioner retired in the year, 2007 itself and has knocked the door of this Court after 9 long years i.e. in year, 2016 and on the ground of delay and laches on the part of the petitioner, this writ petition is fit to be dismissed.

Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that no interference is warranted in the instant writ petition on the following grounds :

1. The arguments of the learned counsel appearing on behalf of the petitioner that he is covered with the Resolution dated 21.05.2014 of the Finance Department even if the petitioner has retired from the service in the year, 2007 and benefits has accrued to him as the Resolution of 2014 of the Finance Department shows that ACP benefit was floated in the year, 2014.
2. The petitioner has approached this Court after 9 long years and no explanation has been given as to why the petitioner has approached this Court after 9 long years of retirement. Admittedly, an employee is entitled for financial upgradation of scale as he has not been granted any regular promotion in lifetime of his service career but the financial upgradation cannot be extended dehors the rules. The learned counsel for the petitioner has failed to show any Rule, which makes

him entitled for financial upgradation as he fulfils the requisite qualification for getting the same even after delay of 9 long years.

3. The Hon'ble Apex Court in case of Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, reported in (2014) 4 SCC 108 had clearly held that even delay of four years is fatal to the petitioner. Doctrine of proportionality is not attracted in the instant case. The doctrine of delay and laches should not be lightly brushed aside. Remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons- who compete with 'Kumbhakarana' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ Court should have thrown the petitioner overboard at the very threshold.

4. Financial upgradation is not granted where there is break in service.

As a sequel to the aforesaid observations, rules, guidelines and judicial pronouncement, I do not find any merit in the instant case. Resultantly, writ petition stands dismissed.

Pending I.A., if any, also stands disposed of.