
(2013) 12 JH CK 0052
In the Jharkhand High Court
Case No : L.P.A. No. 116 of 2013

Mukhdeo Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 1 JLJR 370

Hon'ble Judges : R. Banumathi, C.J.; Amtiav Kumar Gupta, J

Bench : Division Bench

Advocate : Ram Subhag Singh, for the Appellant; M.S. Akhter, S.C. (Mines), A.K. Mehta, JC to S.C. (Mines) for State and Mrs. S. Srivastava, for the Respondent No. 4, for the Respondent

Judgement

1. The short point, whether the service rendered by the appellant Between the period 24.6.1966 to 31.7.1971 can be counted for pension-able service by relating the break in service in terms of Government circular contained in memo No. 581 dated 15.1.1982, falls for consideration in this intra court appeal arisen from the order passed by the learned Single Judge in W.P.(S) No. 2041 of 2008 dated 15th March, 2013, by which the learned Single Judge dismissed the writ petition. The brief facts of the case are that the appellant was initially appointed in Government aided school and worked there in between 24.8.1966 and 31.7.1971. Due to eye problem, the appellant could not continue with the employment and he relinquished the post and for about 10 years he did not attend his duties. Later on, the appellant was appointed on compassionate ground on 26.4.1982 and attained the age of superannuation on 28.2.2005. After attaining the age of superannuation, the appellant had made a representation before the authority concerned to take into count the service rendered by him between the period from 24.8.1966 to 31.7.1971 by relaxing the break in service in terms of Government Circular contained in memo No. 581 dated 15.1.1982.

2. The appellant also filed the writ petition being W.P.(S) No. 2041 of 2008,

seeking relief of counting the service rendered by him between the period 24.8.1966 to 31.7.1971 as pensionable service by relaxing the break in service in terms of Government Circular contained in Memo No. 581 dated 15.1.1982.

3. The learned Single Judge dismissed the writ petition holding that the appellant relinquished the post and that he was appointed on compassionate ground in 1982. The said appointment was fresh appointment given to him and, therefore the appellant cannot claim any benefit under the Circular dated 15.1.1982.

4. Learned counsel for the appellant submitted that the appellant had rendered services between 24.8.1966 to 31.7.1971 in the Government aided schools and only because of the eye problem, the appellant could not report for duty and, therefore appellant ought to have been given relaxation, in view of Circular dated 15.1.1982 issued in terms of Rule 105 of the Bihar Service Code for granting relaxation of break in service.

5. The learned Single Judge referred to the Circular dated 15.1.1982, which is also enclosed as Annexure-5 (page-19) of Letters Patent Appeal. As per the said Circular, the benefits of the said Circular would not be applicable in a case where (i) the employee has relinquished the post, (ii) the employee has been removed from service by the Government and, (iii) there was a break due to participation in strike by the employee. As rightly pointed out by the learned Single Judge, the appellant having relinquished the post due to eye problem, the appointment issued to him in the year 1982 was a fresh appointment on compassionate ground.

6. The learned counsel for the appellant further submitted that the learned Single Judge did not consider para-7 of the said Circular in which there is a specific provision of exemption regarding the middle school teachers in case of relinquishment and breaking up period would be counted as continuity for pensionary benefits

7. The appellant was appointed in the year 1982 on compassionate ground and the said appointment was a fresh appointment given to him and, therefore appellant cannot claim the benefit under the Circular dated 15.1.1982. The long period of ten years cannot be said to be a break in service because the appellant must have relinquished the post because of the eye problem and, therefore the appellant cannot claim the benefit of para 7 of the said Circular dated 15.1.1982. It is also pertinent to note that the appellant while filling the Pension Form has also not mentioned the said fact of rendering of his service between 24.8.1966 to 31.7.1971. In that view of the matter, we do not find any infirmity in the order of the learned Single Judge. Consequently, the Letters Patent Appeal is dismissed.