

(2011) 11 JH CK 0056
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1553 of 2009

Nitai Chandra Dey

APPELLANT

Vs

Chairman, Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Citation : (2011) 11 JH CK 0056

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel

1. This writ petition has been preferred mainly for the reason that unnecessarily and wrongly petitioner was compelled to retire on 1st January, 2001 and earlier the petitioner has to file a writ petition bearing C.W.J.C. No. 3568 of 1999 for correction of his date of birth. The said writ petition was allowed vide order dated 19th June, 2001 and by this judgment, the year of birth of the petitioner was held as 1940 instead of 1946, which was wrongly recorded by the respondents and therefore, taking into account the correct date of birth, date of retirement should be 31st December, 2006. It is further submitted by the counsel for the petitioner that despite the aforesaid judgment in C.W.J.C. No. 3568 of 1999, delivered by this Court on 19th June, 2001, the petitioner was not allowed to resume his duties and ultimately, an application, dated 29th June, 2001, was preferred before the respondent authorities praying to join, but it was rejected. A Letters Patent Appeal, bearing L.P.A. No. 306 of 2002, preferred by the respondents, was also dismissed by order dated 9th September, 2002. After dismissal of the L.P.A., petitioner was allowed to join on 24th October, 2002. A contempt application, bearing Cont.(Civil) Case No. 232 of 2002, preferred by the petitioner, was also allowed on 18th April, 2003. and therefore, the petitioner is entitled to the salary from 1st January, 2001 to 23rd October, 2002. It is further submitted by the counsel for the petitioner that it is for the salary for this

period, i.e. the period from 1st January, 2001 to 23rd October, 2002, the present petition has been preferred.

2. Counsel appearing for the respondent submitted that they have already paid the petitioner the salary for the period running from 29th June, 2001 to 23rd October, 2002 during the pendency of the present writ petition and they are not liable to make the payment of salary for the period from 1st January, 2001 to 28th June, 2001 mainly on the ground of "No work no pay" and moreover, petitioner filed an application on 29th June, 2001 for joining in the light of the decision by which C.W.J.C. No. 3568 of 1999 was allowed on 19th June, 2001.

3. Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that

(I) The date of birth of the petitioner is 30th December, 1946, which was wrongly recorded by the respondents in his service record as 30th December, 1940 and therefore, the petitioner was compelled to wrongly retire on 1st January, 2001 and earlier the petitioner preferred a writ petition bearing C.W.J.C. No. 3568 of 1999 for correction of his date of birth, wherein it was alleged that his correct date of birth is 30th December, 1946 and not 30th December, 1940.

(II) It further appears from the facts of the case that the contention raised by the petitioner was accepted by this Court. The writ petition preferred by this petitioner was allowed by the order dated 19th June, 2001. The said judgment is at annexure 1 to the memo of the present petition. Thus, petitioner ought to have retired on 31st December, 2006 instead of 1st January, 2001. The petitioner had approached the respondents for resuming his duties but he was not allowed and ultimately he gave an application on 29th June, 2001 for joining in the light of the judgment delivered by this Court in the writ petition.

(III) It further appears from the facts of the case that despite the aforesaid application the petitioner was not allowed to resume his duties on the ground that a Letters Patent Appeal, bearing L.P.A.No. 306 of 2002 was pending. This L.P.A. was also dismissed by this Court vide order dated 9th September, 2002. It appears that thereafter, ultimately on 24th October, 2002, the petitioner was permitted to resume his duties. Contempt application was also preferred by the petitioner, which was allowed on 18th April, 2003. Thus, it appears that the judgment delivered by the learned Single Judge in C.W.J.C. No. 3568 of 1999, in which the contention raised by the petitioner that his correct date of birth is 30th December, 1946, was accepted by the Single Judge and therefore, his correct date of retirement should be 1st January, 2006.

(IV) Thus, the petitioner was wrongly compelled to retire on 1st January, 2001 without any fault on the part of the petitioner. This contention was also accepted in the aforesaid Letters Patent Appeal. Thus, for no justifiable reason and only because of the fault on the part of the respondents, the petitioner was compelled to retire on 1st January, 2001 and ultimately, on 24th October, 2002, he was allowed to resume his duties. Thus, the petitioner is not at fault and whatever

fault is there, that is on the part of the respondents. Looking to the facts and circumstances of the case and argument canvassed by the parties, it, however, appears that wisdom has prevailed upon the respondents to make payment of the salary for the period from 29th June, 2001 to 23rd October, 2002. For this period also, salary of the petitioner was released at a much belated stage.

(V) It appears from the facts and circumstances of the case that initially the petitioner was wrongly compelled to retire on 1st January, 2001 and even after petitioner succeeded in the writ petition he was not allowed to resume his duties. Thereafter, petitioner has to file a contempt application. The letters patent appeal preferred by the respondent was also dismissed. Even in the present writ petition also, despite the order passed by this Court, no counter affidavit has been filed and a cost of Rs. 500/- was imposed, vide order dated 30th March, 2010. Ultimately, in the counter affidavit, it has been stated that the respondents are considering for payment of salary for the period from 29th June, 2001 to 23rd October, 2002 and when this court passed an order on 10th October, 2001, ultimately they deposited the arrears of salary in the Bank account of the petitioner. Now, there remains the question of payment of salary for the period from 1st January, 2001 to 28th of June, 2001.

4. Looking to the facts and reasons stated herein above, it appears that the fault lies with the respondents in compelling the petitioner to retire on 1st January, 2001. The petitioner has succeeded in C.W.J.C. No. 3568 of 1999, which was allowed vide order dated 19th June, 2001. There was no fault lying on the part of the petitioner and from the very beginning, it is the decision of the respondents which compelled him to retire on 1st January, 2001. Thus, it is the respondents, who have not allowed the petitioner to continue in the services.

5. I, therefore, direct the respondents to pay the petitioner the salary and such other benefits connected with the salary for the period from 1st January, 2001 to 28th June, 2001, with simple interest at the rate of 5% per annum till the payment is made.

6. The petition is allowed and disposed of with the aforesaid observations.