
(2014) 09 JH CK 0044
In the Jharkhand High Court
Case No : WP(S) No. 4800 of 2014

Pradip Kumar Choubey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2014) 4 JLJR 445

Hon'ble Judges : Dhirubhai Naranbhai Patel, Acting C.J.; P.P. Bhatt, J

Bench : Division Bench

Advocate : Anil Kumar, Advocate for the Appellant

Judgement

Dhirubhai Naranbhai Patel, Actg. C.J.

1. This writ petition has been preferred by the Judicial Officer of the State of Jharkhand mainly for getting salary, leave encashment, travelling allowance bills etc. for the period running from July, 2013 till today. It is submitted by the learned counsel for the petitioner that the petitioner has been selected as an Additional Sessions Judge, Fast Track Court in the year 2002. A writ petition was preferred in the year 2009 challenging the appointment of Fast Track Court Judges appointed in the year 2002. The said writ petition was decided by a Division Bench of this Court on 7th March, 2011 and the appointments of those Fast Track Court Judges were quashed, including the present petitioner. The order of the Division Bench of this Court was carried up to the Hon'ble Supreme Court by way of Special Leave Petition, which was allowed. However, while exercising power under Article 142 of the Constitution of India, it is stated by the Hon'ble Supreme Court that those Fast Track Court Judges, whose services have been terminated vide order dated 7th March, 2011, shall appear in the written examination and also in the interview and after their selection process, they shall be appointed. This petitioner and similarly situated other Fast Track Court Judges have undergone the selection procedure and having been appointed on 10th July, 2013, their services have been again started. This petitioner was not given salary

since the month of July 2013, it is stated by the State Government that as they are fresh appointees, they shall not be allowed to use their earlier G.P.F. Number nor their earlier services will be considered and, therefore, new scheme, namely, Permanent Retirement Account Number (PRAN) is being floated by the Government and under the said scheme 10% of the total emolument will be deposited to the new PRAN Number and equal amount will be deposited by the Government and the benefit of earlier service will not be given to the petitioner and similarly situated other Fast Track Court Judges.

2. It is submitted by the counsel for the petitioner that, in fact, this is not a new appointment at all, but, it is in continuation of the earlier services and, hence, earlier services ought to have been calculated for all practical purposes, especially for getting retirement benefits like gratuity, G.P.F. etc. and old G.P.F. Number ought to have been operated/revived by the State Government. It is further fairly submitted by the petitioner that due to Government's misunderstanding and misinterpretation of the order of the Hon'ble Supreme Court, from August 2013 till today, unless and until the new scheme (PRAN) is signed by the petitioner, no salary will be paid. Therefore, prayer has been made that let during pendency of this writ petition, after deducting 10% of the total emolument rest of the 90% of the emolument may be ordered to be paid to this petitioner. The pay slip issued by the Accountant General's office is at Annexure-1. The basic pay as well as whole calculation has been given which comes to Rs. 96,890/- and after deducting 10% of this amount, rest of the amount may be paid during pendency of this writ petition, otherwise, as per the old G.P.F. Number of this petitioner and other Fast Track Court Judges, only 6.25% minimum was liable to be deducted and there is no limit for maximum deduction. Thus, instead of 6.25%, this petitioner is ready for deduction of 10%, but, not under "PRAN Scheme", but, in old "G.P.F. Account Number" of this petitioner.

3. Having heard counsel for the petitioner and looking to the facts and circumstances of the case, it appears that this petitioner is an Additional Sessions Judge. He was appointed in the year 2002 by the competitive examination and interview held by this Court; he worked as a Fast Track Court Judge for number of years and ultimately his appointment along with other Fast Track Court Judges were challenged. The order was passed by the Division Bench of this Court vide order dated 7th March, 2011 quashing and setting aside the appointment of this petitioner and similarly situated other Fast Track Court Judges. The said order was challenged before the Hon'ble Supreme Court, which was allowed, but, in view of observation, given by Hon'ble Apex Court, this petitioner and other Fast Track Court Judges appeared in the written test and, thereafter, in the oral interview and they have been given appointment from July 2013.

4. Now, the question before this Court is whether this petitioner and other Fast Track Court Judges are appointed afresh or in continuity of their services and if it

is in continuity of their earlier services, their old G.P.F. Number will be revived instead of newly floated "PRAN" Scheme and if they are newly appointed Judges, then some of them may not be found qualified for getting pension etc. These larger issues will be decided at the time of final hearing of this writ petition but, at present they are not getting salary since July 2013. This petitioner is also not getting salary from July, 2013 till today. Other similarly situated Additional Sessions Judges are also not paid salary from July, 2013. He has also attended several seminars at Bhopal etc. upon direction of this Court and, hence, he is also entitled for travelling allowance, in accordance with law. This amount is also not paid because he has not signed "PRAN Scheme". It appears that applicability of "PRAN Scheme" and "continuation of their services" will be decided at the time of final hearing, but, as an ad interim relief we hereby direct the respondents to make payment of an amount of Rs. 85,000/- per month from August 2013 till today as a lump sum amount to the petitioner, which will be subject to the final outcome of this writ petition, without compelling this petitioner to sign for "PRAN" number. Meaning thereby, this petitioner will be paid Rs. 85,000/- x 14 = Rs. 11,90,000/- (Rupees eleven lakhs and ninety thousand). We therefore, direct the respondents to make payment of Rs. 11,90,000/- (Rupees eleven lakhs and ninety thousand) to this petitioner on or before 10th October. 2014. The Registrar General of this Court shall convey this order to the respondents initially by FAX and, thereafter by registered post with A/D. This amount will be adjusted towards final amount, which may be found legally payable to this petitioner. The payment of this amount will not be treated as acceptance of "PRAN Scheme" by the petitioner. The matter is adjourned to be listed on 13th October, 2014.