(2020) 10 JH CK 0099

In the Jharkhand High Court

Case No : W.P.(S) No. 347 of 2015

Rajendra Prasad Verma APPELLANT

Vs

State of Jharkhand And Ors RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2020) 10 JH CK 0099

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : P.P.N.Roy, Ray Rajat Nath, Aashish Kr

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties through V.C.

2. The instant writ application has been preferred by the petitioner for following reliefs;

(A) For issuance of an appropriate writ/writs, order/orders, direction/directions for quashing the order dated 7th October, 2014 passed by Chief Executive Officer, Ranchi Municipal Corporation Respondent No.2 whereby and whereunder the Chief Executive Officer passed an order that since there exist no sanction post of Black Smith in the Ranchi Municipal Corporation, the service of the petitioner cannot be absorbed i.e. at Annexure-9 of the writ petition;

(B) For direction may be issued to the respondents to give scale of Rs.950-1400 to this petitioner since the date when the petitioner had joined in Ranchi Municipal Corporation i.e. on 22.06.1995 instead of 2006 as the petitioner was getting scale of pay of Rs.950-1400 from his parent department when he was deputed to Ranchi Municipal Corporation on 22.06.1995 and such deputation of the petitioner was not in the ordinary sense of terms and it was more a case of rehabilitation than deputation as the petitioner's parent department ceased to exist for all intent and purpose, as subsequently respondents taking into consideration the repeated representation of the petitioner had given scale of Rs.950-1400 to the petitioner since November, 2006 i.e. scale of pay which he was getting in the parent department;

(C) For direction may be issued to the respondents to give revised scale of pay of 5th and 6th Revision of pay to the petitioner since the date when the pay was revised as the petitioner has been deprived of scale of pay of 5th and 6th pay Revision since the date when he was entitled to get it whereas the other employees of the corporation has been given scale of pay of 5th and 6th Pay Revision since the date when it was payable to them;

(d) For direction may be issued to the respondents that scale of 5th and 6th Pay Revision the balance amount which the petitioner is legally entitled to get since the date he was entitled to get that pay revision may be given to the petitioner after proper calculation of the amount;

(e) For direction may be issued to the respondents to pay retiral benefits to the petitioner such as Provident Fund, Gratuity, Leave Encashment, Pension etc. which he is legally entitled to get as the petitioner has superannuated from service from Ranchi Municipal Corporation on 31.12.2011 in the afternoon in view of the letter issued by Medical Officer, Ranchi Municipal Corporation dated 14th September, 2011 to this petitioner i.e. at Anneuxre-2 of the writ petition;

(f) To pass such other order/orders, direction/directions as Your Lordships may deem fit and proper;

3. The relevant facts of the case as narrated in the instant writ application is that the petitioner was earlier appointed and working as Operator Grade-II in High Tension Insulator Factory/Malleable Cast Iron Foundry. Thereafter, he was sent on deputation to Ranchi Nagar Nigam in the year 1995, in view of the fact that High Tension Insulator Factory/Malleable Cast Iron Foundry was closed down. Petitioner had worked continuously with Ranchi Nagar Nigam till 31.12.2011 and has retired from there on attaining the age of superannuation in the afternoon on 31.12.2011.

4. The case of the petitioner is that he has been denied regular salary and increment being paid to the regular employees of the Ranchi Nagar Nigam on the ground that since the petitioner was taken on deputation, therefore, he is not entitled for the regular pay scale and increment being paid to regular employees of the Corporation. The petitioner had applied for his absorption in the Ranchi Nagar Nigam, in view of the fact that the parent department has ceased to exist and the petitioner was working in the Corporation for a petty long period of 16 years.

The further case of the petitioner is that since the parent Department of the petitioner has ceased to exist and all employees including the petitioner were sent initially on deputation for saving them from starvation and since the petitioner had worked with the Corporation for long period of 16 years before his retirement, therefore, the petitioner's case for absorption ought to have been considered sympathetically.

5. Learned senior counsel for the petitioner submits that the petitioner had earlier moved before this court by filing a writ application being W.P.(S) No. 4015 of 2012 wherein this Court has allowed the writ application by observing as under:-

"In the peculiar facts and circumstances of the case, where parent Department has ceased to exist and employee sent on deputation under the Government policy, has worked for a long period of 16 years and was not ever released to join his parent Department and could not be released because of the fact that parent Department has ceased to exist, therefore, the petitioner was legally entitled for consideration for absorption in the Ranchi Nagar Nigam. Principle of salary of an employee on the basis of pay scale of parent Department can only be invoked when parent Department is still existing. However, if parent Department has already ceased to exist and to save the employee from starvation, employee was sent on deputation under the Government policy, this principle ought not to have been invoked.

Therefore, present petition is allowed. Impugned order is quashed and respondent no.2 is directed to take a decision afresh in accordance with law within 90 days from the date a certified copy of the order is placed before him."

Emphasis supplied

6. Learned senior counsel further submits that pursuant to the order passed by this Court in W.P.(S) No. 4015 of 2012 the petitioner filed a representation before the respondent No.2 requesting the authority to take decision in the light of order dated 27th August, 2012 passed in W.P.(S) No. 4015 of 2012. He contended in the said representation that since the petitioner was suffering from serious ailment after his retirement and as such, entire amount of retiral benefits be paid to the petitioner along with all consequential relief after considering the petitioner as absorbed. Learned senior counsel submits that when no order was passed by the respondent No.2, even a contempt application being Contempt Application No. 36 of 2013 was filed by the petitioner.

However, during pendency of the contempt application the decision was taken and the contempt application was dropped. Learned senior counsel further contended that the impugned order has been passed without taking into consideration the specific finding by this Court in W.P.(S) No. 4015 of 2012. He further submits that the petitioner is duly entitled for post retiral benefits as being paid to the other similarly situated person working in the Ranchi Municipal Corporation in the same scale. In order to buttress his argument, learned counsel referred to the judgment passed in the case of Pepsu Road Transport Corporation, Patiala vs. Mangal Singh & Others, as reported in (2011) 11 SCC, 702 wherein para 49 it has been held as under:

"49. To sum up, we state that the concept of pension has been considered by this Court time and again and in a catena of cases it has been observed that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied."

7. Learned counsel for the respondent-State has opposed the prayer of the petitioner and submits that the petitioner was working in Ranchi Municipal Corporation pursuant to the letter dated 03.06.1995 on deputation on purely temporally basic and superannuated on 31.12.2011. He further submits that the actual benefits of 5th Pay revision were given to the employees of the Ranchi Municipal Corporation from 01.05.2006 and 6th Pay revision from 01.05.2011. So far as petitioner is concerned, he is not entitled even for provident fund as no provident fund was deducted from the petitioner's salary. The petitioner has already been paid a sum of Rs.1, 68, 605/- vide cheque dated 10.12.2012 and nothing in this regard is further payable. Learned counsel further submits that with regard to absorption of the petitioner in Ranchi Municipal Corporation is concerned; the impugned order is self explanatory.

8. Having heard learned counsel for the parties and after going through the documents available on record, it appears that the petitioner was sent on deputation to Ranchi Nagar Nigam in the year, 1995 in view of the fact that High Tension Insulator Factory/Malleable Cast Iron Foundry was closed down. It further transpires that from the date of deputation the petitioner continuously worked with the respondent- Corporation till 31.12.2011 when he superannuated from his service. The petitioner was denied regular service and increment being paid to the regular employees of the Ranchi Nagar Nigam on the ground that the petitioner was taken on deputation and therefore, he was not entitled for the regular pay scale and increment being paid to the regular employees of the corporation.

After perusing the previous order passed by this Court in petitioner's own case in W.P.(S) No. 4015 of 2012, it appears that the Hon'ble Court has categorically held that where the parent Department has ceased to exist and an employee sent on deputation under the Government policy, has worked for a long period of 16 years and was not ever released to join his parent department and could not be released because of the fact that the parent department has ceased to exist, therefore, the petitioner was legally entitled for consideration for absorption in the Ranchi Nagar Nigam. This Court, however, with respect to salary clarified that principle of salary of an employee on the basis of pay scale of the parent Department cannot be invoked because the parent Department has already ceased to exist. As such, from perusal of the aforesaid order it is crystal clear that the petitioner was legally entitled for consideration for absorption in the Ranchi Nagar Nigam, however, the claim of the petitioner with regard to pay scale of the parent Department was not considered. Looking to the impugned order as annexed as Annexure-9 of the writ application, I am having no hesitation in holding that this impugned order is in teeth of the order passed by this Court in W.P.(S) No. 4015 of 2012. Needless to say that this order has not been challenged by the respondent-authority, wherein, this court has held that the petitioner was legally entitled for consideration for absorption in Ranchi Nagar Nigam.

The only ground which has been taken in the impugned order is that since there is no sanction post of Blacksmith in the Ranchi Municipal Corporation; the services of the petitioner cannot be absorbed. From perusal of the impugned order, it further transpires that it has been admitted by the respondents that the petitioner superannuated from service on 31.12.2011 after working for 16 long year on deputation from his parent Department-High Tension Insulator Factory/ Malleable Cast Iron Foundry. It has been further indicated in the impugned order that the State Government vide its resolution No. 1949 dated 21.05.2010 has abolished the post of Blacksmith in the Ranchi Municipal Corporation. As such, in this regard the opinion of the State Government was also sought for by Ranchi Municipal Corporation, but the State Government has conveyed through its letter dated 25.04.2014 that the Ranchi Municipal Corporation has itself to take decision in the matter.

At this stage, it is pertinent to mention here that the said resolution of the Government whereby the post of Blacksmith in Ranchi Municipal Corporation was abolished is dated 21.05.2010 and this ground was available with the respondent at the time of hearing of the previous writ application. As such, I am having no hesitation in holding that this ground has no legs to stand and the impugned order is non est in the eyes of law and has been passed against the spirit of the order dated 27.08.2012 passed in W.P.(S) No. 4015 of 2012.

From perusal of the counter-affidavit filed by the Ranchi Municipal Corporation, surprisingly, a statement has been made on affidavit that no provident fund was deducted from the petitioner's salary and as such the same was not payable to him. In this regard it is a settled principle of law that the liability of deducting the provident fund even from a temporary employee is on the employer and if the same has not been deducted, the employee is not at all responsible, as such the ground for non-payment of provident fund to the petitioner is also non-est in the eyes of law and the petitioner is entitled for the provident fund amount. As stated in the Pepsu Road Transport Corporation, Patiala (Supra), the Hon'ble Apex Court has categorically stated that the pension is not a charity or neither bounty nor it is a conditional payment solely dependent on the sweet will of the employer. At the cost of repetition this Court has already held that since the parent Department has ceased to exist, therefore, the petitioner was legally entitled for consideration for absorb in the Ranchi Nagar Nigam and the said order has not been challenged and been accepted by the Respondents. Now, the respondent cannot take a plea that the petitioner cannot be absorbed on the ground that no post of Blacksmith has been abolished.

9. Recently in the case of State of Punjab & others vs. Jagjit Singh & Ors. as reported in (2017) 1 SCC 148, the Hon'ble Apex Court has held that principle of "equal pay for equal work" and in paragraph no. 58 of its order has held as under;

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

10. In view of the aforesaid facts and circumstances of the case, I hold that the petitioner is deemed to be absorbed pursuant to the order of this Court and this Court only sent the same for formal order and as such, the petitioner is entitled for all retiral benefits including provident fund at the same rate and scale what the other employees of Ranchi Municipal Corporation are getting.

11. Consequently, the impugned order dated 7th October, 2014 passed by Chief Executive Officer, Ranchi Municipal Corporation Respondent No.2 whereby and whereunder the Chief Executive Officer passed an order that since there exist no sanction post of Black Smith in the Ranchi Municipal Corporation, the service of the petitioner cannot be absorbed (Annexure-9) is quashed and set aside and the respondent No.2 is directed to calculate the post retiral benefit of the petitioner calculating at par with the other employees retired at the pay scale what the petitioner was getting at the time of retirement including provident fund gratuity amount and other retiral benefits.

12. It is made clear that the entire exercise shall be completed within a period of four months from the receipt/production of copy of this order failing which the petitioner shall also be entitled for 7 % simple interest from the date of entitlement till the date of actual payment.

13. With the aforesaid direction the instant writ application stands disposed of.