
(2013) 07 JH CK 0064
In the Jharkhand High Court
Case No : WP (S) No. 6356 of 2005

Rajeshwar Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 3 JLJR 684

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sumeet Gadodia, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking a direction upon the respondents for payment of arrear of salary to the petitioner from October, 2001 till 17th May, 2005. The brief facts of the case are that the petitioner was appointed on the post of Junior Engineer by Public Works Department, Government of Bihar on 27.2.1973 and he submitted his joining on 3.8.1973. Vide order dated 24.1.2002 the petitioner was transferred and posted to Works Division, Baghmara in place of one Tirath Narayan Jha where he has submitted his joining on 25.1.2002. On 14.2.2002, the transfer of said Tirath Narayan Jha was cancelled and by order dated 11.5.2002 the services of the petitioner was placed in the office of Deputy Commissioner, Dhanbad where he discharged his duties till 13.12.2004. Thereafter, he was transferred to Works Division, Chas. The petitioner performed his duties between 13.12.2004 to 17.5.2005 at Works Division, Chas and he was again transferred to Works Division, Dhanbad on 17.5.2005. As the petitioner's salary between the period October, 2001 till 17.5.2005 was not paid, though he continued discharging the duties at different places where he was posted, he has moved this Court.

2. A counter affidavit has been filed admitting that the petitioner was transferred in place of Tirath Narayan Jha and the transfer of said Tirath Narayan Jha was

stayed and therefore, payment could not be made to the petitioner, as in the said office there was only one sanctioned post against which the said Tirath Narayan Jha was posted. Paragraph Nos. 12 to 15 of the counter affidavit dated 15.2.2011 filed on behalf of the respondent No. 4 are extracted below:--

12. That in reply to statement made in Para-14 of the writ petition it is stated and submitted that as the transfer of Tirath Narayan Jha was stayed, payment could not be made to the petitioner as the division cannot make payment to two persons against one sanctioned post.

13. That in reply to statement made in paras-15 to 18 of the writ petition it is stated and submitted that they require no comments.

14. That in reply to statement made in para-19 of the writ petition it is stated and submitted that it has already been dealt in para-5 of the counter-affidavit.

15. That in reply to statement made in paras-20 to 23 of the writ petition it is stated and submitted that the petitioner has claimed for payment of his salary from November, 2001. The petitioner was not able to take charge of any section from 2.2.2002 to 17.5.2005. The petitioner has applied for regularization of his service for the said period. The application of the petitioner has been forwarded to the Engineer-in-Chief, R.E.O., Jharkhand, Ranchi for his approval.

3. A supplementary counter affidavit dated 16.1.2012 has been filed by respondent No. 4 bringing on record an office order dated 5.1.2012 whereby the claim of the petitioner has been rejected on the ground that the period between 3.2.2002 and 19.8.2005 has been treated as unauthorised absence.

4. Heard counsel for both the parties and perused the documents on record.

5. A perusal of the documents on record, particularly office order dated 24.1.2002 whereby the petitioner as well as the said Tirath Narayan Jha were transferred, and office orders dated 11.5.2002 and 13.12.2004 and the statements made by the respondents in the counter affidavit, would disclose that though the petitioner was transferred by office order dated 24.1.2002 in place of Tirath Narayan Jha, the transfer order of said Tirath Narayan Jha was stayed and therefore, the petitioner could not take charge in place of said Tirath Narayan Jha. In Paragraph No. 15 of the counter affidavit, it has been admitted that the petitioner could not take charge of any section. The statements made by the petitioner in paragraph Nos. 10 to 14 giving details of his postings, have not been controverted by the respondents and these have been admitted by the respondents. By the office orders dated 11.5.2002 and 13.12.2004 the petitioner was transferred to different places and there is no material on record nor a plea has been taken by the respondents in the counter-affidavit that the petitioner did not join his post or remained absent during that period.

6. No reason whatsoever has been disclosed by the respondents for taking a decision in the case of the petitioner for a claim pertaining to the year 2002, in the year 2012. In the counter affidavit dated 15.2.2011 filed by respondent No.

4, also no plea has been taken by the respondents that the petitioner intentionally absented himself from performing the duties. Admittedly, no proceeding was initiated against the petitioner. It is also not the case of the respondents that a show-cause notice was issued to the petitioner for any unauthorised absence from duty. The decision taken by the authority to treat the period between 3.2.2002 and 19.8.2005 as unauthorised absence, is illegal. In view of the aforesaid, this writ petition is allowed. The respondents are directed to calculate and pay the salary of the petitioner between the period 2nd February, 2002 to 17th May, 2005.