

(2014) 01 JH CK 0068
In the Jharkhand High Court
Case No : W.P. (S) No. 2699 of 2013

Ram Lakhan Poddar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 2 AJR 527 : (2014) 2 JLJR 161

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rita Kumari, Advocate for the Appellant; Suresh Kumar, J.C. to G.P. III, Advocate for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order contained in memo. No. 361 (Law) dated 11.06.2012 (Annexure-4) passed by the respondent No. 1, whereby the petitioner's claim of arrears of salary from 16.5.2001 to 19.12.2007 and calculation and payment of pensionary benefits treating the said period in continuity has been rejected.

2. It has been stated that the petitioner was initially appointed as a Supervisor at Jamua, District Giridih in Adult Education. He was, thereafter, transferred from one place to another. In 1992 the Department of Adult and Non-Formal Education merged into a unified department and was brought under the Directorate of Adult and Non-Formal Education. Consequently, number of posts were abolished which affected several employees. The petitioner also became surplus due to abolition of the post. However, he was neither retrenched nor his service was terminated. Subsequently, in the light of the order passed in W.P.(S) No. 298/2002 a committee was constituted for absorption of the employees whose posts were abolished. On that basis, the respondent No. 2 took a resolution for adjusting services of the petitioner and others. The petitioner was absorbed on the post of Supply Inspector by letter No. 2156 dated 20.12.2007. The petitioner, thereafter, worked at several places and on attaining the age of

superannuation, retired on 31.07.2010. The petitioner, however, was not paid his salary for the period from 16th May, 2001 to 19th December, 2007. As a consequence, the petitioner's retiral benefits were calculated treating the said period as not in service. Though, the petitioner was entitled to get salary of the said period no payment was made for the said period from 16.05.2001 to 19.12.2007. That period of service was also not counted for calculating the retiral benefits.

3. It has been submitted that since the petitioner was neither retrenched nor his service was terminated, he is entitled to get arrear of salary and calculation of the said period in continuity for fixing his pensionary benefits without any break in the service. The petitioner filed representation praying for payment of arrear of salary for the said period and also for calculation and payment of the retiral dues in accordance with law. The respondents by order dated 11.06.2012 rejected the petitioner's claim.

4. In the similar circumstance and on identical facts one Ila Sinha had preferred a writ petition in this Court being W.P.(S) No. 574/2008. This Court, after hearing the parties, allowed the writ petition and held that the petitioner (of that case) is entitled to get arrear of salary and calculation of retiral benefits without any break in the service. The respondents were directed to calculate and assess the amount of post-retiral benefits taking the said period in continuity vide the decision of this Court in Ila Sinha vs. State of Jharkhand & Ors. (2010 (4) JLR 628).

5. A counter affidavit has been filed on behalf of the respondents stating, inter-alia, that after the petitioner was declared surplus, he was re-employed and, as such, the petitioner is not entitled to arrears of salary and calculation of retiral benefits including the pension for the said intervening period during which the petitioner was out of service.

6. Learned J.C. to G.P. III appearing on behalf of the respondents, however, has not denied that in the case of Ila Sinha (supra) and even in other cases the salary for the intervening period has been paid by the respondents and pension, gratuity and leave encashment have also been calculated taking the period as continuous period as also that this case has identical facts as that of the facts of Ila Sinha's case (supra).

7. Learned counsel for the petitioner submitted that once it is admitted that benefits of arrears of salary and calculation of post-retiral benefits have been made in the case of similarly situated employees, there is no ground for discriminating the petitioner and denying the said benefits. The impugned letter dated 11.06.2012 is wholly arbitrary, unjust and illegal and is liable to be quashed.

8. Learned counsel submitted that since the petitioner's case is fully covered by the decision of Ila Sinha (supra) which was upheld in L.P.A. No. 359/2009 and also by the Hon'ble Supreme Court in SLP No. 1377 of 2011, the petitioner is

also entitled to get the said benefits.

9. The said contention could not be controverted by learned counsel for the respondents.

10. In view of the above, this writ petition is allowed. The order contained in memo. No. 361 (Law) dated 11.06.2012 (Annexure-4) is quashed. The respondents are directed to calculate the arrears of salary and also the consequential retiral benefits including the gratuity, leave salary and pension of the petitioner within six weeks from the date of receipt/production of a copy of this order. The respondents, thereafter, shall pay the admitted amount of arrears with statutory interest within four weeks thereafter.

11. If the amount(s) found due, is/are not paid within the said period, the petitioner shall be entitled to get compensatory interest @ 10% per annum in addition to the statutory interest from the date the amounts were due till the final payment of the same.