

(2016) 06 JH CK 0056
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4205 of 2013

Ram Narayan Sah

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 300A

Citation : (2016) 4 JCR 763

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : M/s. Sumeet Gadodia and Prem Pujari Roy, Advocates, for the Petitioner; Mr. Amit Kumar, J.C. to G.P. II, for the Respondents

Final Decision : Allowed

Judgement

Pramath Patnaik, J. - In the instant writ application, the petitioner has inter-alia prayed for setting aside the order contained in letter dated 17.12.2012 issued by respondent no.2 vide Annexure-5 whereby the appointment of the petitioner on the post of Steno has been declared illegal and his appointment has been directed to be treated on the post of typist and also the petitioner impugns the consequential order dated 24.12.2012 passed by the respondent no.3 vide Annexure-6 to the writ application, pertaining to recovery of the excess amount towards salary paid to the petitioner and has prayed for declaration that the petitioner has been validly appointed on the post of Steno and he is entitled for retiral benefits on the basis of the pay scale to the petitioner of the post of Steno.

2. During pendency of the writ application, the petitioner has challenged the order dated 30.07.2013 made Annexure-9 to the I.A which is impugned in the writ application.

3. The facts as disclosed in the writ application in a nutshell is that initially the petitioner was appointed on the post of Typist on 09.07.1974 and he joined on the said post on 12.07.1974. The appointment of the petitioner was made by the

Deputy Director of Industries, Kosi Division, Saharsa (Bihar). After initial appointment on the post of Typist the petitioner was appointed afresh by the Deputy Director of Industries, Kosi Division, Saharsa vide office order dated 13.12.1978 on the post of Steno and in pursuance to the said appointment the petitioner joined on 13.12.1978 and since joining on the post of Steno discharged his duties with utmost satisfaction of the higher authorities without any blemish whatsoever, the appointment of the petitioner on the post of Steno has been approved vide order dated 13.12.1978 as evident from Annexure-1 to the writ application. During course of his service, on the post of Steno, time bound promotion was granted to the petitioner with effect from 13.12.1978 after completion of 10 years of service by the order of the General Manager, District Industries Centre, Chaibasa. Therefore, for practical purposes the initial appointment on the post of Steno was taken into consideration on 13.12.1978 instead of 12.07.1974. On the basis of treating the date of appointment on 13.12.1978 the petitioner after completion of 10 years has been granted time bound promotion. Subsequently, the petitioner has been granted the benefits of Assured Career Progression Scheme, being first ACP with effect from 09.08.1999 and second ACP with effect from 13.12.2002 by the office order issued by the Directorate of Industries, contained dated 08.08.2005 as evident from Annexure-2 to the writ application. The benefits of First and Second ACP granted to the petitioner has also been confirmed by memo dated 06.10.2009. It has also been submitted that the petitioner's services on the post of Steno with effect from 13.12.1978 has been confirmed vide memo dated 06.08.2005 as evident from Annexure-4 to the writ application. After rendering about 34 years of services on the post of Steno the order dated 17.12.2012 has been passed vide Annexure-5 to the writ application treating the service of the petitioner to be typist which is impugned in this writ application. Pursuant to the order dated 17.12.2012, consequential order dated 24.12.2012 has been issued by the office of the General Manager, District Industries Centre, Dhanbad treating the petitioner as Typist and order has been passed for recovery of excess amount paid to the petitioner as per Annexure-6 to the writ application.

4. Being aggrieved by and dissatisfied with the impugned order under Annexures 5 and 6, petitioner preferred a representation submitted before the appellate authority vide Annexure-7 to the writ application which has been rejected by order dated 30.07.2013 vide Annexure-9 to the interlocutory application. The petitioner, left with no other alternative efficacious and speedy remedy has approached this Court for redressal of his grievances.

5. Mr. Sumeet Gadodia, learned counsel for the petitioner has strenuously urged before this Court that the impugned order under Annexures 5 and 6 has been passed without issuance of notice being violative of principle of natural justice and also violative of Article 14, 16 and 300-A of the Constitution of India. Learned counsel for the petitioner further submits that the impugned order under challenge has been passed in arbitrary exercise of powers and suffers from non-application of mind. Learned counsel for the petitioner further submits that the

impugned order has been passed being oblivious of order dated 06.08.2005 by which the petitioner's services has been confirmed by the Director Industries, Jharkhand, Ranchi which cannot stand to the test of reasoning. During course of hearing learned counsel for the petitioner has referred to the decision cited by this Court reported in L.P.A No.578 of 2015 dated 10th May, 2016 in the case of State of Jharkhand & Others v. Ram Anugrah Pandey and also has referred to the decision as reported in 2015 (4) SCC 334 in the case of State of Punjab and Others v. Rafiq Masih (white washer) and Others.

6. Mr. Amit Kumar, J.C to G.P. II has reiterated the submissions made in the counter-affidavit. Learned counsel for the State by referring to paragraph nos. 8, 9, 10, 14 and 15 of the counter-affidavit has strenuously urged before this Court that it is crystal clear that the respondents have consistently stated that initially the appointment of the petitioner as a Steno has been made by incompetent person without having jurisdiction, therefore the subsequent confirmation by the authority cannot be justified in the eye of law. Learned counsel for the State further submits that the impugned orders passed by the respondents was justified on the ground that when the petitioner prayed for MACP, after perusal of the record it was found to be not genuine. Learned counsel for the State has submitted that in the case of the petitioner since facts stated therein are substantially different from the issue in the present writ application the action taken by the respondents cannot be construed to be arbitrary taking into consideration the initial appointment of the petitioner. The respondents have taken the decisions which is justified.

7. After hearing learned counsel for the respective parties at length and on perusal of the evidences on records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts, reasons and judicial pronouncements:-

(i) The impugned orders dated 17.12.2012, 24.12.2012 and the order dated 30.07.2013 to the writ application, thereby rejecting the appeal confirming the order of disciplinary authority have been passed without giving any opportunity of hearing and without holding any proceeding whatsoever suo-motu after approximately 35 years of services of the petitioner on the post of Steno. The aforesaid orders smacks of non-application of mind, in view of the fact that vide office order dated 24.02.1983 (Annexure-1) the appointment of the petitioner on the post of Steno has been confirmed with a rider that the seniority of the petitioner shall be computed from the date of joining on the post of Steno.

(ii) By virtue of the impugned orders, the appointment of the petitioner has been treated on the post of Typist and further direction has been made for determining the pay-scale of the petitioner treating on the post of Typist and thereafter a separate order was issued for recovery of the excess amount paid towards salary to the petitioner, such an action cannot be countenanced in the interest of justice & equity after lapse of more than last three decades. The respondents have questioned the appointment of the petitioner on the post of Steno but just on the

eve of the superannuation of the petitioner. The impugned orders have been passed to deprive the petitioner of getting the benefit of post retiral benefits on the post of Steno and which would ultimately affect the pensionary benefits of the petitioner. So far as recovery of the excess amount towards salary as per the decision of the Hon''ble Apex Court in the case of State of Punjab and Others (Supra) there cannot be recovery from the salary.

8. In view of the reasons the impugned orders dated 17.12.2012 (Annexure-5), 24.12.2012 (Annexure-6) and 30.07.2013 (Annexure-9) are hereby quashed and the respondents are directed to pay the post retiral benefits to the petitioner on the post of Steno within a period of eight weeks from the date of receipt of a copy of this order.

9. With the aforesaid observations and directions, the writ petition stands allowed.