
(2014) 12 JH CK 0051
In the Jharkhand High Court
Case No : W.P.(S) No. 1645 of 2014

Shambhu Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Citation : (2014) 12 JH CK 0051

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Shafique Rahman, Advocates for the Appellant

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties.

2. The petitioner is a Junior Engineer in the Road Construction Department. Petitioner had certain grievances relating to claim of A.C.P, benefits of Pay Revision w.e.f. 1.1.2006, M.A.C.P and also for regularization of period of his posting from 1.9.2008 to 28.4.2009 and 29.4.2009 to 20.1.2011. He had also certain other grievances relating to salary for the period of his posting in the Month of January-February, 2011.

3. When the petitioner approached this Court earlier in W.P.S. No. 6353 of 2012 with the aforesaid grievances, the Secretary, Road Construction Department, Government of Jharkhand was directed to take a decision relating to each and every items of the petitioner's claim within a stipulated period. By the reasoned order No. 110 dated 25.5.2013 which has been communicated to the petitioner vide memo No. 1354 dated 19.6.2013 (Annexure-II), the respondent No. 3, Secretary, Road Construction Department has disposed of the petitioner's representation. Now the present writ petition has been filed inter-alia with several prayers which include prayer for quashing the decision of the respondent No. 3- Secretary where under he has held that the period from 7.11.2008 to 29.4.2009 would amount to break in service. He is also aggrieved by the decision of the respondent-Secretary in respect of the period from 30.4.2009 to

20.1.2011 wherein it has been held that the services of the petitioner cannot be regularized. These are the two grievances which petitioner is presently pressing as the rest of the grievances relating to grant of A.C.P, benefits of 6th PRC, M.A.C.P etc. have been redressed. However, learned counsel for the petitioner submits that payments on that account have not been paid, more so for the reason that these periods of his service have not been regularized.

4. From the submission of the learned counsel for the petitioner and the documents which has been relied upon by him, it appears that petitioner proceeded on medical leave on 7.11.2008 while he was posted in the office of Executive Engineer, Rural Works Department, Works Division, Lohardaga. It however also appears that petitioner has pleaded ignorance of any order of transfer i.e. Office order dated 28.11.2008 issued by the Office of Engineer-in-Chief, Road Construction Department, Respondent No. 5 where under he was transferred from the post of Junior Engineer, Works Section Kuru under Works Division, Lohardaga to the Office of Deputy Commissioner, Chatra. Such an assertion is made on the basis of information obtained under R.T.I. which is at Annexure-14 furnished through letter dated 22.10.2013. As per the R.T.I. information the order of transfer was received on 18.4.2011 in the Office of Executive Engineer, Works Division, Lohardaga where the petitioner was posted. Despite that petitioner did not report on recovery from his illness in the Office of his Controlling Authority from where he had proceeded on leave i.e. Executive Engineer, Rural Works Division, Lohardaga but is said to have reported his joining at the Headquarters before the Engineer-in-Chief, Rural Works Department, Government of Jharkhand as per letter dated 30.4.2009 (Annexure-4). Such an act on the part of the petitioner was therefore not in consonance with the provisions of law, more so when he himself stated that he was not aware of the order of his transfer to the Office of Deputy Commissioner, Chatra. Petitioner has also tried to impress that by another order dated 6.10.2009 he was transferred from the Office of Deputy Commissioner, Chatra to the Work Section, Maheshpur at Pakur Works Division but he was in total dark about the same. This transfer order also came to his notice under R.T.I. It further appears that finally by Office order at Annexure-7 dated 20.1.2011 the petitioner was transferred from the Office of Deputy Commissioner, Chatra to the Road Construction Department i.e. his parent department. The Secretary, Road Construction Department while passing the reasoned order, part of which the petitioner is aggrieved with, took into account the relevant material facts and in his discussion has referred to the following facts:--

"(i) that the petitioner had proceeded from 7.11.2008 to 28.2.2011 on unauthorized leave, which has been communicated by the Executive Engineer, Works Division, Lohardaga through Last Pay Certificate issued vide memo dated 15.7.2011. Therefore the period from 7.9.2008 to 29.4.2009 is to be treated as break in service.

(ii) In respect of the period from 30.4.2009 to 20.1.2011, the respondent -

Secretary has referred to the order of transfer of the petitioner from Kuru to the Office of Deputy Commissioner, Chatra dated 28.11.2008 and the order dated 20.1.2011 whereby the services of the petitioner were repatriated to his parent department."

5. During this period admittedly petitioner did not serve under his Controlling Office from where he had proceeded on leave i.e. Executive Engineer, Works Division, Lohardaga nor had reported before the Deputy Commissioner, Chatra but on his own seems to have reported to the Office of Engineer-in- Chief on 30.4.2009. Such a unilateral stand to join in the Office of the technical head of the department i.e. Engineer- in - Chief would have no meaning and consequences as the petitioner had never been posted in the said Office by any order. The respondents- Secretary, therefore held that the period from 30.4.2009 to 20.1.2011 cannot be regularized.

6. It appears that the respondents in their counter affidavit have stated that an F.I.R. being Lohardaga P.S. Case No. 170 of 2008 was lodged on 6.11.2008 in respect of certain irregularity committed by the petitioner while he was posted as Junior Engineer under the Pradhan Mantri Gramin Sarak Yojana. They stated that petitioner had immediately proceeded on leave from 7.11.2008, thereafter. They also stated that the Executive Engineer reported the unauthorized leave of the petitioner through letter dated 15.7.2011 (Annexure-10) stating that even paper publication was made while the petitioner had remained in unauthorized absence. It is further stated on their behalf that for the aforesaid period petitioner has represented that the competent authority has regularized his service which on inquiry was found to be false. This has led to a direction to the concerned Dhurwa Police Station on 21.03.2014 vide Annexure-F for institution of an F.I.R.

7. Having considered all these relevant materials which have been referred to and relied upon by the petitioner and the respondents as well, I do not find that the impugned order suffers from any non application of mind or any errors of law and fact. Matters of leave or regularization of service for the period of absence are to be considered by the competent authority upon bonafide of the employee being shown that he has acted in accordance with law and proceeded on leave and also upon consideration of all the relevant materials which may be necessary for coming to a findings on those issues. The order of the respondent-Secretary, Road Construction Department, Government of Jharkhand is a reasoned one and has considered all the relevant materials.

8. Therefore, in exercise of powers of judicial review, no interference is warranted on that account. So far as the claim of benefits of A.C.P, M.A.C.P, Pay Revision is concerned, if the same are admissible in law despite holding that the aforesaid period of absence of the petitioner amounts to break in service and cannot be regularized, respondents would release the admissible dues on those account. However, petitioner otherwise has failed to make any ground for interference in the writ petition.

9. The writ petition being devoid of merit is accordingly, dismissed.