
(2014) 09 JH CK 0069
In the Jharkhand High Court
Case No : WP(S) No. 4969 of 2010

Shambhu Prasad Sinha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2014) 4 JLJR 443

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Prabhat Kumar Sinha, Advocate for the Appellant; S. Shrivastava and Lalan Kr. Singh, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. Petitioner had earlier approached this Court in W.P.S. No. 4094 of 2005 after his retirement on 31.1.2003 from the post of Permanent Clerk. In the said writ petition petitioner had made a claim for payment of retirement benefits on reckoning the period spent by him as Extra Clerk. Petitioner was appointed as Extra Clerk on 2.8.1971. Thereafter, he was appointed as Temporary Clerk on 21.5.1981 in the Department of Registration. Learned Division Bench of this Court by the judgment dated 19.4.2006 considered the judgment passed in the case of State of Jharkhand Vs. Kauleshwar Prasad and Others, and observed that it was not valid to grant relief to the petitioner by counting the period of service rendered by him as Extra Clerk. Accordingly, the matter was remitted to the respondents to consider his case for first time bound promotion under the old scheme from the date he completed 10 years of service and thereafter to consider his case for the benefits under A.C.P. scheme from the due date as per the resolution dated 14.8.2002 given effect from 9.8.1999. Thereafter, the respondents chose to give him first time bound promotion w.e.f. 22.5.1991. They however found that he is not entitled to the benefit of first A.C.P. as he has been granted regular promotion to the post of Permanent Clerk on 17.4.1999 vide office order No. 1 bearing memo No. 592, Hazaribagh dated 22.4.1999 (Annexure-2). Petitioner

pursued the contempt petition, which was however dropped giving liberty to him to raise his grievance relating to first ACP before appropriate Forum. Therefore, in the present writ petition, petitioner has raised his claim for grant of first ACP on the ground that the promotion granted to him in the year 1999 vide Annexure-2 was in the nature of appointment. He has relied upon letter dated 8.11.1995, Annexure-6 to the rejoinder, according to which promotion granted from the post of Temporary Clerk to that of Permanent Clerk would be treated as appointment and that in such case the person appointed as Permanent Clerk would not be entitled to 12% enhancement of pay which was being granted to concerned Temporary Clerk earlier. It has been submitted that in the case of one Md. Moinuddin Ahmad in W.P.S. No. 3579 of 2010, learned Single Bench of this Court vide judgment dated 23.7.2014, after taking into account the letter dated 8.11.1995 and also the instance of similarly placed person, Mohan Prasad who was also appointed in the year 1981 and had been promoted as Permanent Clerk, but had been granted the benefit of first and second ACP directed the respondents to give benefit of first ACP from due date to the said person Md. Moinuddin Ahmad. Therefore, the petitioner is also entitled to similar benefits as the present petitioner was also appointed as temporary clerk through the same office order communicated through memo No. 2439 dated 21.5.1981 like the other persons. Therefore, the respondents are not justified in denying the claim of first ACP to the petitioner.

2. Leaned counsel for the respondent relied upon the averments made in the counter affidavit and submitted that petitioner was considered fit for grant of first time bound promotion after 10 years of his service reckoning from 1981 was given the said benefit from 22.5.1991. However, petitioner having been granted regular promotion on the post of Permanent Clerk, Annexure-2, could not have been granted the benefit of first ACP.

3. Having heard counsel for the parties and having gone through the relevant materials on record, it appears that case of the petitioner has a similarity with the case of Md. Moinuddin Ahmad. Petitioner also was appointed as Extra Clerk in the Registry Office, Hazaribagh vide office order dated 21.5.1981 (Annexure-1) where under 22 other persons were also appointed. Petitioner was also given promotion as a Permanent Clerk but the date of promotion of the case of the petitioner is 22.4.1999 (Annexure-2), while in the case of said Md. Moinuddin Ahmad the date of promotion as Permanent Clerk was 22.5.1995 vide office order No. 9. The dates of promotion of both the person may have been different but both of them were granted promotion to the post of permanent clerk which was to be treated as a matter of appointment in view of the letter dated 8.11.1995 which was issued by the Secretary, Registration Department in respect of the subject of promotion of Temporary clerk to Permanent Clerk. By the said letter promotion of Temporary Clerk to Permanent Clerk were directed to be treated as case of appointment and that those Permanent Clerk would not be entitled to benefit of 12% enhanced pay. In the case of Md. Moinuddin Khan, it was noticed that one Mohan Prasad who was also appointed by the same

common order dated 22.5.1981 as temporary Clerk had been granted the benefit of first time bound promotion and first ACP as well treating his promotion as a permanent clerk later on as an appointment. In the present case, therefore except for a difference in the date of promotion, on the very yardstick which is applied in the matter of promotion from temporary clerk to that of permanent clerk vide different orders passed in the other cases, there are no other distinguishing features which disentitles equal consideration to the petitioner as well in the matter of grant of first ACP. The only reason for which the respondents have denied the benefit of first ACP is that his promotion as permanent clerk in the year 1999 has been treated to be regular promotion and not as a matter of appointment. However, in view of the aforesaid reasons and the similarity having been noticed in the case of other such similarly situated persons like Md. Moinuddin Khan and Mohan Prasad, who were also serving in the same department on the same post, there is no reason why the respondents should not consider the case of grant of first ACP to the petitioner as well.

4. Accordingly, the writ petition is allowed by directing the concerned respondents to grant the benefit of first A.C.P. to the petitioner as well from the due date and also revision in his pensionary benefits as may accrue there upon within a period of 12 weeks from the date of receipt of the copy of this order. The consequential benefits of the arrears of salary etc. be released in favour of the petitioner, thereafter within a reasonable time. Writ petition is allowed in the aforesaid terms.