(2015) 01 JH CK 0085

In the Jharkhand High Court

Case No : L.P.A. Nos. 340, 357, 311 of 2013 and 55 of 2014, I.A. No. 7476 of 2013 in L.P.A. No. 340/13, I.A. Nos. 7901 of 2013, 2587 of 2014 in L.P.A. No. 357 of 2013, I.A. No. 6813 of 2013 in L.P.A. No. 311 of 2013 and I.A. Nos. 997, 998 of 2014 in L.P.A. No. 55 o

State of Jharkhand APPELLANT

Vs

Dadan Prasad Singh and Others RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Constitution of India, 1950 — Article 12
Limitation Act, 1963 — Section 5

Citation : (2015) 01 JH CK 0085

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : Ajit Kumar, A.A.G., Kumar Sundaram, Vikash Kumar and Chanchal Jain, J.C., for the Appellant; Prabhat Kumar Sinha, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dhirubhai Naranbhai Patel, J.

I.A. No. 997 of 2014 in L.P.A. No. 55 of 2014:

1. The present interlocutory application has been preferred under Section 5 of the Limitation Act for condoning the delay of 207 days in preferring the instant Letters Patent Appeal.

2. Having heard learned counsel for the appellant and looking to the reasons, stated in this interlocutory application, especially in paragraph Nos. 4, 5, 6, 7 and 8 thereof, there are reasonable reasons for condoning the delay in preferring the instant Letters Patent Appeal. We, therefore, condone the delay in preferring L.P.A. No. 55 of 2014.

3. I.A. No. 997 of 2014 is accordingly, allowed and disposed of.

L.P.A. Nos. 340 of 2013, 357 of 2013, 311 of 2013 and 55 of 2014:

4. Group of these Letters Patent Appeals has been preferred against the judgment and order, delivered by learned Single Judge in W.P.(S) No. 6739 of 2012 with W.P.(S) No. 6753 of 2012, W.P.(S) No. 1693 of 2012 and W.P.(S) No. 939 of 2012 dated 30th April, 2013, 31st July, 2013 and 19th June, 2013 respectively.

5. The appellant and proforma respondents in all the Letters Patent Appeals are the original respondents in the writ petitions.

Factual Matrix:

6. Learned counsel in all the Letters Patent Appeals submitted that the private respondents, who are the original petitioners, had preferred the writ petitions, mainly for the reasons that initially the employees of Boards/Corporations in the erstwhile State of Bihar were working on deputation in the State of Jharkhand in the Directorate of Provident Fund and in case of the respondents in L.P.A. No. 357 of 2013, they were working on deputation in the Treasury Offices. Thereafter, all of them were absorbed in the Government services. No option was ever given to these respondents-employees that if they will go on deputation either in the services of Directorate of Provident Fund or in the services of Treasury Offices from the Boards/Corporations, they will lose their earlier services, rendered in the Boards/Corporations, and will be absorbed as fresh employees in the Government. Looking to the order at Annexure 2 in L.P.A. No. 340 of 2013, which is an order of deputation, it appears that no such option was given to the respondents-employees that if they so want, they may opt for going on deputation to the Directorate of Provident Fund or to the Treasury Offices, from their parental Boards/Corporations. Such option was never offered to the respondent-employees. Moreover, from Annexure 2 in L.P.A. No. 340 of 2013 it appears that the employees were on deputation since the year, 1997 and further, looking to the order of absorption, which is at Annexure 16 to the memo of L.P.A. No. 340 of 2013, it appears that the same was issued in the year, 2011. Thus, there was a long gap between the date of deputation, which is dated 2nd September, 1997 (in case of L.P.A. No. 340 of 2013) and the date of absorption dated 19th September, 2011, which is at Annexure 16 to the memo of L.P.A. No. 340 of 2013. Thus, the respondent-employees were sent on deputation in Directorate of Provident Fund or in the Treasury Offices, without any option given to them and they worked on deputation for more than one decade and, thereafter, they were absorbed in the government job. Looking to Annexure 6 to the memo of L.P.A. No. 340 of 2013, it further appears that meanwhile the parental departments of the respondents-employees demanded such employees. Parental department also pointed out that if these employees will not return, they may be suspended, but, the Directorate of Provident Fund refused to send them back or refused to return the services of those employees. However, after absorption, the Government is now taking stand that the earlier services, rendered by them with the Boards/Corporations shall not be counted for the

purposes of pension and other retiral benefits and these employees shall be treated as afresh employees from the date of their absorption. Thus, the respondents-employees, who have remained in job for several years in the Boards/Corporations and were sent on deputation at the Directorate of Provident Fund/Treasury Offices, for no fault of their own, are losing their earlier job and consequently, there will be a great financial loss in pension, gratuity etc. and, therefore, they had preferred the writ petitions before the learned Single Judge, which have been allowed by the learned Single Judge and hence, the respondent-State of Jharkhand has preferred these Letters Patent Appeals.

Arguments canvassed by the learned counsel for the Appellant-State:

7. Learned counsel for the appellant-State of Jharkhand has vehemently submitted that the respondents-employees, who were earlier in the services of or in the employment of Boards/Corporations, with their separate legal entity, have worked for few years on deputation in the Government. They were absorbed in the year, 2011 and from the date of their absorption, they have now become the employees of the Government and hence, their pension, provident fund, gratuity etc. shall be calculated on the basis of the services, rendered by them after their absorption viz. on and from 2011 onwards and their prior services, rendered with the Boards/Corporations, shall not be calculated at all.

8. Learned counsel for the appellant-State has also relied upon the following decisions, in support of his contention,

(a) Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, ;

(b) Major M.R. Penghal Vs. Union of India (UOI) and Others, ;

(c) C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain, ;

(d) State of Bihar Vs. S.A. Hassan and Another, ;

(e) A.K. Bindal and Another Vs. Union of India (UOI) and Others, ;

(f) State Bank of India Vs. L. Kannaiah and Others, ;

(g) Avas Vikas Sansthan and Another Vs. Avas Vikas Sansthan Engineers Assn. and Others, ;

(h) Indu Shekhar Singh and Others Vs. State of U.P. and Others, and

(i) L.P.A. No. 1141 of 201, decided on 15th September, 2010 (The State of Bihar and Anr. v. Narain Dutta Pandey and Anr.)

and on the basis of the aforesaid decisions, it has been submitted by the learned counsel that the previous services of those employees, who were earlier serving in the Boards or Corporation and later on absorbed in the government services, cannot be taken into consideration for the purposes of pension, gratuity and such other retiral benefits and they shall be treated as government employees on and from the date on which they were absorbed in the government services.

Arguments canvassed by the learned counsel for the respondents-employees:

9. It is submitted by the learned counsel for the respondents-original petitioners that they were serving with the Boards/Corporations in the erstwhile State of Bihar and were happy with their respective employers. They have never shown their desire to be absorbed by the Directorate, Provident Fund nor they have shown their desire to go into the services of Treasury nor they were ever informed that if they will be absorbed by the Directorate of Provident Fund or by the Treasury Offices, they will lose their earlier services, nor these employees were informed that if they are going on deputation, their earlier years of employment in the respective parental Boards/Corporations will not be counted for retirement benefits. It is further submitted by the learned counsel for the respondents-writ petitioners that looking to the Annexures, annexed with the writ petitions as also the Letters Patent Appeals, it appears that the Directorate of Provident and the Treasury Offices, who were in need of some employees, evolved a mechanism that instead of regular employment, ad-hoc arrangement may be made so that few employees on deputation may come in their departments. There were certain conditions also, attached by the Directorate of Provident Fund as well as Treasury Offices that only such employees who have completed five years of service and are below 45 years of age and possess the qualification of M. Com. or Graduate with Maths, may be sent on deputation from the Boards/Corporations to the offices of Directorate of Provident Fund and the Treasury Offices. Thus, the Directorate of Provident Fund and the Treasury Offices were in need of young, properly educated and well experienced employees. The respective parental Boards/Corporations found out the respondents-employees (writ petitioners) and without any option, they were sent on deputation to the Directorate of Provident Fund and Treasury Offices in the year, 1997. They worked there for 14 long years i.e. up to 2011.

10. Looking to condition No. 1 of the order of deputation (Annexure 2), there was a condition for absorption that if the services of the employees, who were on deputation, were found satisfactory, they will be absorbed in those departments. The writ petitioners have worked for more than one decade and later on they were absorbed in the year, 2011 and at the time of absorption also, never any option was given to these respondents, either to be absorbed in the government services or to go back to their parental Boards/Corporations. Thus, it is submitted by the learned counsel for the respondents that both the phenomenon were under compulsion viz.

(a) while sending these respondents-writ petitioners on deputation at the office of the Directorate of Provident Fund or at the office of the Treasury Officer and

(b) at the time of absorption into the services of Directorate of Provident Fund or into the services of Treasury.

Thus, it is submitted by the learned counsel for the private respondents that everything was under compulsion and nothing was voluntary.

11. Sending on deputation was also under compulsion and at the time of absorption also never any option was asked from the respondents that if they are opting to continue at the Directorate of Provident Fund or at the Treasury Offices, they will lose their earlier services, which they have rendered in their parental Boards/Corporations.

12. It is further submitted by the learned counsel for the respondents that the respondents were grappled by the Directorate of Provident Fund and by the Treasury Offices, so tightly that even though some of the respondents were put on suspension by their parental departments, they were not allowed to go back to their parental departments. This is being reflected from Annexure 4, 5 and 6 to the memo of L.P.A. No. 340 of 2013. These Annexure 4, 5 and 6 also reveals that the respondents were compelled to go at the Directorate of Provident Fund and the Treasury Offices.

13. It is further submitted by the learned counsel for the respondents that had there been any option given to these respondents, the case would have been otherwise, but, as stated herein above, there is absence of option given to the respondents at both the stages, nor it is the stand taken by the appellant-State in its counter affidavit, filed in the writ petitions, that the option was given to the employees to go or not to go on deputation. It is also not the stand of the appellant-State in its counter affidavit, filed in the writ petitions, that option was given to the respondents to be absorbed or not to be absorbed. Thus, at both the stages, under compulsion the respondents were serving, wherever they were directed to serve and, therefore, it is not befitting for the State not to consider the earlier services rendered by these respondents-faithful employees in their respective parental Boards/Corporation. These aspects of the matter have been properly appreciated by the learned Single Judge and no error whatsoever has been committed by the learned Single Judge and hence, the Letters Patent Appeals may not be entertained by this Court.

Reasons:

14. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain these Letters Patent Appeals, mainly for the following facts and reasons:

(i) L.P.A. No. 340 of 2013 has been taken as a leading case for ready reference of the dates as well as Annexures.

(ii) It appears that the private respondents in these Letters Patent Appeals are the original petitioners, who had preferred the writ petitions mainly for the reasons that they were initially in the services of the governmental Boards/ Corporations in the erstwhile State of Bihar. They were never dissatisfied by their parental departments nor there was any agitation in their mind to go on deputation in the services of either Directorate of Provident Fund or Treasury Offices. These peaceful employees were put in difficulty because of the government letters from the Directorate of Provident Fund as well as from the

Treasury Offices.

(iii) Looking to the correspondences annexed with these Letters Patent Appeals it appears that from the Directorate of Provident Fund as well as from the Treasury Offices, letters were written to the Boards/Corporations that if they have employees, who are less than 45 years of age, having 5 years of service with B. Com. or M. Com. or Graduation with Maths degree, may be sent on deputation at the Directorate of Provident Fund or Treasury Offices. These are the letters written from one office to another office, but, the fact remains that the employees were never given any option whether they want to go on deputation or not.

(iv) It further appears from the facts of theses, especially from Annexure 2 to the memo of L.P.A. No. 340 of 2013 that these employees were sent on deputation from the Boards/Corporation. Further, looking to the conditions of deputation, it appears from condition No. 1 that if the employees are working with all satisfaction to those departments, where they are sent on deputation after 5 years, they may be absorbed. These employees continued for approximately 14 long years into the services of Directorate of Provident Fund as well as Treasury Offices. Never any show cause was issued upon them nor any misconduct has been alleged by the Government, against these employees and, thus, these respondents-employees were working in their parental Boards/Corporations as well as at the Directorate of Provident Fund and Treasury Offices, honestly, sincerely, diligently and to the satisfaction of their respective employers.

(v) The reward has been given of the aforesaid qualities of the services of these employees after absorption in the year, 201 (Annexure 16 to the memo of L.P.A. No. 340 of 2013) that their previous services rendered with their parental Boards/ Corporations shall not be calculated for the purposes of retirement benefits. This is not permissible in the eyes of law and this is a patent illegality committed by the State, mainly for the reasons that never any option was given to these respondents-employees at the time of:

(a) their deputation in the year, 1997;

(b) during the period of deputation when they were working honestly, sincerely, diligently at the Directorate of Provident Fund and Treasury Offices, till they were absorbed; and

(c) never any option was given to these employees at the time of their absorption i.e. on 19th September, 2011 (Annexure 6 to the memo of L.P.A. No. 340 of 2013).

(vi) Thus, the respondents-employees (original petitioners) were always compelled to go the offices wherever they were directed to go and they have worked sincerely wherever their services were directed to be given. Had any option been given to these respondents employees that if they want to go on deputation at the Directorate of Provident Fund or at the Treasury Offices, they may go otherwise they may continue with their parental Boards/Corporations, the matter would have been otherwise. This desire was never sought for. On the contrary, looking to Annexure 4, 5 and 6, the respondents-employees were put under suspension because they were directed to return to their parental Boards/ Corporations, but, the Directorate of Provident Fund, looking to Annexure 6, did not allow these respondents-employees to go back to their parental Boards/ Corporations. This is an extreme example of compulsion on the part of the respondents-employees.

(vii) It further appears that had any option been given to these respondents-employees that if they will go into the services of the Directorate of Provident Fund or Treasury Offices, they will lose their earlier services, rendered with parental department i.e. Boards or Corporation, perhaps these employees would have denied to go on deputation. It ought to be kept in mind by the appellant-State of Jharkhand that it is a ''State'' within the meaning of Article 12 of the Constitution of India and always the State is an ideal employer.

(viii) Looking to the correspondences, it appears that the State was in need of young (maximum 45 years of age), properly educated (minimum qualification was B. Com./M. Com/Graduation with Maths) and well experienced (minimum 5 years of service) employees to be placed on deputation. If this is the demand and without any option and under compulsion if the respondents-employees were sent on deputation and during deputation of 14 years period also, never they were informed that their all earlier years of service with the parental Boards/ Corporations and all years of service on deputation in the Directorate of Provident Fund/Treasury Offices will not be calculated for the purposes of retirement benefits, perhaps they would have opted to go back to their parental Boards/Corporations. Never they were given any letter in writing at the time of absorption also that if they do not want to be absorbed, they may go back to their parental Boards/Corporations. Thus, it appears that everything was under compulsion for these respondents-faithful and obedient employees. Now the appellant-State, therefore, cannot say that the services rendered by these respondents prior to their absorption, whether it is in their parental Boards/ Corporations or in the Directorate of Provident Fund or Treasury Offices after deputation but before absorption (approximately 14 years), will not be considered for the purposes of calculating the length of their services for retirement benefits. There is unequal bargaining power between the State and respondents-employees. The State cannot take advantage of a high bargaining power vested in it. If the State would have further extended the period of deputation, even more members of employees would have been excluded from their retirement benefits entitlement. The appellant-State has to keep in mind that no fault lies on the part of the respondents-employees, because under compulsion they were sent on deputation after minimum 5 years of service from their respective parental Boards/Corporations and, thereafter, they continued on deputation for 14 long years. Thus, the minimum services they have rendered is 19 years (5 plus 14). These services cannot go in vain. These services ought to be considered for the purposes of pension, gratuity and for all type of retirement benefits. This aspect of the matter has been properly appreciated by the learned Single Judge and, thus, no error has been committed by the learned Single Judge.

(ix) There is still one more argument canvassed by the learned counsel for the respondents-employees that there are few employees, who are also coming from Boards/Corporations from the erstwhile State of Bihar and the present respondents-employees are similarly situated to those employees. Those few persons were also sent on deputation at different offices of the State Government like Consumer Forum etc. and they were absorbed by the Government, in one case, after the direction of this Court and in another case, the State of Jharkhand at its own, calculated the earlier period of service prior to their absorption for the purposes of retirement benefits, whereas, these respondents-original petitioners have been discriminated without any justifiable reasons. Paragraph No. 31 of the writ petition, preferred by one of the respondents being W.P.(S) No. 6753 of 2012 reads as under:

"31. That at this stage it is relevant to mention herein that in similar situation in the case of Sri Parsuram Chaudhary, Bench Clerk, District Consumer Forum, Chatra preferred writ petition being W.P.(S) No. 3672 of 2009 wherein this Hon''ble Court has been pleased to direct the respondents to count the services rendered by him in Bihar State Food And Civil Supply Corporation Ltd. for the purpose of payment of pension. The aforesaid order of this Hon''ble Court has been complied with by the state government. Besides in the case of Sukhram Tiwari and Arjun Ram retired orderlies who were originally belonged to Bihar State Food And Civil Supply Corporation Ltd. and were subsequently sent on deputation and absorbed in the services of the state government, the state government has counted their past services rendered in their corporation for the purposes of pensionary benefits, of course, after they moved this Hon''ble court in writ jurisdiction." (x) Thus, the appellant-State has given full concession to one Sri Parsuram Chaudhary, who had preferred W.P.(S) No. 3672 of 2009, which was decided vide order dated 14th July, 2011 and his earlier services prior to his absorption has been reckoned for the purposes of calculating the retirement benefits whereas these respondents-employees have not been given the benefits of the said decision, which has been rendered on 14th July, 2011 in W.P.(S) No. 3672 of 2009. This judgment has been implemented also by the State Government.

(xi) Further, one of the respondents has preferred W.P.(S) No. 1693 of 2012, paragraph No. 29 whereof reads as under:

"29. That the Government of Jharkhand also absorbed the services of the employees similarly situated to the petitioners who had come on deputation to the National Saving Directorate, Government of Jharkhand, Ranchi and the Department of Cabinet (Election), Government of Jharkhand, Ranchi by office order contained in Memo No. 634 dated 23.10.2007 and order contained in

Memo No. 227 dated 3.2.2009." In view of the aforesaid facts also the State of Jharkhand, who is appellant in these Letters Patent Appeals without any order, passed in a writ petition, at its own, has taken into consideration the previous services of similarly situated another employee for the purposes of retirement benefits.

(xii) Thus, it appears that the State has accepted the decision rendered by this Court in W.P.(S) No. 3672 of 2009 dated 14th July, 2011, in principle. Similarly from paragraph No. 29 of W.P.(S) No. 1693 of 2012 it is clear that the State at its own has also taken into consideration the services, rendered by the similarly situated employee prior to his absorption for all the purposes of granting retirement benefits.

(xiii) Apart from these two orders viz. In W.P.(S) No. 3672 of 2009 dated 14th July, 2011 and the Government''s own action, as stated in paragraph No. 29 of W.P.(S) No. 1693 of 2012, independent of these facts also, the appellant-State cannot deny the retirement benefits, by not calculating their previous services rendered in the Boards/Corporations or their previous services prior to their absorption, because the respondents-employee were not at fault at all and no option was ever given to them whether they want to go on deputation or not nor any option was given to them at the time of their absorption whether they want to return to their parental departments or not. On the contrary, looking to Annexure 4, 5 and 6 of the memo of L.P.A. No. 340 of 2013, it appears that even though few employees were suspended by their parental departments, the Directorate of Provident Fund has refused to send them back. This shows non-voluntary phenomenon on the part of the employees to go and work wherever they were directed. These facts make the present case different from the facts, stated in the aforesaid decisions, which are relied upon by the learned counsel for the appellant-State in all the Letters Patent Appeals.

(xiv) It appears that the "State" within the meaning of Article 12 of the Constitution of India should not take advantage of its high bargaining power. These government employees, who are faithful in their services, as stated herein above, in view of the fact that neither any show cause notice was ever issued to them nor any departmental proceeding has ever been initiated against them, cannot be rewarded like this that minimum 5 + 14 years of their service will not be calculated for the purposes of their retirement benefits. If option would have been given to them even at the time of their absorption that 5 + 14 years of services will not be calculated for the purposes of retirement benefits, perhaps they would not have given their consent to be absorbed. These facts have been properly appreciated by the learned Single Judge.

15. As a cumulative effect of the aforesaid facts and reasons, we hereby uphold the decisions, rendered by the learned Single Judge in the writ petitions, no error having been committed by the learned Single Judge in deciding the writ petitions. Thus, there being no substance, these Letters Patent Appeals are hereby dismissed.

16. Consequently, I.A. No. 7476 of 2013 in L.P.A. No. 340/13; I.A. Nos. 7901 of 2013 and 2587 of 2014 in L.P.A. No. 357 of 2013; I.A. No. 6813 of 2013 in L.P.A. No. 311 of 2013 and I.A. No. 998 of 2014 in L.P.A. No. 55 of 2014 also stand disposed of.