(2013) 11 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1437 of 2013

Surendra Choudhary — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 4 JLJR 550

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; Abhay Prakash, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order dated 20.2.2013, contained in Letter No. 839 (Annexure-4), whereby the petitioner''s representation for confirming his services and giving him the benefits of 1st and 2nd A.C.Ps, has been rejected by the respondents. The petitioner has also prayed for a direction on the respondents to confirm the services of the petitioner on the post of Clerk in the department with effect from the date of his joining and to give him the benefits of the 1st and 2nd MACP, admissible to the petitioner. It has been stated that the petitioner was appointed as a Clerk in the State Services in the year 1980. The petitioner joined the post of Clerk in the Office of the Joint Commissioner, Commercial Taxes, Darbhanga. By Letter No. 737 dated 16.10.81, the Joint Commissioner, Commercial Taxes, Darbhanga recommended for confirmation of his services. The petitioner also passed Hindi Noting and Drafting Examination and Accounts Examination and acquired requisite eligibility for promotion. The petitioner was transferred to and posted in the Office of the Deputy Commissioner, Commercial Taxes, Jamshedpur. During his service tenure, on competition of 12 years as well as 24 years of service, the petitioner was entitled to get the benefits of 1st and 2nd A.C.P. under the Assured Career Progression Scheme, but the said benefits were not given to the petitioner. Even the order of confirmation of his service was not issued by the department. The petitioner, after rendering long service, attained the age of superannuation and retired on 31.3.2013.

2. It has been further stated that when his service was not confirmed even after long lapse of time due to laches of the department and the benefits of 1st and 2nd A.C.Ps., admissible to him, were not given, the petitioner filed writ petition being W.P.(S) No. 6480/2012. The writ petition was disposed of directing the respondents to take decision and pass appropriate order. The respondents in purported compliance of the said direction of this Court, rejected the petitioner''s claim in mechanical manner by order contained in Letter No. 839 dated 20.2.2013.

3. It has been submitted that the service of one Yogendra Prasad, who was also appointed as a Clerk in the Commercial Tax Office and was junior to the petitioner, has been confirmed and the benefits of 1st and 2nd A.C.Ps have been given to him. But the petitioner''s claim has been rejected on the ground that no scheme has been prepared by the department as yet on the basis of the decision of the Supreme Court in the case of Uma Devi.

4. Learned counsel for the petitioner submitted that when the respondents have confirmed the service of the said Yogendra Prasad, who was similarly situated and even junior to the petitioner and given the benefits of 1st and 2nd A.C.Ps to him, the respondents cannot adopt pick and choose policy and reject the petitioner''s claim. The impugned order is, thus, wholly discriminatory, arbitrary, illegal and is liable to be quashed.

5. The respondents have opposed the petitioner''s writ petition stating, inter alia, that initially the petitioner''s appointment as a Clerk was on Ad Hoc basis and no order of confirmation of his service was issued till his retirement. However, on the basis of the decision of the Supreme Court in the case of Uma Devi, the State Government has taken steps for framing scheme for regularization and the same is in process. The petitioner''s claim shall be considered in accordance with the said scheme after the same is finalised.

6. I have heard learned counsel for the parties and considered the facts and materials on record.

7. It is an admitted position that the petitioner was appointed in the year 1980; he remained in service for more than three decades; he was given salary and other service benefits during his entire tenure of more than three decades. After attaining the age of superannuation, the petitioner retired on 31.3.2013. It is also not disputed that the services of one Yogendra Prasad, who was similarly appointed on the post of Clerk in the Department of Commercial Taxes, was confirmed and he has been given the benefits of 1st and 2nd A.C.P. In view thereof, the respondents cannot discriminate, withhold or deny the petitioner''s confirmation and benefits of 1st and 2nd A.C.P.

8. It appears ridiculous that the matter regarding confirmation of the petitioner''s

service will be considered after framing of the scheme, when the petitioner has already completed his long tenure of service and retired. In the counter affidavit, nothing has been stated to justify the different treatment to the petitioner while the services of similarly situated Yogendra Prasad was confirmed and benefits of 1st and 2nd A.C.P. have already been given to him. The impugned order (Annexure-4) rejecting the petitioner''s prayer for confirmation and giving benefits of 1st and 2nd A.C.P. is, thus, wholly arbitrary, discriminatory and unsustainable. The said order contained in Letter No. 839 dated 20.2.2013 (Annexure-4) is quashed.

9. This writ petition is allowed.

10. The respondents are directed to pass a fresh order regarding confirmation of the petitioner''s service and on his claim of benefits of the 1st and 2nd M.A.C.P. maintaining equality with the case of the similarly situated employee, as mentioned above, within six weeks from the date of receipt/production of a copy of this order. Since the petitioner has already retired, the respondents shall pass order regarding payment of admitted amounts of difference of salary and post retiral benefits in terms of the said order with statutory interest, within six weeks thereafter.

