
(2012) 02 JH CK 0050

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2693 of 2006

Sushil Ignatius Minz

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 JCR 282

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.P. Bhatt

1. The petitioner, by way of filing this writ petition under Article 226 of the Constitution of India, has prayed for a direction upon the respondent authorities to treat the petitioner to be in the services of the Government of Jharkhand from 10.5.2005 to 13.2.2006 I.e. the period during which the petitioner was wrongly allocated the Bihar Cadre. It is further prayed for a direction to make payment of salaries and other dues for the period 10.05.05 to 13.02.2006. Learned Counsel for the petitioner submitted that the petitioner was allocated the Bihar Cadre vide tentative allocation list of the State Advisory Committee and against this, the petitioner and others moved before this Court in WPS No. 2734 of 2004 challenging the principle adopted by the said Advisory Committee and this Court was pleased to hold that any allocation made in the meantime shall be subject to the result of the said writ application. Thereafter, at the time of final disposal of the said writ application, a direction was issued to the Central Government to be considered the case of the petitioner for allocating their services under the State of Jharkhand. It has also observed in the said order if there is single ST employee in one or other cadre, the case of such single ST employee should be considered for allocation of his/her services under the Successor State of Jharkhand. The competent authority of the Central Government should take such

decision within three months from the date of receipt of representation, as may be preferred by any one or other petitioner of the said case. In pursuance to the said order, the Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) vide its corrigendum dated 02.01.2006 finally allocated the petitioner to the State of Jharkhand wherein, the name of petitioner has been shown at Sl. No. 3. Thereafter, vide memo No. 298 dated 8.2.2006 the services of the petitioner were declared to be treated henceforth in the State of Jharkhand.

2. Learned Counsel for the petitioner invited attention to this Court to Annexure 12 to the writ application to show that after the issuance of notification, the petitioners gave the joining report on the same day but the same was accepted on 14.2.2006 by virtue of Annexure-15. Thereafter, he made representation dated 27.3.2006 to the Secretary, Department concerned with a request to release the salary in the intervening period but the said representation was rejected by assigning the reason that the petitioner was relieved on 10.5.2005 and again he has joined the duty on 14.2.2006 and the salary of this intervening period cannot be paid to the petitioner. Learned Counsel for the petitioner further invited attention to this Court to Annexure-21 page- 94 to show that the petitioner could not join after his relieving from the State of Jharkhand as the State of Bihar did not relieve one Sri Laxmi Prasad Sahu, the Additional Director, Mines and Minerals, Patna, who was allocated and transferred vice the petitioner was prevented from relieving till the outcome of issue with regard to allocation of Officer in a particular State decided by the Govt. of India. Learned Counsel for the petitioner while referring Annexure-23 of this petition submitted that the respondent-State has treated the case of one Sri P. Kerketta, Inspector, working under the Industries Department in similar situation was allowed to work during that intervening period and he was paid salary during that intervening period whereas, in the case of the present petitioner, discriminatory treatment has been meted out by the respondent State.

3. Learned Counsel for the State submitted that since the petitioner was not actually under the duty during the intervening period with the State of Jharkhand and as such, the petitioner is not entitled for the relief as prayed and in support of his submission, he further submitted that the services of the petitioner was allocated to the State of Bihar and finally allocation was decided by the Govt. of India on 02.01.2006. It is also submitted that after issuance of said notification, the petitioner joined the State of Jharkhand on 14.2.2006 and prior to that, he was order to be relieved vide order dated 9.5.2005 w.e.f. 10.5.2005 and therefore, the petitioner was relieved by the State of Jharkhand w.e.f. 10.5.05 and his services cannot be treated as continuous service and therefore, the petitioner is not entitled to relief as prayed for.

4. Considering the rival submissions of the Learned Counsel for the parties and from perusal of the papers, it transpires that the short question which is involved in this case is with regard to payment of salary during the intervening period till

the services of the petitioner, finally allocated to the State of Jharkhand. The documents annexed with this petition as well as counter affidavit, indicate that the final decision with regard to allocation was taken by the Govt. of India vide its notification dated 2.1.2006 and the petitioner was relieved by the State of Jharkhand vide order dated 9.5.2005 w.e.f. 10.5.2005. But unfortunately, the officer allocated to the State of Jharkhand and transferred vice the petitioner was not relieved by the State of Bihar as per the communication dated 6.5.05 by the Secretary, Mines and Mineral Department, State of Bihar. It further appears that by the said communication, the State of Jharkhand was requested to wait till the final decision is taken by the Govt. of India regarding final allocation of the Officer, but inspite of that, the present petitioner was relieved w.e.f. 10.5.2005. It further appears that on the one hand, the petitioner was relieved by the State of Jharkhand whereas on the other hand, the State of Bihar did not relieve and transfer the Officer concerned so as to enable him to join State of Jharkhand under the circumstances, it was not possible for the petitioner to join the State of Bihar, therefore, this Court is of the view that the petitioner was not at fault. The intervening period can not be treated as break in service and the same is required to be treated as continuous service without any break in service. It also appears that the petitioner gave his joining report immediately on 8.2.2006 but the same was accepted on 14.2.2006.

5. Having regards to the facts and circumstances of the case, the instant petition deserves to be allowed and the communicated dated 19.4.2006 (Annexure-20) is quashed. The respondent State is directed to release the salary of the petitioner of the intervening period i.e. from 10.5.2005 to 13.02.2006 without considering that period as break in service and the services of the petitioner be counted as continuous service without any break. The State of Jharkhand shall pass an appropriate order regarding continuous of service of the petitioner and release the salary within a period of six weeks from the date of receipt of this order. With the aforesaid observations and directions, this writ petition is allowed.