(2013) 09 JH CK 0031

In the Jharkhand High Court

Case No : L.P.A. No. 421 of 2012

The Jharkhand Industrial Infrastructure Development Corporation and Others	APPELLANT
Vs	
Animesh Tetarway and The Director Industries, Department of Industries and Others	RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2013) 09 JH CK 0031

Hon'ble Judges : Dhirubhai Naranbhai Patel, Acting C.J.;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Vishal Kumar Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

1. The present Letters patent Appeal has been preferred against the order dated 27th August, 2012 passed by the learned Single Judge in W.P. (5) No. 4665 of 2012. Counsel for the appellants submitted that respondent No. 1 served the present appellants on deputation as a Tracer. The order of deputation dated 8th April, 2006 is at Annexure 1 to the memo of this Letters Patent Appeal. The parent department of Respondent No. 1 is Respondent No. 2 and Respondent No. 3 and since, as per rule, i.e. as per Rule 2 of the circular dated 16th November, 1991 issued by the Finance Department, Govt. of Bihar, maximum period of deputation is three years and the deputation allowance cannot be paid after the period of three years without approval of the Finance Department and therefore, Respondent No. 1/original petitioner was not entitled to deputation allowance for the period he served after three years. Audit objection was raised and Notice dated 14th June, 2012 was issued upon the Respondent No. 1 for recovery of the excess amount paid inadvertently towards deputation allowance after the stipulated period of three years. The said Notice is at Annexure 7 to this Letters Patent Appeal, which was challenged in W.P. (S) No. 4665 of 2012. This writ petition was allowed vide order dated 27th August, 2012 passed by the learned

Single Judge without giving any opportunity of being heard to the present appellants and therefore, said order may be quashed and the present Letters Patent Appeal may be allowed.

2. We have heard learned counsel for Respondent No. 1, i.e. original petitioner of W.P. (S) No. 4665 of 2012, who submitted that the present Respondent No. 1 has served the appellants honestly, sincerely, diligently and to the satisfaction of the appellants from the date he was put on deputation, i.e. from 8th April, 2006 till the date he was actually relieved, i.e. 23rd January, 2012 pursuant to the relieving Order dated 16th January, 2012. Therefore, as there was no fault or lapse on the part of the original petitioner to serve the appellants for the period he was posted on deputation, he was entitled to the deputation allowance for the period he actually worked for the appellants. Further, it was not a fault on the part of the original petitioner but the appellants that concurrence of the Finance Department was not taken on expiry of the stipulated period of three years. It was the responsibility of the appellants to relieve him on time, i.e. on expiry of the deputation period and since Respondent No. 1/Original Petitioner can not be held responsible for the lapse which resulted in his continuing on deputation even after expiry of the stipulated period, he can not be denied the deputation allowance as long as he worked with the appellant on deputation and therefore, this Letters Patent Appeal may not be allowed.

3. Having heard counsel for the appellants and original petitioner and looking to the facts and circumstances of the case, we are not inclined to entertain this Letters Patent Appeal for the following facts and reasons:

(I) The present Respondent No. 1 is the original petitioner who instituted W.P. (S) No. 4665 of 2012 challenging the order dated 14th June, 2012 (Annexure 7 to this Letters Patent Appeal) passed by the appellants.

(II) The original petitioner was serving Respondent No. 2 and 3 as a Tracer. He was put on deputation with the appellants vide order dated 8th April, 2006 (Annexure 1 to the memo of this Letters Patent Appeal). Thereafter, he worked sincerely, honestly, diligently and to the satisfaction of this appellant. Any misconduct has not been alleged against the original petitioner by the appellants and as per the rules and regulations applicable to this original petitioner, he was also regularly paid monthly deputation allowance. It appears that as per some circulars of the year, 1991 issued by the Finance Department, Govt. of Bihar, as submitted by the counsel for the appellants, after completion of three years period of deputation concurrence of the Finance Department was required to be taken for payment of deputation allowance and therefore, an employee will be entitled for deputation allowance only when the State Government gives extension of the deputation. Thus, it appears that in the present case irregularity has been committed, but not illegality. The appellants should have moved the concerned government after completion of three years period of the deputation of the original petitioner/Respondent No. 1, but it appears that even after three years, the original petitioner was allowed to continue on deputation without any concurrence from the State Government. It was only after an audit objection was raised that the appellants became aware that original petitioner has overstayed the period of deputation and subsequently, vide letter dated 16th January, 2012 he was ordered to be relieved and he was actually relieved on 23rd January, 2012. Thereafter, vide order dated 14th June, 2012 the original petitioner was asked to refund Rs. 64,571/- which was paid to the petitioner as deputation allowance after expiry of the period of three years. This order of recovery was quashed vide order dated 27th August, 2012 in W.P. (S) No. 4665 of 2012, which is the impugned order in this Letters patent Appeal. Therefore, the only question before this court is to decide whether the payment of deputation allowance to the original petitioner beyond the period of three years is legal or not.

(III) It appears that there is no mistake committed by the original petitioner regarding continuation of the deputation beyond three years with the appellant The original petitioner has worked with this appellant on deputation since 8th April, 2006 till 23rd January, 2012 and for which he was paid deputation allowance as per rule and it was only after some audit objection was raised, appellants issued Notice for recovery of excess amount paid to the original petitioner towards deputation allowance for the period of overstay. It appears that the period of three years of deputation can be extended only with the concurrence of the State Government and the matter of extension should have been taken up with the concerned State Government by the appellant himself. A proper order of extension of the period of deputation should have been obtained, but, the appellant did not move the papers of the original petitioner for extension of the period of deputation. The original petitioner could not have walked away from the service of the appellant on completion of three years, on his own, which would tantamount to indiscipline and misconduct and therefore, certainly there was no fault on the part of the original petitioner for the aforesaid irregularity and therefore, he is entitled to the deputation allowance for the period he actually served the appellants on deputation. Therefore, it appears that no error has been committed by the learned Single Judge in appreciating this aspect of the matter while deciding the writ petition.

So far the grievance raised by the counsel for the appellants is concerned that no opportunity of being heard was afforded by the learned Single Judge, we have given adequate opportunity of hearing to the appellant and therefore, we see no reason to remand the matter to the learned Single Judge on this ground alone.

Therefore, in the light of the aforesaid findings, this Letters Patent Appeal is, hereby, dismissed.

