
(2014) 12 JH CK 0003
In the Jharkhand High Court
Case No : L.P.A. No. 109 of 2013

The State of Jharkhand and Others

APPELLANT

Vs

Shiv Nandan Prasad Gupta

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 1 JLJR 578

Hon'ble Judges : Virender Singh, C.J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Rajesh Kumar, G.P. and Abhijeet Kr. Singh, JC to G.P, Advocates for the Appellant; R.S.P. Sinha, Sr. Advocate and Rakesh Kr. Sinha, Advocates for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order delivered by the learned Single Judge in W.P.(S) No. 2313 of 2012 dated 25th September, 2012, whereby, the writ petition preferred by the respondent-writ petitioner was allowed and hence, the present Letters Patent Appeal has been preferred by the respondents to the writ petition.

Factual Matrix:

2. The respondent herein was the writ petitioner, who had preferred writ petition bearing W.P.(S) No. 2313 of 2012, mainly for the reason that he was appointed by the State Government after his retirement as a Senior Executive Engineer (Civil) from the services of Central Coalfields Limited.

3. The writ petitioner was superannuated on 30th April, 2009 from the services of Central Coalfields Limited and was appointed by the State Government on contract basis as Assistant Engineer, Road Construction Department, with effect from 6th September, 2011, on the basis of fixed wages. The writ petitioner was paid salary of the post of Assistant Engineer minus pension whereas the writ petitioner is demanding the salary of Executive Engineer minus pension.

4. On the basis of notification dated 8th January, 2003 the writ petitioner is claiming salary equivalent to the salary, paid to the Executive Engineer minus pension whereas the Government viz. the present appellant is relying upon the fact that the writ petitioner was given appointment on 6th January, 2011.

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

5. Learned counsel appearing for the State submitted that the writ petitioner was working as Senior Executive Engineer (Civil) in the Central Coalfields Limited and he retired on reaching the age of superannuation on 30th April, 2009. Thereafter, he was given appointment on contract basis as Assistant Engineer, Road Construction Department, Government of Jharkhand, vide order dated 6th September, 2011. The appointment letter itself suggests that the employee may be working on any post before his retirement in the Central Government Undertaking, but, on a contract basis after his retirement, he was appointed as Assistant Engineer. The said appointment letter is at Annexure 2 to the memo of this Letters Patent Appeal. If this appointment letter is read with the Government order dated 25th March, 2009 (Annexure 11 to the memo of Letters Patent Appeal) then it is quite clear from paragraph No. 2 of the said order that the retired employee will get the salary of the post, upon which he is appointed after deducting the pension.

6. It is further submitted by the learned counsel for the State that the earlier order of the Government date 8th January, 2003 (page 38 of the memo of Letters Patent Appeal, which is part of Annexure 5) has been clarified by the State of Jharkhand, after its bifurcation from the erstwhile State of Bihar vide another order dated 26th November, 2011 (Annexure 5 to the memo of Letter Patent Appeal) to the extent that the order dated 8th January, 2003 is applicable only to those employees, who have either retired from the services of the State of Jharkhand or Board/Corporation/Municipal Corporation of the State of Jharkhand. The writ petitioner has retired from the services of the Central Government Undertaking and, therefore, he will be entitled to get the salary of the post of Assistant Engineer (upon which he was appointed) after deducting pension. This aspect of the matter has not been properly appreciated by the learned Single Judge. Moreover, these earlier orders have also been clarified vide another order dated 16th August, 2011, which is at Annexure 1 to the memo of Letters Patent Appeal and by this order also, it has been clarified that the Executive Engineers, who have already retired, shall be appointed as Assistant Engineer (Civil) and hence, the writ petitioner is entitled to the salary of the post of Assistant Engineer after deducting the pension, because he has already retired from the services of Central Government Undertaking viz. Central Coalfields Limited.

Arguments canvassed by the learned counsel for the respondent (writ petitioner):

7. It is submitted by the learned counsel for the writ petitioner that no error has been committed by the learned Single Judge in appreciating the fact that as the

writ petitioner has retired from the post of Senior Executive Engineer (Civil) from the services of Central Coalfields Limited and as he has been appointed after his superannuation, on contract basis by the State of Jharkhand, he should be entitled to the salary of the post of Executive Engineer-pension, on the basis of the Government order dated 8th January, 2003. It is further submitted by the learned counsel for the respondent that even as per the order dated 16th August, 2011 salary of the writ petitioner was fixed keeping in view the Government order dated 8th January, 2003 and, thus, looking to the Government order dated 8th January, 2003 the writ petitioner will be paid salary on the basis of Last Pay Drawn minus Pension. This aspect of the matter has been properly appreciated by the learned Single Judge and hence, this Letters Patent Appeal may not be entertained by this Court.

REASONS:

8. Respondent is the writ petitioner, who had preferred W.P.(S) No. 2313 of 2012 for getting salary of the post of Executive Engineer minus pension. The writ petitioner was working as Senior Executive Engineer (Civil) in the Central Coalfields Limited, which is a Central Government Undertaking. The writ petitioner retired from the services of Central Coalfields Limited on 30th April, 2009, and thereafter, he was appointed on contract basis as Assistant Engineer, Road Construction Department, Government of Jharkhand, Ranchi vide order dated 6.9.2011 (Annexure 2 to the memo of Letters Patent Appeal).

9. It is quite clear from the appointment letter that the writ petitioner was appointed as Assistant Engineer. Road Construction Department, Government of Jharkhand.

10. Now the question before this Court is whether the writ petitioner is entitled salary to the post of Executive Engineer minus pension or the salary of the post of Assistant Engineer minus pension, for which there are certain governmental orders-

"(a) 8th January, 2003;

(b) 25th March, 2009 and

(c) 26th November, 2011"

11. Looking to the governmental order dated 8th January, 2003 it is evident that if any government employee is appointed after his retirement, he will be entitled to the Last Drawn Salary minus pension. In fact, this order dated 8th January, 2003 is an amendment in the governmental order dated 15th July, 2002, especially in Clause (3) thereof. Thus, Clause (3) of governmental order dated 15th July, 2002 has been amended by another governmental order dated 8th January, 2003.

12. It further appears from the governmental order dated 25th March, 2009 that earlier governmental order dated 15th July, 2003 has been clarified and it has

been mentioned that if any retired employee is re-appointed on contractual basis, he will get the salary on the basis of the post. upon which he was appointed. This has been mentioned in paragraph No. 2 of the order dated 25th March, 2009 and then addition of 50 % Dearness Allowance etc. is mentioned in the said governmental order dated 25th March, 2009.

13. It further appears from the facts of the case that still there was some doubt in the mind of the Government with regard to clear interpretation of the governmental order dated 8th January, 2003 and, therefore, one more order was passed by the Government dated 26th November, 2011 and it has been made more clear in paragraph No. 3 of the order dated 26th November, 2011 that only to those employees. who have retired either from the Services of the State of Jharkhand or from the services of the Board of the State of Jharkhand or from the Corporation of the State of Jharkhand or from the Municipal Corporation of the State of Jharkhand. the governmental order dated 8th January, 2003 will be applicable.

14. It appears that the present respondent (writ petitioner) has neither retired from the services of the State of Jharkhand nor from the services of my Board, Corporation or Municipal Corporation of the State of Jharkhand rather he has retired from the services of the Central Government Undertaking viz. Central Coalfields Limited and, therefore, the government order dated 8th January, 2003 shall not be applicable to him, looking to Clause (3) of the governmental order dated 26th November, 2011.

15. Similarly, looking to paragraph No. 2 of the governmental order dated 25th March, 2009 it appears that for the purposes of calculating the salary to be paid to a retired employee, who is appointed on contractual basis, the salary of the post upon which he is appointed. shall be taken into consideration. Thus, as per paragraph No. 2 of the governmental order dated 25th March, 2009 also for calculating the salary to be paid to the writ petitioner, the post upon which he is appointed, namely, Assistant Engineer, Road Construction Department, Government of Jharkhand, shall be taken into consideration. These governmental orders are explicitly clear, namely, 25th March, 2009 [Clause (2) thereof] to be read with Clause (3) of governmental order dated 26th November, 2011. If both the aforesaid governmental orders are read along with appointment letter dated 6th September, 2011 (Annexure 2 to the memo of Letters Patent Appeal), the writ petitioner will be entitled to the salary of the post of Assistant Engineer minus pension. This aspect of the matter has not been properly appreciated by the learned Single Judge.

16. The learned Single Judge has relied upon one letter written by the Deputy Secretary of Road Construction Department dated 16th August, 2011, wherein, it has been stated in paragraph No. 2 that the salary to be paid to the retired employee, who is appointed as Assistant Engineer, will be as per governmental order dated 8th January, 2003. Merely because the Deputy Secretary has not referred the further governmental orders and clarifications dated 25th March,

2009 and 26th November, 2011, it does not mean that these two orders are not applicable to the writ petitioner. In fact, as stated herein above, Clause (2) of governmental order dated 25th March, 2009 and Clause (3) of governmental order dated 26th November, 2011 are nothing but the clarification, given to the governmental order dated 8th January, 2003 and, therefore, both are applicable to the writ petitioner.

17. For the aforesaid reasons and looking to the governmental orders dated 25th March, 2009 and 26th November, 2011 to be read with the appointment letter of the writ petitioner dated 6th September, 2011, which is at Annexure 2 to the memo of Letters Patent Appeal, whereby the writ petitioner has been appointed to the post of Assistant Engineer, the writ petitioner will be entitled to the salary of the post of Assistant Engineer-pension, though he has retired from the post of Executive Engineer. Even otherwise also, after retirement the writ petitioner was appointed on contractual basis and whenever any employee is appointed on contractual basis, his salary will be governed by the contract. Admittedly the writ petitioner was appointed on the post of Assistant Engineer and, therefore, salary of the post of Assistant Engineer will be paid to him after deducting pension and hence, the judgment and order delivered by the learned Single Judge in W.P.(S) No. 2313 of 2012 dated 25th November, 2012 is hereby quashed and set aside. The Letters Patent Appeal is, accordingly, allowed and disposed.