

(2014) 11 JH CK 0063
In the Jharkhand High Court
Case No : L.P.A. No. 394 of 2013

The State of Jharkhand and Others

APPELLANT

Vs

Sudhir Kumar Sinha

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 1 AJR 387 : (2015) LabIC 1675

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

Bench : Division Bench

Advocate : Manoj Kumar, S.C. (Mines) and Sunil Singh, J.C. to S.C. (Mines),
Advocates for the Appellant; B.K. Dubey, Advocates for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been finally heard by the consent of the Advocates for both the sides and we have taken up final hearing of the Letters Patent Appeal.

2. This Letters Patent Appeal has been preferred against the judgment and order delivered by the learned Single Judge in W.P. (S) No. 1267 of 2009 dated 20th June, 2013, whereby, petition preferred by the respondent (original petitioner) was allowed and the benefit of 1st Assured Career Progression was given treating the original petitioner in Government service since 23rd June, 1989. Being aggrieved and feeling dissatisfied by the aforesaid order of the learned Single Judge, the original respondents have preferred the present Letters Patent Appeal.

3. Factual Matrix:

(i) The present respondent (original petitioner) was appointed on temporary basis as Village Level Worker on 20th June, 1989.

(ii) By the order of the Deputy Commissioner, Hazaribagh, dated 26th April, 1994 the respondent (original petitioner) was adjusted on the post of Clerk and the original petitioner has been working on the said post since the date of his joining.

(iii) The original petitioner has completed 12 years of service on the post of Clerk in April 2006 and, therefore, he was given benefit of 1st Assured Career Progression upon completion of 12 years of service after he was regularized into the service as a Clerk.

(iv) The petitioner agitated the Governmental authorities that as he was working as a Village Level Worker since 20th June 1989, 12 years period starts from the said date for grant of 1st Assured Career Progression benefit, whereas, the Government has rejected his claim of calculation 12 years from 20th June 1989 mainly for the reason that the original petitioner was regularised into the services with effect from 26th April 1996 on the post of Clerk. The previous period as a temporary/ad-hoc etc. cannot be calculated because in fact the services of the original petitioner starts with the Government upon his regularisation.

(v) Being aggrieved by this calculation of 12 years period, the present respondent/original petitioner preferred W.P.(S) No. 1267 of 2009 which was allowed by the learned Single Judge vide order dated 20th June, 2013 and being aggrieved by the order of the learned Single Judge, this letters patent appeal has been preferred by the State of Jharkhand.

4. Arguments canvassed by the counsel for the appellants-State:

(i) It is submitted by the learned counsel for the appellants that as per Assured Career Progression Scheme of the year 2002 and more particularly looking to Clause XV, the services of any employee prior to his regularisation cannot be calculated for 12 years. Ad-hoc employee, seasonal employee, muster roll employee, temporary employee etc. if are working for some period and, thereafter, they are regularised into the Governmental services, in those cases, period prior to regularisation will not be reckoned in the calculation of 12 years, for grant of Assured Career Progression benefit. The calculation of 12 years" period starts only when the employee is regularised into the services. This is a policy decision of the Government which is annexed as Annexure-3 to the memo of the letters patent appeal, which was also part and parcel of the record of the writ petition. This aspect of the matter has not been properly appreciated by the learned Single Judge and, hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

(ii) Counsel for the appellants has further submitted that even as per Modified Assured Career Progression Scheme which is at Appendix-I to the Government policy decision which is at Annexure-F to the counter affidavit in this letters patent appeal which is also part and parcel of the writ petition and looking to Clause 12 thereof also the benefit can be given to the employee only when he is working as a regular employee.

(iii) It is also submitted by the learned counsel for the appellants-State that looking to Annexure-A/3 of the counter affidavit filed by the original petitioner in the letters patent appeal, which is a letter of the Government dated 8th April,

1994, written by the Deputy Commissioner, Hazaribagh that the seniority of the appellant will be reckoned only from the date on which he is joining the duty and he has regularised on the post of Assistant. Thus, at the relevant time in the month of April 1994, when the services of the original petitioner was regularised in the said letter of regularisation which was clearly mentioned that his seniority will be calculated from the date on which he is regularised. Thus, earlier services of the original petitioner from 1989 till his regularisation i.e. up to April 1994 will not be calculated for seniority. This order was never challenged by the original petitioner from 1994 onwards. This order was inbuilt condition of the regularisation of the original petitioner in the month of April 1994. This order has attained its finality since last two decades. This aspect of the matter has also not been properly appreciated by the learned Single Judge.

(iv) Normally, the Court will be very slow in reviewing the policy decision of the Government. As per Assured Career Progression benefit policy, if any employee has worked for 12 years of service without promotion on the same post, he will be entitled to the benefit of Assured Career Progression. The calculation of 12 years will start from the date on which the employee is regularised and if there is any previous service of the said employee either in the form of ad-hoc, seasonal, temporary etc., the said period will not be calculated for the purpose of calculation of 12 years because the said employee is not a regular employee of the Government and, therefore, in the facts of the present case though the original petitioner was working on temporary basis from 1989, but his services were regularised since 28th April, 2006. This policy decision of exclusion of period of service of ad-hoc, temporary, casual, seasonal employees may not be interfered by this Court while exercising the writ jurisdiction. Normally, the Court cannot replace or even modify the clauses of the Governmental policy. This aspect of the matter has also not been properly appreciated by the learned Single Judge and, hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

5. Arguments canvassed by the learned counsel for the respondent (original petitioner").

(i) It is submitted by the learned counsel for the respondent (original petitioner) that no error has been committed by the learned Single Judge in allowing the writ petition, preferred by the original petitioner in calculation of 12 years from 20th June, 1989 i.e. the date on which the original petitioner had joined the services of the Government as Village Level Worker (VLW).

(ii) After the appointment of the original petitioner, he was transferred as Sahayak (Assistant) and as per Clause No. 12 of Modified Assured Career Progression Scheme, which is at Schedule-I or Appendix-I of Annexure-F to the counter affidavit filed by the original petitioner in the letters patent appeal, the earlier period prior to regularisation can also be calculated in 12 years.

(iii) Learned counsel for the original petitioner further submitted that in fact the

original petitioner was in the Government service since 1989 either as an ad-hoc or as a temporary basis, but the fact remains that if the employee working since 12 years with the Government and if he is not getting promotion, then after 12 years of his appointment the benefit of 1st Assured Career Progression should be given. Thus, for all purposes the first date of appointment is to be appreciated not the latter date on confirmation or regularisation into the services which is in the facts of the present case i.e. 28th April, 1994.

(iv) Similarly situated other employees like the original petitioner have been given benefit of 1st Assured Career Progression and their 12 years of service have been calculated from the date on which they were appointed either as ad-hoc or temporary basis and not from the date on which they were regularised into the Government services. These aspects of the matter have been properly appreciated by the learned Single Judge while allowing the writ petition preferred by the present respondent and no error has been committed by the learned Single Judge in allowing the writ petition preferred by the original petitioner and, hence, this letters patent appeal may not be entertained by this Court.

Reasons:

6. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the present respondent is an original petitioner, who was appointed as Village Level Worker on temporary basis with effect from 20th June, 1989, thereafter, voluntarily he got himself transferred as Sahayak (Assistant), but the same was also on temporary basis.

7. It further appears from the facts of the case that this employee was not in the regular services of the Government and he was later on regularised into the Government services with effect from 26th April, 1994.

8. It further appears from the pleadings of this letters patent appeal and the writ petition that regularisation of any employee into the Government services is not repentance of the Government that he was wrongly appointed as a temporary employee and, therefore, he is now regularised and, therefore, earlier period of adhocism or temporarism cannot be calculated for any purpose whatsoever, much less, for grant of benefit of Assured Career Progression, in light of Assured Career Progression Scheme, floated by the Government.

9. Learned counsel for the original petitioner repeatedly argued that earlier period i.e. "pre-regularisation period" should be calculated in 12 years. We are not in agreement of this argument canvassed by the counsel for the petitioner mainly for the reasons that-

(i) An employee becomes Government employee upon his regularisation. Period of service prior to regularisation like temporary employees" period, ad-hoc appointees period, seasonal employees" period etc. cannot be calculated for any purpose like pension, gratuity etc. Normally, ad-hoc employees or temporary employees are "back door employees" coming into the Government services in

breach of Articles 14 and 16 of the Constitution of India, but it happens that sometimes their services are regularised into the Government. The date on which such ad-hoc, temporary, casual, seasonal employee is regularised is his "birth date into the Government services". On and from this "birth date into the Government services", he will be entitled to every benefit of his service, may be for gratuity, for pension, for Assured Career Progression calculation etc.

(ii) As per the Assured Career Progression Policy, 2002 and especially as per Clause XV thereof, 12 years of service will be regular services. Temporary, seasonal, muster roll employee etc. will not be calculated in reckoning of 12 years. This is a Governmental policy. Normally, this Court will be very slow in replacing the Governmental policy, while exercising writ jurisdiction. It ought to be kept in mind by the original petitioner that the Court cannot replace even, a better policy for any reason, whatsoever. It is not the function of this Court nor the Court has expertise knowledge of drafting of these types of policies. The drafting of any administrative policy is a complex phenomenon. It depends upon several factors, like financial, not to encourage the back door employees or to give encouragement to the regularised employee etc. Thus, drafting of a policy is a prerogative power of the Government. In the facts of the present case, it is a policy decision of the Government of Jharkhand that period prior to regularisation, will not be calculated in reckoning of 12 years, for grant of 1st Assured Career Progression benefit. We see no reason to alter this policy decision, on the contrary, the Government's policy is based upon a sound logic. This is an attempt to curb or demoralize the back door entry of the employees into the Government services as temporary employee, seasonal employee, casual employee etc.

(iii) As per Clause 12 of Modified Assured Career Progression Scheme, which is at Appendix-I of Annexure-F to the counter affidavit filed by the original petitioner in the letters patent appeal (this document is also part and parcel of the record of the writ petition), there is provision for calculation of regular services in two different departments as a continuous one. Thus, one employee is working in one department on regular basis, as a regular employee and if he is getting transfer to another department as a regular employee, then earlier services will be treated as continuous one without any break, but the fact remains that earlier service in another department is also his regular service as a regular employee. This clause has not been properly appreciated by the learned Single Judge. It ought to be kept in mind that Clause 12 of Modified Assured Career Progression Scheme is not meant for calculation of mixture of two services namely ad-hoc/casual/temporary service and regular service as regular employee. In fact, Clause 12 of Modified Assured Career Progression Scheme talks about continuity of service between two regular services, as a regular employee in two departments. This aspect of the matter has not been properly appreciated by the learned Single Judge and the learned Single Judge has calculated "pre-regularisation services" as well as "regularised services" for reckoning of 12 years. This is an error committed by the learned Single Judge.

10. In the facts and circumstances of the present case, when the original petitioner was regularised into the services in the month of April 1994 by the Deputy Commissioner, Hazaribagh (Annexure-A/3 of the counter affidavit filed by the original petitioner in the Letters Patent Appeal), it was mentioned categorically in the said communication that his seniority will be calculated from the date on which he is regularised. This order was never challenged by the original petitioner after 1994. Thus, previous period of services i.e. prior to regularisation, cannot be calculated for grant of benefit of Assured Career Progression. The service as a regular Government employee of the original petitioner, starts from the date on which he is regularised in the services.

11. Learned counsel for the original petitioner has submitted that other similarly situated persons have been given benefit of Assured Career Progression after adding pre-regularisation period of service of 12 years. This contention is also not accepted by this Court mainly for the reasons that:

(i) The original petitioner could not point out any name of any employee, who has been given benefit of addition of pre-regularisation period of service in calculation of period of 12 years of service. Bare assertion is of no help to the original petitioner.

(ii) Assuming without admitting that the Government has committed some error by addition of pre-regularisation service period in calculation of 12 years of service, there cannot be equality in illegality. If the Government has committed wrong for some of the employees, similar errors cannot be repeated for others and no writ can be issued for maintaining equality in illegality.

(iii) This argument of equality into illegality is also running counter to the benefit of Assured Career Progression Scheme, as stated hereinabove. As per Clause XV of Assured Career Progression Scheme of year 2002, period of service prior to regularisation cannot be considered for calculation of 12 years. As per Clause XV of Assured Career Progression Scheme, 2002 (Annexure-3 to this letters patent appeal), which is part and parcel of the record of the writ petition, for Assured Career Progression benefit, only regularised services will be calculated. We see no reason to alter this policy decision, much less, there is any error in drafting of the policy. This policy is a very sound policy for the reasons, as stated hereinabove.

12. As a cumulative effect of the aforesaid facts, reasons and circumstances, we hereby quash and set aside the judgment and order delivered by the learned Single Judge in W.P. (S) No. 1267 of 2009 dated 20th June, 2013. Accordingly, this appeal is allowed and disposed of.