
(2002) 05 JH CK 0028
In the Jharkhand High Court
Case No : L.P.A. No. 356 of 1997 (R)

Uday Bahadur Prasad Sinha	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Citation : (2002) 50 BLJR 1436

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : L.K. Lal, for the Appellant; P.D. Agarwal and Shailesh, JC to GP II for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order dated 16.7.1997 passed in C.W.J.C. No. 3846 of 1996 (R) whereby the learned Single Judge disposed of the writ application by issuing certain direction. The impugned judgment dated 16.7.1997 reads as under :

"This is the third attempt on behalf of the petitioner for grant of the reliefs sought for in this writ application. Prayer of the petitioner is for a direction to the respondents to pay the retirement dues to him, who retired on 31.1.1990 from the services of respondent No. 2 as an Assistant Engineer, Mines Board. Mr. Kalyan Roy, learned counsel appearing on behalf of the respondent Mines Board has filed counter affidavit which is not on the record, but he has produced the office copy of the same wherefrom it appears that the petitioner was dismissed in the year 1984 and whatever dues legally payable to him has already been paid. Having regard to the stand taken in the counter affidavit filed on behalf of the respondent Board and further having regard to the fact that the petitioner also approached this Court for the same relief earlier, I am not inclined to pass any positive order. Suffice it to say that the respondent Mines Board is directed to pay the legal dues, if any, which is still unpaid, as early as possible. This disposes of this application."

2. The writ petitioner-appellant has assailed the impugned judgment on the ground, inter alia, that learned Single Judge has committed serious error of facts and also error of law in disposing of the writ petition, inasmuch as no counter affidavit was, in fact, filed by the respondents nor the facts stated in the judgment are factually correct.

3. In course of the hearing, learned counsel appearing for the appellant, supplied us the synopsis of the cases which the learned counsel appearing for the respondents has not disputed the correctness of the facts stated in the synopsis. From the synopsis, it appears that the petitioner joined as Assistant Engineer in Hazaribagh Mines Board in 1962 and his post was confirmed by the Government in 1966. The petitioner was put under suspension by the Board on 24.2.1973 but the suspension order was subsequently stayed on 15.5.1973. The petitioner filed a Title Suit No. 15/76 challenging the order of suspension and the suit was decreed. The respondent Mines Board preferred Title Appeal No. 36/73 which was allowed by the judgment and decree dated 20.5.1979 passed by 3rd Additional Sub-Judge, Hazaribagh in terms of judgment dated 29.4.1985. In the meantime, the Mines Board vide resolution dated 15.9.1984 discharged the petitioner from the service. The petitioner preferred a departmental appeal before the Minister-in-charge. Urban Development, Government of Bihar against the discharge order. The departmental appeal remains pending for so many year. The petitioner filed C.W.J.C. No. 2045 of 1989 (R) challenging the order of discharge and also for payment of salary. The writ application was allowed to be withdrawn in terms of order dated 30.11.1989 with the observation that Appellant Authority shall dispose of the appeal to expeditiously and preferably within four (4) months. When the order and direction of this Court was not complied with, the petitioner filed a contempt petition being M.J.C. No. 82 of 1990 (R). Which was converted into CWJC No. 2433 of 1990 (R). The writ application was disposed of on 1.8.1991 with the direction to appellate authority to dispose of the appeal within three (3) months. In the meantime, the petitioner attained the age of superannuation i.e. 1.3.1990, the departmental appeal filed by the petitioner was eventually allowed by the appellate authority in terms of order dated 2.1.1993. The appellate authority quashed the order of discharge and held that the petitioner shall be treated as continuance in service and shall be entitle to receive all dues of his service period along with interest at the market rate. A copy of the order passed by the Minister-in-charge. Urban Development, Government of Bihar in departmental appeal annexed as Annexure-4 to this Memo of Appeal. It further appears that the order passed by the appellate authority was communicated to the Chairman of the respondent Mines Board with a copy to the Commissioner, Hazaribagh and Examiner of local accounts. The Chairman of Mines Board requested the State of Bihar to make allotment of atleast Rs. 36 lakhs for payment of legal dues to the petitioner. In reply to the said request, State of Bihar refused to allot funds on the ground that the Mines Board is liable to pay from its own means and sources. The petitioner, thereafter, filed detailed representation in 1996 before the Chairman of the Mines

Board for payment of the entire salary for the aforementioned period and also for payment of retiral dues, but nothing was paid to the petitioner. Then the petitioner filed C.W.J.C. No. 3846 of 1996 (R). The writ petition was disposed of by the learned Single Judge in terms of order dated 16.7.1997.

4. As stated above the facts narrated herein before, has not been denied or disputed by the counsel appearing for the respondents. It is also not disputed that the order passed by the appellate authority in departmental appeal was not challenged either by the Mines Board or by the State of Bihar before this Court or before any other Court. Having regard to the facts that no counter-affidavit was filed by the respondent, the learned Single Judge has erred in law in disposing of the writ application, holding that the petitioner approached against for the same relief and no positive order was passed against the respondents.

5. For the aforesaid reasons, this writ application is allowed and the impugned judgment passed in C.W.J.C. No. 3846 of 1996 (R) and findings recorded by the learned Single Judge is set aside. Consequently the respondent Mines Board is directed to pay the entire dues legally pay able to the petitioner-appellant together with all the retiral dues within a period of three (3) months from the date of receipt of copy of this order.