

(2024) 01 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 182 Of 2022

Ujjwal Kant

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 08-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 01 PAT CK 0022

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Pawan Kumar Choudhary, Manoj Kumar, Kameshwar Kumar, S. K. Ranjan, Ram Yash Singh

Final Decision : Allowed

Judgement

1. This Court has heard Mr. Pawan Kumar Chaudhary, alongwith Mr. Manoj Kumar, learned counsel for the petitioner and Mr. S. K. Ranjan, learned counsel for the State.

2. The writ petition under Article 226 of the Constitution of India has been initially filed for a direction upon the concerned respondents to ensure payment of all the retiral benefit except the payment of GIC and G.P.F. to the petitioner with statutory interest, who was superannuated from service on 31.01.2021, as the Accountant in Education Department, Government of Bihar, Patna, as also for payment of compensation of Rs.1,00,00,000/- on account of the death of his wife in dearth of money for treatment during the pandemic period. Subsequently, during the pendency of the writ petition on account of certain development, the relief prayed for in para.1 of the writ petition is modified by adding certain other prayer by the order of this Court dated 05.09.2023, which are quoted hereinbelow:

"1(i) For issuance of writ in the nature of certiorari for quashing the re-fixation of pay scale by the respondents vide Memo No. 1321 dated 25.07.2023 and the

entitlement of ACP/MACP modified vide Memo No. 1309 dated 24.07.2023 (Annexure-A and B to the Supplementary counter affidavit filed on behalf of the respondent no.3).

1(ii) For direction to the respondent

Joint Secretary-cum-Director (Administration), Department of Education, Government of Bihar, Patna to not to discriminate the petitioner from other and to grant all his retiral dues on the basis of last pay certificate appended as Annexure-P/6, as the petitioner was superannuated with the pay scale of Rs.76,500/-.

1(iii) For direction to the respondents to grant all the consequential benefits as has been granted to Smt. Ram Laxmi Mishra and others, which has been given in compliance of the order of this Hon'ble Court and the same had also been affirmed by the Hon'ble Apex Court (Annexure-P/4 & P/10 Series)."

3. Shorn of unnecessary details, the relevant facts, which led to the filing of the present writ petition is that the petitioner was appointed as a Clerk-cum-Accountant under the Adult Education-cum-Non-formal Education, Project of the Education Department on 10.05.1985. Owing to the closure of the project/scheme by the Central Government, the petitioner along with other persons, who were working in the said scheme/project were retrenched with effect from 01.04.2001.

4. In the light of several judicial pronouncement of the Hon'ble Court on the issue relating to retrenched/surplus employee of Adult Education-cum-Formal Education, the State Government vide its resolution contained in Memo No. 582 dated 20.05.2005 has taken a policy decision to absorb all the retrenched employee in the different Departments of the State Government. In view thereof, vide letter no. 433 dated 10.02.2006, issued by the Director, Mass Education addressed to the Director (Administration)-cum-Deputy Secretary, Human Resources Development Department, Bihar to absorb the services of the petitioner in the Education Department. Accordingly, the appointment letter was issued vide office order, as contained in Memo no. 896 dated 18.04.2006 by the Director (Education) of the Education Department and the petitioner was absorbed on the post of Clerk-cum-Accountant.

5. Referring to the appointment letter, as contained in Memo no. 896 dated 18.04.2006, the learned counsel for the petitioner impressed upon the Court that the appointment letter was in clear terms mentioned that the appointment of the petitioner has not been treated as a new appointment. After serving unblemished service, the petitioner retired from the service on 31.01.2021 from the post of Accountant under the Education Department and on the date of retirement, the last pay drawn by the petitioner was Rs.76,500/-. In support of his submission, attention of this Court has been drawn to Annexure-P/6 of the first rejoinder to the counter affidavit.

6. It is the case of the petitioner that despite having superannuated on 31.01.2021, when the authority did not release the due retiral benefit, the petitioner has filed the instant writ petition for payment of retiral benefits under different heads, but the authority of the Education Department unilaterally amended the last pay drawn as Rs.68,000/- by treating the petitioner as new appointee, contrary to the condition of the appointment/absorption letter 896 dated 18.04.2006. He further submits that the respondent, in order to justify the aforesaid amendment, has also issued a corrigendum letter under the signature of Special Secretary-cum-Director (Administration) with regard to appointment letter of the petitioner, as was issued vide Memo no. 896 dated 18.04.2006 and modified the same that the services of the petitioner will be treated as new service vide Departmental letter no. 957 dated 27.06.2022 (Annexure-C to the supplementary counter affidavit). Further the respondent vide Departmental Memo No. 1309 dated 24.07.2023 has also withdrawn the benefit of MACP, which was allowed to him on the basis of recommendation of the Screening Committee of the Department w.e.f. 14.02.2005 in Level-V. After withdrawing the benefit of the aforesaid MACP, the authority once again re-fixed the last pay drawn by the petitioner and fixed the same at the rate of Rs.41,600/-, which orders are also under challenge.

7. While assailing the impugned orders and action of the respondents, Mr. Chaudhary, learned counsel for the petitioner submits that the last pay of the petitioner drawn on the date of retrenchment was Rs.5800/-, which was also approved by the Finance Department and is manifest from the service book. The entire exercise was made by the authority of Education Department and approved by the Finance Department in view of the letter no. 1129 dated 04.07.2006 and thus the re-fixation or re-amendment of the last pay of the petitioner is wholly illegal, unjustified and fit to be set aside. It is further submitted that several other retrenched employees had been given salary for the retrenched period in view of the judicial pronouncement of this Court, particulars of which has been duly obtained under Right to Information Act and copy of which has been brought on record by way of Annexure-P/5 to the rejoinder filed on behalf of the petitioner. He also submits that one Smt. Ram Laxmi Mishra, who was also holding the post of Accountant had been provided salary for the retrenched period and the case of the petitioner is identical to the case of Smt. Ram Laxmi Mishra and others. He next submitted that the authority has provided all the in-service benefits, except 2nd and 3rd M.A.C.P., as per the condition of the appointment letter as well as in accordance with the directions contained in letter no. 1129 dated 04.07.2006 and rightly fixed the pay drawn at the rate of Rs.76,500/-, which was illegally altered twice with ulterior motive to deprive the petitioner from getting 2nd and 3rd MACP, thus left with no option, the petitioner has assailed the same by filing interlocutory application.

8. In order to buttress his submission, he further submits that other, identically situated persons, have also been allowed the benefit of ACP/MACP, who were later on absorbed in the Government Service in the different departments and in

order to seek parity certain letters/orders with respect to different persons have been brought on record. In support of the aforesaid submissions, reliance has been made on the judgment of this Court rendered in the case of Ram Naresh Ishwar Vs. The State of Bihar & Ors. (CWJC No. 17137 of 2009), Bipin Bihari Roy Vs. The State of Bihar & Ors. (CWJC No. 11936 of 2011) and in the case of The State of Bihar & Ors. Vs. Prabhakar Mishra & Ors. (L.P.A. No. 438 of 2017).

9. Per contra, Mr. S. K. Ranjan, learned counsel for the State, while refuting the contention of the petitioner, submitted that the service of the petitioner before his retrenchment was the part of Non Formal Education Programme, which was sponsored by both the Government i.e. Central Government as well as State Government, who were bearing the expenses incurred in this programme in specified ratio. However, the Central Government has taken a decision to stop the Non Formal Education Programme and accordingly the petitioner who was the then employee of Non Formal Education Programme was retrenched from his service alongwith others. In the light of the several pronouncements of this Court, the State Government took a policy decision to adjust the retrenched employee vide Memo No. 582 dated 20.05.2005, which clearly contemplates that the adjustment should be treated as a new employment and they shall not be entitled to grant the benefit of seniority on the basis of earlier service prior to retrenchment. The said period will be counted only for pensionary benefits of retirement. Accordingly, the case of the petitioner was recommended to adjust on the post of Accountant in the pay scale of Rs.4000-6000/- as a new appointment. However, due to typographical mistake appointment letter was issued mentioning therein that the appointment will not be considered as new appointment but in Clause -2 therein it was in clear term mentioned that he will not get the benefit of seniority. The respondent having come to know about the mistake has rectified the same vide letter no. 957 dated 27.06.2022.

10. He next submitted that the case of the petitioner is covered by the judgment of the Apex Court in Civil Appeal No. 10806 of 2018 (State of Bihar & Ors. Vs. Baliram Singh & Ors.) inasmuch as the petitioner has neither challenged his retrenchment order nor challenged the adjustment order before any Court of law.

11. To buttress his submission, he further vehemently submitted that the Apex Court in the case of State of Bihar & Ors. Vs. Baliram Singh & Ors. (supra) allowed the appeal vide order dated 29.10.2018 and held that the writ petitioner has not challenged the termination order, including the policy decision dated 20.05.2005 of the terms and conditions of the appointment letter, thus the Hon'ble Apex Court in uncertain terms held that the readjustment of service shall be deemed as new/fresh appointment, which will be counted from the date of fresh appointment. The Hon'ble Court also distinguished the order passed in the case of Smt. Ram Laxmi Mishra, which was affirmed by the Division Bench of this Court in L.P.A. No. 137 of 2006 and the SLA (Civil) No. 9401 of 2009 preferred by the State of Bihar also came to be dismissed on 24.07.2009.

12. The respondent State of Bihar after obtaining the order of the Apex Court in

Baliram Singh & Ors. (supra) vide Departmental Letter No.464 dated 28.02.2019 communicated to the Accountant General, Bihar that the retrenched employees of Formal Education is not entitled for any financial benefit for the period 2001 to 2006-07. Consequent thereupon, the Government of Bihar has re-determined the pay scale of the petitioner by treating the appointment of the petitioner on 14.02.2006 in the pay scale of Rs.4000-6000/- and granted 1st ACP w.e.f. 14.02.2016. The pay scale of the petitioner has accordingly also determined from the date of appointment to the date of retirement vide Department Memo no.1548 dated 01.09.2023. It is lastly submitted that in identical matter in the case of Chharpan Ram Vs. State of Bihar & Ors. (CWJC No. 10282 of 2020) a Bench of this Court vide its order dated 08.07.2022 has been pleased to hold that for the purpose of grant of ACP/MACP the benefits should not be calculated prior to retrenchment period.

13. In response to the submissions made on behalf of the learned counsel for the State, Mr. Choudhary further submitted that the reliance upon the judgment passed by the Apex Court in the case of Baliram Singh & Ors (supra) whereby and whereunder the Apex Court has been pleased to distinguish the case of Smt. Ram Laxmi Mishra on the ground that Smt. Ram Laxmi Mishra had challenged her retrenchment order whereas the respondent Baliram Singh and Others not only failed to challenge the termination order passed against them consequent to the abolition of scheme w.e.f. 01.04.2001, but also failed to challenge both the policy of the State and the terms and conditions of the letter of the appointment, however, the distinguishing feature would not have any application in the case of the petitioner, as the case of the petitioner is not identical to those of Baliram Singh and others (supra) where in the appointment letter of the petitioner, it has been clarified that his service should not be treated as new appointment and thus there was no reason or occasion to challenge the same. He further submits that once the petitioner superannuated from his service on 31.01.2021, there was no relationship of master and servant between them and in the circumstances mentioned herein, the authority cannot alter the terms of appointment of the petitioner after 1 ½ years of his retirement that too unilaterally without any show-cause notice or opportunity of hearing.

14. This Court has given anxious consideration to the submissions advanced on behalf of respective parties and also perused the materials available on record. Undisputedly, the petitioner was the employee of Mass Education (Non Formal Education Programme), whose services were retrenched along with others and subsequently in the light of the pronouncement of judgments rendered by this Court, the State Government took a policy decision on 20.05.2005 to adjust the retrenched employees. The very adjustment/ appointment of the petitioner is on account of the policy decision of the State Government dated 20.05.2005, which has been brought on record by way of Annexure- A to the Supplementary Counter Affidavit filed on behalf of respondents. Bare reading of the said policy decision, Clause ([k) thereof it is manifest that the retrenched employee shall be adjusted for the same salary at which they were retrenched. In the case of

unavailability of posts/vacancies and upon furnishing their written consent retrenched employee shall also be adjusted at minimum salary. Clause (V) of the said policy decision clearly stipulates that "adjustment of the retrenched employee shall be deemed to be a new appointment, they shall not get the benefit of seniority on the basis of their service before being retrenched, but the period of service prior to retrenchment shall be used for the pension purpose.

15. On the basis of the aforementioned policy decision, as contained in Resolution dated 20.05.2005, the Director, Mass Education, Bihar, Patna vide his Memo no. 433 dated 10.02.2006 wrote to the Director (Administration)-cum-Deputy Secretary, Human Resources Development Department, Bihar with recommendation to appoint the petitioner on the post of Accountant in the pay scale of Rs.4000-6000/-. This Court has also perused the said letter, which also contemplates similar conditions that his adjustment shall be deemed to be new appointment and on the basis of their service prior to retrenchment, the seniority shall not be permissible, but his service prior to his retrenchment shall be calculated for the purpose of pension. However, surprisingly, when the appointment letter, as contained in Memo no. 896 dated 18.04.2006, has been issued it has been incorporated in it that the appointment shall not be treated as new appointment, though the other condition was already there that his service prior to retrenchment shall not be permissible for seniority. However, it shall be counted for the purpose of pension.

16. It is true that it is the only letter i.e. Memo No. 896 dated 18.04.2006, which was communicated to the petitioner and, as such, the petitioner had no reason or occasion to challenge the same, as his appointment was not treated to be new appointment, but this Court cannot shut his eyes that the very basis of the appointment of the petitioner as discussed hereinabove, viz, policy decision as well as recommendation letter, there was a clear stipulation that the adjustment of retrenched employee(s) shall be deemed to be new appointment.

17. In such circumstances, now the question posed before this Court as to whether the petitioner shall be given the benefit of his past services prior to appointment. After careful consideration, this Court is of the opinion that admittedly the petitioner has neither challenged the order of retrenchment nor being aggrieved by the terms of the policy decision as well as recommendation stipulating the condition that the appointment shall be deemed to be new appointment, thus, it was out and out a sheer mistake or typographical error on the part of the respondents and, as such, the case of the petitioner also covers by the judgment rendered by the Apex Court in the case of Baliram Singh & Ors. (supra) wherein the Apex Court has held that the adjustment/appointment of the retrenched employee was/were a fresh appointment and the past service will be reckoned only for the purpose of grant of pension and nothing more.

18. Despite having held the appointment of the petitioner as fresh appointment, this Court has no hesitation to further hold that the case of the petitioner falls under exceptional facts and circumstances, as this Court cannot lose sight of the

fact that the very appointment of the petitioner stipulates that his appointment shall not be treated as new appointment and the Government resolution dated 20.05.2005 specially Clause ([k] clearly says that the retrenched employee shall be adjusted for the same pay scale at which they were retrenched.

19. From the materials available on record, it would be evident that before retrenchment on 31.03.2001, the petitioner was getting salary at the rate of Rs.5800/-(in the pay scale of Rs.4500-7000/-) w.e.f. 01.01.1996 and thus the respondents is directed to ensure re-fixation of the pension of the petitioner on the basis of the basic salary drawn in the pay scale of Rs.4500-7000/- in terms of the policy decision of the State Government, as contained in Resolution dated 20.05.2005.

20. So far the contention of the petitioner that others have been allowed the benefit of salary for the period of retrenchment, including Smt. Raj Laxmi Mishra and others. Needless to observe that such benefits have been allowed pursuant to the order of this Court as well as Apex Court on account of their order of retrenchment having been set aside, which is not the facts of the case in hand, thus no such relief/benefits be accorded to the petitioner.

21. So far the challenge of the petitioner to the order whereby the pay scale of the petitioner has been re-fixed by the respondent vide Memo No. 1321 dated 25.07.2023 and the entitlement of ACP/MACP modified vide Memo No. 1309 dated 24.07.2023 are concerned, admittedly the service of the petitioner prior to retrenchment has been considered for the purpose of pension and it has been submitted on behalf of the petitioner at the bar that several persons, identically situated, have been allowed the benefit of ACP/MACP by counting their past services before the retrenchment, this Court also finds substance on the reliance made on behalf of the petitioner on the judgment rendered by this Court in the case of Ram Naresh Ishwar Vs. The State of Bihar & Ors. (CWJC No. 17137 of 2009 and other analogous cases), Bipin Bihari Roy Vs. The State of Bihar & Ors. (CWJC No. 11936 of 2011) and in the case of The State of Bihar & Ors. Vs. Prabhakar Mishra & Ors. (L.P.A. No. 438 of 2017).

22. In all the aforementioned cases, the Hon'ble Court taking note of the fact that all those, who were terminated and came to be absorbed under a policy decision form one class and absorbed against the regular sanctioned vacancies in different department/regional offices. The policy decision was also clear for a permanent absorption is further confirmed by subsequent appointment letter and to grant pay protection and count past service for pension.

23. In the case of Bipin Bihari Roy (supra), the petitioner of the said writ petition was also appointed as Class-III employee in the year 1985 in the Directorate of Adult Education, Government of Bihar along with other persons, whose services were terminated on account of closure of Adult Education Project, which subsequently, came to be set aside and they were absorbed in Non-Formal Education Education Wing of the Directorate of Adult Education with the same

benefits and he has been allowed the benefit of ACP taking into account the past services, prior to retrenchment. Further the learned Division Bench in the case of Prabhakar Mishra & Ors (supra) while affirming the order of the learned Single Judge has been pleased to hold in para. 13 and 14, which are as follows:

"13. Similarly, if Rules 10 and 22 of the MACP Rule, 2010 are taken note of, it speaks about appointment in the State Government service of an employee, who had been working in a school as a teacher or in any other Public Sector Undertaking or Autonomous Body. The rule speaks about induction and appointment of the employees into the service of the State Government and does not refer to a case where the services of the employees working in the Corporation is absorbed in the State Government on winding up or closing of the Corporation. The case in hand is one where the State by its own notification dated 7.3.1986 thought it appropriate to absorb the services of the employees and after such absorption when for getting the benefit of pension and post retiral benefits, the services rendered by them in the Corporation is counted, we are of the considered view that there should not be any impediment in counting the same services for grant of ACP or MACP. The interpretation given by the State Government in our considered view, will only apply in the case of appointment of employee in the State Government service after following the selection process or after his lien is terminated in the Corporation or Autonomous Body. The respondents were regular employees in service of Corporation and not appointed in regular cadre service of the State Government after selection or termination.

14. We are of the considered view that the Writ Court has not committed any error in passing the order, as from para-6 onwards by holding that in the case of absorption the principle applicable in the case of appointment or fresh appointment will not apply. In our considered view it is correct interpretation and the same need not be interfered with. Accordingly, we find that the Writ Court has not committed any error and further hold that the Single Bench in the case of Anjani Kumar Sinha (supra) has not considered the law correctly and has not interpreted the ACP Rules, 2003 and MACP Rules, 2010 in its right perspective. With due respect, we disagree with the observation of the Writ Court in that case."

24. In view of the discussions made hereinabove, this Court is also of the opinion that the impugned order withdrawing the benefit of ACP/MACP vide Memo No. 1309 dated 24.07.2023, as also Memo No. 1321 dated 25.07.2023 for re-fixation of the pay scale are fit to be quashed and cancelled and accordingly the same are fit to be set aside.

25. So far the prayer of the petitioner for payment of compensation of Rs.1,00,00,000/- on account of death of his wife in dearth of money for treatment during the pandemic period is concerned, this Court has found that the unfortunate demise was on account of Covid-19 where the Medical survey data reveals that lacs and lacs of people have lost their life in this pandemic not

because of lack of money, but because of the large scale spread infection leading to severe complication as well as low immunity power and prolonged illness. It has rightly been averred by the respondents that the percentage of death ratio during the pandemic period from maximum elite class and of well of families, who have no scarcity of money. In such view of the matter, this Court does not find that it is a case, which warrants any compensation to be awarded to the petitioner.

26. Accordingly, the present writ petition stands allowed to the extent indicated hereinabove. The entire exercise, in terms of the order of this Court, must be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

27. There shall be no order as to costs.