(2020) 01 JH CK 0049

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 264 of 2016, I.A. Nos. 2430 & 4106 of 2018

Yogendra Mahto And Ors APPELLANT

Vs

State of Jharkhand And Ors RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:
Bihar Reorganisation Act, 2000 — Section 62, 62(1), 62(3)

Citation : (2020) 01 JH CK 0049

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Divison Bench

Advocate : Anil Kumar Sinha, Abhijeet Kumar, Jai Prakash, Rishi Pallava

Final Decision : Allowed

Judgement

1. Heard learned senior counsel for the appellants and learned Additional Advocate General for the respondent State.

2. The appellants are aggrieved by the impugned Judgment dated 08.03.2016, passed by the Writ Court in W.P.(S) No. 2115 of 2015 and W.P.(S) No.2382 of 2015, whereby, the writ applications filed by the appellants and other similarly situated persons, claiming the benefits of the 5th Pay Revision w.e.f. 1.1.1997 and 6th Pay Revision w.e.f. 1.1.2006, have been dismissed by the Writ Court.

3. The appellants herein, were the employees of Bihar State Road Transport Corporation, (herein after referred to as the 'Corporation'). Consequent to the bifurcation of the State of Bihar by virtue of Bihar Reorganization Act, 2000, and upon creation of the State of Jharkhand, the services of the appellants fell within the State of Jharkhand, as they were either working within the territorial jurisdiction in the State of Jharkhand, or subsequently their services were allocated to the State of Jharkhand. All the appellants superannuated from service between the period 31.01.2005 to 31.07.2011.

4. For the purpose of adjudication of this L.P.A., it would be appropriate to go through Section 62 of the Bihar Reorganization Act 2000, which provided for

dissolution of the Bihar State Road Transport Corporation. The relevant provisions are in Section 62(1) & (3), which read as follows :-

62. Provisions as to Bihar State Electricity Board, State Ware-housing Corporation and State Road Transport Corporation.- (1) The following bodies corporate constituted for the existing State of Bihar, namely:-

(a) the State Electricity Board constituted under the Electricity (Supply) Act, 1948 ;

(b) the State Warehousing Corporation established under the Warehousing Corporation Act, 1962;

(c) the State Road Transport Corporation established under the Road Transport Act, 1950,

shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section and to such directions as may, from time to time, be issued by the Central Government.

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(3) The Board or the Corporation referred to in sub-section

(1) shall cease to function as from, and shall be deemed to be dissolved on such date as the Central Government may, by order, appoint; and upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor States of Bihar and Jharkhand in such manner as may be agreed upon between them within one year of the dissolution of the Board or the Corporation, as the case may be, or if no agreement is reached, in such manner as the Central Government may, by order, determine:

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5. Thus, from the plain reading of the provision of Section 62(1) it is apparent that on and from the appointed day, i.e., 15.11.2000, the Corporation continued to function in those areas in respect of which they were functioning immediately before 15.11.2000, and by virtue of Section 62(3) of the said Act, the Corporation was to cease to function and deemed to be dissolved on such date as the Central Government may, by order, appoint. The Notification under Section 62(3) of the aforesaid Act was published by the Central Government, through its Ministry of Road, Transport and Highways, Government of India, vide Gazette Notification dated 14.01.2004, dissolving the Corporation w.e.f. 30.06.2004.

6. In the unified State of Bihar, for some reason or the other, the employees of the Corporation were not being paid their salary and the matter went up to the Hon'ble Supreme Court of India in Civil Appeal No. 7290 of 1994. Order dated 12.08.2008 passed by the Hon'ble Supreme Court in the said Civil Appeal is an important order, which deals with the bifurcation of the State of Bihar and the plight of the employees of the Corporation. The dispute between the parties had been referred to an Arbitration Committee appointed by the Apex Court, which was headed by a former Judge of the Hon'ble Supreme Court, Hon'ble Mr. Justice S. Saghir Ahmad, and on the basis of the report submitted by the said Committee, which was accepted by the Hon'ble Supreme Court, the employees of the Corporation were being paid their 50% salary from 1.12.2000. The Hon'ble Apex Court, taking note of these facts, passed the following order on 12.08.2008:-

"Similarly the employees working in the Jharkhand State Road Transport Corporation are also paid 50% of their salaries. We make it clear that the remaining 50% salary, which is in arrears, to be paid to the employees by the State of Bihar as well as by the State of Jharkhand within a period of six months. Since 1.12.2000, there must have been employees who must have been retired from service, those employees shall be similarly paid with the arrears of salary due to them within the period stipulated along with the retiral benefits. Some of the employees must have been died during the pendency of these matters. The legal heirs of those employees would also be entitled to get the arrears of salary as well as other retiral benefits or any benefits consequent upon the death of the employees. Same shall be paid to them within a period of six months. The legal heirs would be at liberty to file applications before the Transport commission of the State of Bihar and Jharkhand." (Emphasis supplied).

7. It may be stated at this place that since the aforesaid order was passed by the Hon'ble Apex Court on 12.08.2008, and the Hon'ble Apex Court directed to make the payments of the entire arrears of salary / retiral dues to the employees within a period of six months, this undisputedly covers the entire salary of all the employees till 12.02.2009.

8. Though the subsequent part of the order dated 12.08.2008 deals with the situation that if the State of Jharkhand decided not to have the State owned Transport Corporation, or it wanted to terminate the services of the employees, it could do so by giving them the benefit of the provisions of the Industrial Disputes Act, but we are not concerned with that part of the order, as admittedly, the services of none of the employees in the State of Jharkhand were terminated even after the dissolution of the Corporation, rather the services of the employees were absorbed by the State Government.

9. Though we have observed that the services of the employees of the Corporation were not terminated, rather their services were absorbed by the State of Jharkhand, but in this case, there is a disputed question as to when their services were absorbed, and the adjudication of this matter depends on the

answer of this moot question.

10. There is yet another order passed by the Hon'ble Apex Court in Writ Petition (Civil) No. 337 of 2001, and in the connected Contempt Petition (C) No. 342 of 2004, wherein in order dated 24.08.2011, the Hon'ble Supreme Court took note of the fact that the State of Bihar had already paid to the Corporation a sum of Rs.458.77 crores, whereas the Corporation was to receive a sum of Rs.35,19,57,949/- from the State of Jharkhand, and it was assured by the State of Jharkhand before the Hon'ble Apex Court that they shall be disbursing the amount by 03.09.2011. The counsels of both the States also agreed before the Hon'ble Apex Court that the amount would be sufficient to pay the entire arrears to the employees of the Corporation who were presently working and who might have retired from service and even those who might have passed away in the meantime. The employees who were working in the State of Jharkhand, made yet another grievance before the Hon'ble Apex Court that they had not been paid their salary for the past six months, and it was assured to the Hon'ble Apex Court that they would be paid their entire salary within a period of ten days from that date, i.e., from 24.08.2011. Yet another grievance was made by the employees working in the State of Jharkhand, that their services had not yet been absorbed as directed by the Award of Justice S. Saghir Ahmad, to which, upon being pointed out to the Hon'ble Apex Court, by the counsel for the State of Jharkhand, it was ordered as follows :-

"Counsel for the State of Jharkhand referred to paragraph 6 of the Compliance Report dated August 09, 2011, filed on August 23, 2011 on behalf of the State of Jharkhand. In paragraph 7 of the Report, it is stated as follows :

"7. It is also stated and submitted that, all the employees allotted to Jharkhand have been working with the Transport Department, Jharkhand and they are operating the Bus Services and maintaining the Bus Depots which are still functional....."

In paragraph 9 of the Report, it is averred as under :

"9. It is stated and submitted that all the employees have been getting regular salaries and up (sic) February, 2011, there is not (sic) dues."

We read the aforesaid paragraphs to mean that all the employees of the Corporation, who were allocated to the State of Jharkhand, have been duly absorbed in the service of the State Government there." (Emphasis supplied).

11. Thus in view of the aforesaid order of the Hon'ble Apex Court, the services of the employees of the Corporation, who were allocated to the State of Jharkhand, stood absorbed. The State of Jharkhand subsequently filed a petition seeking clarification about this order from the Hon'ble Apex Court, by filing I.A. No. 32 of 2012, which also stood dismissed by the Hon'ble Apex Court by order dated 05.10.2012, as mentioned in the resolution of the State Government itself, which was published in the Official Gazette on 07.06.2013. Thus, the aforesaid order

dated 24.08.2011 attained finality for all practical purposes.

12. It however, appears that in a subsequent Contempt Petition (C) No. 411 of 2013, filed in the Hon'ble Apex Court, an order was passed on 07.04.2015, wherein the opening sentence of the order reads thus, "It is not in dispute that the petitioners have been absorbed with effect from 24th August, 2011 and their dues have been paid and in some of the instances is in the process of being paid keeping the date of absorption in mind."

13. The Hon'ble Single Judge, placing reliance on this order, held that the date of absorption of the employees of the Corporation was 24.08.2011, and since all the writ petitioners had superannuated prior to 24.08.2011, they were not entitled to claim the benefits of the 5th Pay Revision and 6th Pay Revision, and dismissed the writ application. The Hon'ble Single Judge has also taken into consideration the fact that even the State of Bihar had not implemented the 5th and 6th Pay Revision Committees' report with respect to the employees of the State Road Transportation Corporation, and dismissed the writ applications filed by the appellants and other similarly situated persons, by the impugned Judgement dated 08,03.2016, holding that the petitioners cannot expect any windfall merely because of their adjustment in the Transport Department. Aggrieved thereby, the present appeal has been filed by the appellants.

14. Learned senior counsel appearing for the appellants has made a simple argument. According to the learned senior counsel, the appellants have been paid their salary throughout, for the entire period of their service, on the basis of 4th Pay Revision. It is submitted that in the State of Jharkhand, the benefit of 5th Pay Revision was allowed to the employees w.e.f. 01.01.1997, and the benefit of 6th Pay Revision was also made applicable to the employees w.e.f. 01.01.2006, and as such, the appellants who superannuated after the implementation of the 5th Pay Revision and some of the appellants who have superannuated after the implementation of the 6th Pay Revision, were entitled to get their salary in accordance with the 5th and 6th Pay Revisions, and they were also entitled to get the arrears of salary and other pensionary benefits on the said basis.

15. Learned senior counsel for the appellants has also drawn our attention towards an order passed by the Patna High Court in Rajya Path Paribahan Kamgar Union Vs. Union of India & Ors., (in C.W.J.C No.7185 of 2005 and other analogous matters decided on 04.06.2015), which was filed by the employees of the Bihar State Road Transport Corporation, for claiming their salary in accordance with 5th and 6th Pay Revision Committee's report, which has been allowed by the Hon'ble Patna High Court, in the following terms:-

"25. I have already held that the petitioners are entitled to 5th and 6th Pay Revision Committee recommendation and that they are stuck up with 4th Pay Revision scale for about two decades or so. In such circumstances, the Government would constitute a committee comprising of Chief Secretary, Finance

Secretary and the Transport Secretary, which would review the present salary position of the employees to lead a life with human dignity in light of principles laid down by Hon'ble Apex Court in case of A.K. Bindal (supra) and consider the feasibility of providing package to the Corporation to enable it to meet the liability of 5th and 6th Pay Revision Committee recommendation with a date it may just and appropriate within a period of four months from the date of receipt of a copy of this order."

16. Learned senior counsel for the appellants accordingly, submitted that the ground that even the State of Bihar had not implemented the 5th and 6th Pay Revision Committees' report with respect to the employees of the State Road Transportation Corporation, no more exists.

17. Learned Additional Advocate General, on the other hand, has submitted that after the bifurcation of the State of Bihar, the State Government of Jharkhand had paid its dues to the Corporation for giving the salary of their employees and the State Government never treated the employees to be their direct employees, until their services were absorbed by the State Government, which decision was taken by the resolution of the State Government published in the Official Gazette on 07.06.2013, giving all the benefits to the employees, as applicable to the State Government employees. Accordingly, the services of all such employees who were working on 07.06.2013, were absorbed w.e.f. 07.06.2013, and they are getting all the benefits since that date only. It is submitted by the learned Additional Advocate General that prior to this date, all the appellants had already superannuated and accordingly, they could not be given the benefits of 5th and 6th Pay Revision. Alternatively, relying upon the order dated 07.04.2015 passed by the Hon'ble Apex Court in Contempt Petition (C) No. 411 of 2013, it is submitted that in any event, the employees have to be deemed to be absorbed w.e.f. 24.08.2011 and not before that date, and even in that event, the appellants had already superannuated from service and accordingly, no benefits could be given to the appellants.

18. Learned Additional Advocate General has also submitted that the employees of the Corporation who were, or are working in the State of Jharkhand, have been given all the benefits as had been given by the State of Bihar to the employees of the Bihar State Road Transport Corporation. It is submitted by the learned Additional Advocate General that the Judgement passed by the Hon'ble Patna High Court in C.W.J.C No.7185 of 2005 and analogous matters, has been implemented by the State of Bihar, only w.e.f. 01.12.2015. Learned Additional Advocate General accordingly, submitted that even this Judgment is of no help to the appellants.

19. The order implementing the said Judgment has been brought on record by way of counter affidavit filed on behalf of the State, which however, shows that due to the poor financial position in the State, the said Judgment was being implemented from 01.12.2015.

20. Having heard the learned counsels for both the sides and upon going through the record, we find that the submission of the learned Additional Advocate General that the services of the employees shall be deemed to be absorbed w.e.f. 07.06.2013, when the resolution was published in the Official Gazette by the State of Jharkhand, or in any event, not prior to 24.08.2011, in view of the order dated 07.04.2015 of the Hon'ble Apex Court, cannot be accepted for the simple reason that according to the notification issued by the Central Government, the Corporation stood dissolved w.e.f. 30.06.2004, and admittedly, the employees have been paid their salary till their retirement. If date of absorption is to be taken either 07.06.2013 or 24.08.2011, it shall create an absolutely anomalous situation, inasmuch as, the State Government is not treating the employees to be in service after 30.06.2004, and still paying the salary to the employees for the entire period. This anomalous situation cannot be allowed to be created.

21. Though in the order dated 07.04.2015 passed by the Hon'ble Apex Court in Contempt Petition (C) No. 411 of 2013, it is stated that "It is not in dispute that the petitioners have been absorbed with effect from 24th August, 2011 and their dues have been paid and in some of the instances is in the process of being paid keeping the date of absorption in mind.", but prima-facie, this order does not appear to be in consonance with the order dated 24.08.2011 passed by the Hon'ble Apex Court in Contempt Petition (C) No. 342 of 2004, stating "We read the aforesaid paragraphs to mean that all the employees of the Corporation, who were allocated to the State of Jharkhand, have been duly absorbed in the service of the State Government there.", as this order was based on the statement of the State of Jharkhand on affidavit that "It is also stated and submitted that, all the employees allotted to Jharkhand have been working with the Transport Department, Jharkhand and they are operating the Bus Services and maintaining the Bus Depots which are still functional.....".

22. Though we are not in a position to decipher as to how in the order dated 07.04.2015, it is given that the petitioners have been absorbed w.e.f. 24.08.2011, but the plain reading of the order dated 24.08.2011 quoted above clearly shows that the Hon'ble Apex Court was given to understand that the services of the employees who were allocated to the State of Jharkhand, had been duly absorbed in the State Government, and they were working with the Transport Department of the State Government, without any break in service. In that view of the matter, we are of the considered view that it cannot be said that the services of the employees were not deemed to be absorbed after the dissolution of the Corporation on 30.06.2004. For all practical purposes, it has to be held to be so, otherwise it will only create the anomalous situation, but this analogy shall also save the State Government from the anomalous situation stated above. We accordingly, hold that the services of the employees shall be deemed to be absorbed soon after the dissolution of the Corporation on 30.06.2004, i.e., w.e.f. 01.07.2004. This answers the question posed by us in paragraph 9 of this Judgement.

23. Having given this finding, now the only question that remains to be decided is whether the appellants and the other similarly situated employees of the Corporation were entitled to get their salary in accordance with the 5th and 6th Pay Commission recommendations. Admittedly, after the dissolution of the Corporation w.e.f. 30.06.2004, no Corporation was created by the State of Jharkhand, and as held above, the services of the employees stood absorbed in the State Transport Department w.e.f. 01.07.2004. In that view of the matter, there cannot be any anomaly between the salaries which are being paid to the employees of the State Transport Department and to the ex-employees of the Corporation on the ground that they were working in the Corporation and absorbed latter. The submission of the learned Additional Advocate General that the employees have been paid all the benefits that have been paid by the State of Bihar to the employees of the Bihar State Road Transport Corporation, is of no help to the State of Jharkhand, inasmuch as, in the State of Bihar, the Corporation still continues, but in the State of Jharkhand, the employees are now the employees of the Transport Department of the State Government and they are no more the employees of any Corporation or any corporate body. In that view of the matter, there cannot be any anomaly in the salaries of the employees inter se, working in the Transport Department of the State Government.

24. We find that even in the State of Bihar the employees had filed a writ application bearing No. 7185 of 2005 and analogous writ applications, in which it has been held by the Hon'ble Patna High Court that the petitioners are entitled to 5th and 6th Pay Revision Committee recommendations. In the State of Bihar, as pointed out by the learned Additional Advocate General, the order has been implemented with effect from the year 2015. But that is so, in view of fact that the employees in the State of Bihar are still the employees of the Corporation, and not of the State Government. That is not the situation here. The poor economic condition of the State of Bihar, is said to be the other ground for delayed date of implementation of the pay scales. On that ground, we cannot deny the benefits of the 5th and 6th Pay Revision to the appellants or the other similarly situated employees, even though we have held that they have to be deemed to be the employees of the State of Jharkhand, in its Department of Transport, and there cannot be any pay anomaly between the employees inter se, of the State Government.

25. We accordingly, hold the appellants and the other similarly situated employees, entitled to the benefits of 5th Pay Revision Committee recommendations w.e.f. 01.07.2004, i.e., after the dissolution of the Corporation on 30.06.2004, and 6th Pay Revision Committee recommendations from the dates applicable to the other employees of the State of Jharkhand. The respondent State is accordingly, directed to calculate the dues of the appellants and the other similarly situated employees, including their retiral dues accordingly, and to make the payment of all their dues, including the retirement benefits, positively within a period of six months from today.

26. For the foregoing reasons, the impugned Judgment dated 08.03.2016 passed by the Writ Court in W.P.(S) No. 2115 of 2015 and W.P.(S) No.2382 of 2015, cannot be sustained in the eyes of law, and the same is accordingly, set aside.

27. This L.P.A. is accordingly, allowed with the directions and observations as above. The pending Interlocutory Applications also stand disposed of.

