

Ajay Ram Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : May-16-2017

Appellant : Ajay Ram

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 3542 of 2010 Ajay Ram, son of Late Jgnath Ram, Resident of-Thana Road, Subhash Chowk, P.O.-Lohardaga, District-Lohardaga Petitioner -V e r s u s- 1.The State of Jharkhand. 2.Principal Secretary, Road Construction Department, Project Building, P.O. and P.S.-Dhurwa, District-Ranchi. 3.Engineer-in-Chief, Road Construction Department, Government of Jharkhand, Ranchi. 4.Chief Engineer, Road Construction Department, Government of Jharkhand, Ranchi.

5. Executive Engineer, Road Construction Department, Lohardaga.

6. Superintending Engineer, National Highway, Road Circle, Ranchi.

7. Superintending Engineer, National Highway Circle, Ranchi. Respondents
CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - Mr. Saurabh Shekhar, Advocate. For the Respondents : - Mrs. Richa Sanchita, S.C. V. C.A.V. On: -01.12.2016 Delivered On: - 16/05/2017 Per Pramath Patnaik, J.: In the captioned writ application, the petitioner has, inter alia, prayed for quashing the part of the order dated 29.10.2009, as contained in Office order no. 1536, so far as

the condition mentioned in column (3) by which, it has been decided that the petitioner will not be entitled to get the benefits of GPF and the pensionary benefits in view of the Finance Department Circular dated 09.12.2009 vide Annexure-4 to the writ petition and further prayer has been made for a direction commanding upon the respondents to forthwith count the service of the petitioner with effect from his initial date of appointment i.e. w.e.f. 19.06.1987 and to extend entire consequential benefits along with penal interest in view of the ratio laid down in the judgment passed in W.P. (S) No. 3588 of 2004, basing on which the office order dated 29.10.2009 vide Annexure-4 has been issued.

2. Bereft of unnecessary details, the facts, as disclosed in the writ petition is that the petitioner was continuing as work charged employee since 1987, because of not bringing his services to 2 permanent/regular establishment. The petitioner approached this Court in W.P. (S) No. 3588 of 2004 and the said writ petition along with batch of cases was disposed of vide order dated 16.05.2005. The aforesaid writ petition was disposed of by remitting to the competent authority with direction to decide the individual claim of each of the petitioner and to communicate the decision within a period of four months from the date of receipt/production of a copy of the order as evident from Annexure-1 to the writ petition. Due to non-compliance of the aforesaid order, the petitioner filed Cont. Case (C) No. 463 of 2006, which was also disposed of vide order dated 05.04.2010. The petitioner being aggrieved by the part of the order dated 29.10.2009 vide Annexure-4 to the writ petition, so far as wiping out his past services, has filed the instant writ petition invoking Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner during course of hearing has strenuously urged that the impugned order vide Annexure-4 has not been passed in due compliance and spirit of the order passed by this Court. Learned counsel for the petitioner further submits that once the services of the petitioner has been regularized, it amounts to continuity of services and consequential benefits from the date of initial appointment but since the past services of the petitioner in work charged establishment has been wiped out, the action of the respondents tantamounts to violation of Article 14 of the Constitution of India. Learned counsel

for the petitioner further submits that if the initial date of appointment of the petitioner under work charged establishment i.e. 19.06.1987 is wiped out, purportedly, on the basis of a circular, issued by the Finance Department, dated 09.12.2009, the same cannot be legally sustainable because of the fact that the Circular issued by the Finance Department dated 09.12.2009 cannot have any retrospective effect. Moreover, the Circular, which was in vogue, during the time of initial appointment, ought to have been made applicable to the petitioner and on the basis of the said Circular, the petitioner is entitled to the benefit of the GPF and the pensionary 3 benefits.

4. A counter affidavit has been filed on behalf of the respondents repelling the contentions made in the writ petition. It has been, inter alia, contended in the counter affidavit that the petitioner was illegally appointed as Grade-IV employee in the work charged establishment, not holding any sanctioned post with effect from 20.06.1987 by the then Superintending Engineer, who was no longer the appointing authority as the power of appointment of the work charged employees has been delegated to the Engineer-in-Chief/Chief Engineer/Additional Chief Engineer vide P.W.D. letter dated 25.07.1975. It has further been submitted that the petitioner filed W.P. (S) No. 3588 of 2004 for regularization of his services from work charged establishment to regular establishment and for payment of arrears of the period when his service was dispensed with as per the general policy of the Government in the matter of work charge employee, which has been circulated vide Road Construction Department letter dated 14.09.2002 vide Annexure-A to the counter affidavit. In view of the aforesaid letter of the Department, the Departments stopped taking work from the petitioner from 22.09.2002. It has further been submitted that the petitioner was not on work in the department from 22.09.2002 to 29.10.2009 i.e. for more than 7 years, the service of a government employees who remains not on work for more than five years, automatically gets terminated as per Rule 76 of the Jharkhand Service Code. Moreover, the petitioner was not having the requisite educational qualification for the post. It has further been submitted that no work has been performed by the petitioner from 22.09.2002 onwards, but, after considering his claim, the respondents acted in a sympathetic manner and appointed the petitioner in regular establishment as a Sectional Peon in spite of not having the requisite qualification of the said post i.e.

08th Pass. It has further been submitted that as per the Finance Department Resolution No. 518 dated 09.12.2004, a new Contribution Pension Plan has been introduced for the employees, 4 who have been appointed on or after 01st December, 2004 and since the petitioner has also been appointed after 01st December, 2004, new pension plan has been applied to the petitioner in view of the resolution of the Finance Department dated 09.12.2004.

5. Learned counsel for the Respondent-State by reiterating the submissions made in the counter affidavit has vociferously submitted that since the initial appointment of the petitioner to the work charged establishment, was ex facie illegal as the concerned authority had not followed the procedure with the doctrine of equality enshrined in Article 14 and 16 of the Constitution of India and also the instruction issued by the Government for making appointment on the work charged establishment, the service of the petitioner under work charged establishment since 1987 till 2002 though continued under the work charge establishment but from 2002 to 2009, the petitioner was not assigned the work under the work charge establishment but in due deference of the orders of the Hon'ble Court and showing sympathy, the impugned orders vide Annexure-4 has been issued, which cannot be construed to be illegal, unjust or not legally sustainable. In this respect, learned counsel for the Respondent-State has referred to the decision of the Hon'ble Apex Court reported in (2009) 5 SCC65 State of Bihar- versus-Upendra Narain Singh and others.

6. Having given my anxious consideration to the rivalized submissions and on perusal of the documents, I do not find any infirmity or illegality in the impugned order at Annexure-4 to the writ petition on the following grounds : - (i) The Full Bench of this Court in a batch of writ petitions, disposed of vide order dated 16.05.2005, has been pleased to, inter alia, hold that work-charged employees working against a post, in regular scale of pay, on their retirement and after their death, their heirs/dependants are entitled to claim death-cum- retiral benefits, such as pension/family pension, gratuity, leave encashment etc., apart from G.P.F. and Group Insurance amount, if otherwise, fulfills the requisite qualifying period to earn 5 pension, gratuity and leave encashment, but, while disposing the writ petition, this Court remitted the matter to the competent authority with a direction to the

respondents to decide the individual claim of each of the petitioners and for communication of the decision. Accordingly, a decision has been taken by the Government vide Annexure-4, regularizing the services of the petitioners, but, in the said order, it has been mentioned that in view of the Finance Department's Circular dated 09.12.2004, the Government employees, who have been appointed on or after 01.12.2004, are not entitled to any pensionary or other retirement benefits. Since the services of the petitioner has been regularized in the year 2009 and the Government Circular has come into effect in 2004, the services of the petitioner is to be governed by the aforesaid Circular. Moreover, the Full Bench of this Court directed for consideration of the case of the petitioner for regularization and pensionary benefits with a rider of fulfilling the requisite qualifying period. (ii) As per the Finance Department's Resolution No. 518, dated 09th December, 2004, vide Annexure-D to the counter affidavit, a new Contribution Pension Plan has been introduced for the employees, who have been appointed on or after 01st December, 2004. The services of the petitioner has been regularized in the year 2009, he would be governed under the New Pension Scheme as per the said Resolution and whatever the benefits are available under the new Pension Scheme shall be made applicable to the petitioner, therefore, the petitioner cannot have any cause for grievance, so far as post-retirement benefits under the new Pension Scheme of 2004 is concerned. Moreover, no Circular of the Government has been pressed into service by the learned counsel for the petitioner under which the services of the work charged employee prior to the regularization can be computed for the purpose of pensionary benefits. Therefore, in absence of any Circular or Guidelines, the relief claimed by the 6 petitioner cannot be acceded to.

7. In view of the reasons stated in the foregoing paragraphs and as a logical sequitor to the aforesaid discussions made in the preceding paragraphs, the impugned order dated 29.10.2009 vide Annexure-4 to the writ petition, as contained in Office order no. 1536, does not warrant any interference by this Court. Accordingly, the writ petition, sans merit, is hereby dismissed. (Pramath Patnaik, J.) APK