

Shiv Kumar Singh and Ors Vs. State of Jharkhand and Ors.

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Court : Jharkhand

Decided On : Jul-21-2017

Appellant : Shiv Kumar Singh and Ors

Respondent : State of Jharkhand and Ors.

Judgement :

1 W. P. (S) No. 1569 of 2006 In the matter of an application under Article 226 of the Constitution of India ---- 1. Shiv Kumar Singh son of late Gajadhar Prasad Singh, resident of C-2/1, Adrey House Campus Ranchi, PO Ranchi, P.S. Kotwali, District Ranchi-8.

2. Lal Dutt Thakur son of late Dukhi Thakur, resident of Main Road, Hatia, P.S. Jaggannathpur, P.O. Hatia, District Ranchi.

3. Mahesh Prasad Sharma son of Sri Alekh Deo Sharma, resident of C/o Sri Prabhu Prajapati, 56 Seth, Doranda, Lakshmi Para, P.O. Doranda, P.S. Doranda, District Ranchi. Petitioners Versus 1. The State of Jharkhand.

2. Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Govt. of Jharkhand, Ranchi.

3. Joint Secretary, Department of Personnel Administrative Reforms and Rajbhasa, Govt. of Jharkhand, Ranchi.

4. Principal Secretary, Department of Finance, Project Bhawan, Dhurwa, Ranchi, Govt. of Jharkhand, Ranchi. ... Respondents ----- PRESENT HON'BLE MR. JUSTICE ANANDA SEN For the Petitioners : Mr. Rajiv Ranjan, Sr. Advocate Mr. Shresth Gautam, Advocate Mr. Piyush Chitresh, Advocate For the State Respondents : J.C. to G.P.IV ----- Ananda Sen, J.

Heard Mr. Rajiv Ranjan, Sr. Advocate appearing for the petitioners and learned J.C. to G.P.IV for the State-respondents.

2. The petitioner, in this writ application, has challenged the office order, as contained in Memo No. 5/vividh-19-13/2002 Ka. 121/Ranchi, dated 15 th January, 2005, by which the petitioners have been directed to show cause as to why disciplinary action be not taken for wrong information in respect of their date of appointment while seeking first and second Time Bound Promotion. Further, the order No.5/Vividh-19-13/2002 Ka. 07/Ranchi dated 17 th January, 2005, by which the second Assured Career Promotion granted to the petitioner No.1 has been 2 cancelled, has also been challenged in this writ application.

3. The facts are admitted in this case.

4. The petitioners were appointed some time between 1972 and 1978 to the post of Steno-Typist in the Secretariat. Vide resolution dated 07.08.1987 contained in Memo No.9/Vi.1037/85Ka. 708, the post of Steno-Typist was upgraded and merged with the joint cadre of Personal Assistants in the scale of Rs.785-1210. The petitioners, who were the Steno-Typist, got the benefit of the said merger with effect from 11.08.1987 and the petitioners joined the upgraded post. The first Time Bound Promotion was granted to the petitioners with effect from initial date of appointment as Steno-Typist. Thereafter, the scheme of Time Bound Promotion was replaced with a new scheme, namely, Assured Career Progression (A.C.P.) Scheme. The petitioners were granted the first A.C.P. vide order dated 16 th December, 2004 contained in Memo No. 5/Vividh-19-13/2002 351/ Ranchi. Petitioner No.1, Shiv Kumar Singh was given the benefit of A.C.P. Scheme with effect from 09.08.1999 showing his date of posting as 15.05.1978 (wrongly typed as 15.05.1978 in place of 11.08.1987); similarly, petitioner No.2, Lal Dutt Thakur was given the benefit of the said A.C.P. Scheme with effect from 09.08.1999,

showing his date of posting as Personal Assistant as 11.08.1987; and petitioner No.3 Mahesh Prasad Sharma was granted the benefit of the said A.C.P. Scheme with effect from 11.08.1999 showing his date of posting as Personal Assistant with effect from 11.08.1987. The petitioner No.1 was granted second A.C.P. with effect from 15.05.2002 showing his date of posting as Personal Assistant with effect from 15.05.1978 (should have been 11.08.1987). Be it mentioned here that, 15.05.1978 is the initial date of appointment of petitioner No.1 on the post of Steno-Typist and 11.08.1987 was the date when all these three petitioners were upgraded as Personal Assistant in the combined cadre. Petitioners made representation before the concerned authorities claiming their Time Bound Promotion and A.C.P. from the date of their initial date of appointment, i.e., when they joined as Steno-Typist and 3 not from the date of upgradation and merger of their post of Steno-Typist with the post of Personal Assistant.

5. A similar dispute was pending before the Hon'ble High Court of Judicature at Patna in C.W.J.C. No.4944 of 1993. Hon'ble High Court of Judicature at Patna had allowed the writ application by order dated 06.01.1995 directing the State Government to consider the case of the petitioners of the said writ application to grant Time Bound Promotion in the Junior Selection Grade of Personal Assistants of the Secretariat with effect from the date they completed ten years of their services from the date of their initial appointments as Steno-Typist in accordance with the Government resolutions.

6. It is apparent from the record that after the order of the Honble Patna High Court, the Personal Assistants of Government of Bihar were granted the First and Second A.C.P. by counting their service period from their initial date of appointment as Steno-Typist vide Office Order No.9/Pro.-02-02/07 Ka. 311/Patna dated 09.08.2007. The said order of the Government of Bihar was subsequently kept in abeyance by the State of Bihar vide order No.9/Pro-14-56/2007 Ka. 10659/Patna dated 25.10.2007. The Government of Jharkhand also decided to grant A.C.P. to the Personal Assistants from the date of their initial appointment in the post of Steno-Typist, but, as the State of Bihar had kept their order in abeyance, the State of Jharkhand also did not implement their decision. Vide letter dated 31.12.2008 (signed on 16.12.2008), the State of Jharkhand requested the

State of Bihar as to why the order No.311 dated 09.08.2007 was kept in abeyance. From perusal of the said letter, it is clear that to take further steps in this matter, the State of Jharkhand was seeking clarification from the State of Bihar. The State of Bihar vide letter No.10418 dated 19.10.2010 informed that they have revived the order No.311 dated 08.08.2007 after setting aside the order dated 25.10.2007 by which the order dated 09.08.2007 was kept in abeyance. This means that the State of Bihar has finally decided to grant the benefit of A.C.P. from the date of 4 appointment as Steno-Typist.

7. The counsel for the State submits that the petitioners are not entitled to the reliefs. Objection of the State is on two counts : (i) the State of Bihar has kept in abeyance the order granting A.C.P. from the date of initial appointment and thus, the petitioners, who are in Jharkhand, are also not entitled to receive the said benefit; (ii) A.C.P. has to be granted from the date of their appointment as Personal Assistant since it is a new post and their appointment is to be treated as new appointment.

8. Learned senior counsel appearing on behalf of the petitioners countered the said argument and submits that in fact, vide minutes of meeting dated 27.11.2008 (whose minutes have been annexed at page 7 of the supplementary affidavit filed on 04.12.2002), the State of Jharkhand has principally decided to grant the benefit of A.C.P. from the date of initial appointment in the post of Steno- Typist, but, since the State of Bihar has kept in abeyance its order in that regard, the State of Jharkhand has also not proceeded further in this matter. He submits that when the State of Bihar has already withdrawn the embargo, the State of Jharkhand has to follow and implement its own decision, which was already taken by the State.

9. After hearing the arguments of learned counsel for the parties and going through the records, specially, the order of the Hon'ble Patna High Court, I find that the dispute has been set at rest as it has been held that Steno-Typists, who were upgraded as Personal Assistant in the Secretariat Cadre, are entitled to get Time Bound Promotion from the date of their initial appointment as Steno-Typist and not from the date of their appointment as Personal Assistant. It is pertinent to mention here that the order of Hon'ble Patna High Court, has attained finality.

10. It is also clear that the State of Bihar had taken a decision to grant the benefit of A.C.P. to the Personal Assistants, who were earlier Steno-Typist in the Secretariat Cadre from the date of their initial appointment in the post of Steno- 5 Typist and not from the date of their upgradation/merger to the post of Personal Assistant. It is also an admitted fact that the State of Bihar had taken a decision to grant them the benefit of Time Bound Promotion / A.C.P. from the date of their initial appointment as Steno-Typist, but, the same was kept in abeyance and later on the embargo was withdrawn. It is also a fact that the State of Jharkhand had principally agreed to grant the same benefit, but, did not extend the same as because the State of Bihar had stayed their decision.

11. It is admitted that the petitioner No.1 was appointed on 15.05.1978 as Steno-Typist, petitioner No.2 was appointed on 21.12.1972 and petitioner No.3 was appointed on 28.12.1973 as Steno-Typist in the Secretariat Cadre. It is also admitted that their post was upgraded and merged with the post of Personal Assistant. The judgment of the Honble Patna High Court in C.W.J.C. No.4944 of 1993 has already decided the issue, which is now binding on the State of Jharkhand also. As per the said judgment, initial date of appointment as Steno-Typist will be the basis of granting Time Bound Promotion or A.C.P. The Government of Bihar has also accepted the same and has passed orders granting A.C.P. from their initial date of appointment as Steno Typist. Further, as per the minutes of meeting contained in Annexure 7 of the Supplementary Affidavit, it is clear that the State of Jharkhand has also taken a decision to principally grant benefit of A.C.P. from the date of appointment as Steno-Typist. This decision was not implemented just because the similar decision of State of Bihar was kept in abeyance by the State of Bihar, but, admittedly later on the order of stay has been withdrawn by the Bihar Government.

12. Thus, from the undisputed facts mentioned above, I find that the petitioners, in view of the judgment passed by the Honble Patna High Court in C.W.J.C. No.4944 of 1993 and also in terms of the decision taken by the State of Jharkhand are entitled to get their respective Time Bound Promotions and A.C.Ps. counting the period of service from the date of their initial appointment, i.e., from the date they were appointed as Steno-Typist and not from the date they were appointed as

Personal Assistant in the Secretariat Cadre.

13. Thus, the office order, as contained in Memo No. 5/vividh-19-13/2002 Ka. 121/Ranchi, dated 15th January, 2005 and the order No.5/Vividh-19-13/2002 Ka. 07/Ranchi dated 17th January, 2005, are hereby quashed. The respondents are directed to re-calculate the benefits of Time Bound Promotions and the A.C.Ps. granted to the petitioners counting the period of service from the date of their initial appointment, i.e., from the date they were appointed as Steno-Typist and not from the date they were appointed as Personal Assistant in the Secretariat Cadre. Necessary corrections are accordingly required to be made by shifting their initial date of appointment. This process of rectification must be done by the respondent No.2 within a period of eight weeks from the date of presentation of a copy of this order before him by the petitioners. All consequential monetary benefits will also be extended to the petitioners within a period of four weeks, thereafter.

14. With the aforementioned observations and directions, this writ application stands allowed. (Ananda Sen, J) High Court of Jharkhand, Ranchi dated, the 21st of July, 2017 AFR Kumar-cp.03

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