

Binay Kumar Prasad Vs. Road Construction

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Court : Jharkhand

Decided On : Jul-25-2017

Appellant : Binay Kumar Prasad

Respondent : Road Construction

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 7483 of 2016

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Binay Kumar Prasad, son of late Raghunandan Prasad, resident of village Gandhi Tola (New Colony), Chaibasa, P.O. & P.S. Chaibasa Sadar, District West Singhbhum. Petitioner VERSUS1 The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, Ranchi.

3. The Superintendent Engineer, Road Construction Department, Path Circle, Jamshedpur.

4. The Executive Engineer, Road Construction Department, Path Pramandal, Chaibasa. ... Respondents.

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For Petitioner : Mr. Suraj Kumar, Advocate For Respondents : Mr. Rahul Kumar,
JC to SC-II

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK05 25.07.2017 Heard

learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has approached this Court with a prayer to grant the benefits of ACP/ MACP to the petitioner after completion of satisfactory years of service as per the resolution of Finance Department for ACP/ MACP. Further prayer has been made for recalculating the difference of entire dues towards salary for the period 01.01.1989 to 26.09.2008 after adding annual increment for the period 01.01.1989 to 26.09.2008 and also for revised pay-scale under Pay Revision Rules. FACTUAL MATRIX³ The petitioner was initially appointed by respondent No. 2 for the post of Accounts Clerk being retrenched employee vide memo No. 118 dated 30.01.1988. Thereafter, his appointment was extended vide memo No. 358 2 dated 25.04.1988, memo No. 1191 dated 30.08.1988 and letter No. 296 dated 18.12.1989, issued by the Superintending Engineer, Jamshedpur. The petitioner had continuously worked for about 18 months i.e. much more than 240 days but subsequently, he was removed from the service. On such removal, the petitioner raised an industrial dispute and the appropriate authority referred the matter for adjudication vide notification dated 10.02.1994, issued under the orders of Governor of Bihar. Thereafter, Ref. Case No. 12 of 1994 was instituted and the proceeding was initiated and after examining the witnesses adduced by the Management/ respondents, the learned Labour Court, Jamshedpur by its Award dated 25.02.2004, reinstated the petitioner setting aside the order of termination with full back wages and consequential benefits.

4. In view of quashment of the order of termination, the petitioner submitted his joining before Executive Engineer, Road Construction Department, Path Pramandal, West Singhbhum at Chaibasa but the same was not accepted and hence, the matter was again agitated by the petitioner before the Labour Deputy Commissioner, Jamshedpur who referred the matter to the Labour Superintendent, Chaibasa vide letter No. 4984 dated 20.11.2004. In the meantime, the Executive Engineer, Road Construction Department, Path Pramandal, West Singhbhum at Chaibasa also referred the matter to the Superintending Engineer vide letter 03.11.2004. The Labour Superintendent, Chaibasa also issued direction to the Executive Engineer on 04.01.2005 with a direction to immediately implement the Award failing which necessary action shall be taken but no orders

were passed. The petitioner having no alternative remedy moved the Honble Court for acceptance of his joining in service in terms of Award dated 25.02.2004 passed in Ref. Case No. 12 of 1994 and this Honble Court vide order dated 31.01.2005, passed in W.P.(S). No. 254 of 2005, disposed of the writ petition directing the respondent No. 2 to take final decision in the matter of joining within a period of two weeks.

5. When the order of this Honble Court was not complied with, the petitioner was compelled to move this Honble Court in Cont. Case (C). No. 185 of 2005 and during the pendency of the contempt application, the respondents issued memo No. 811 dated 04.08.2006, by which the joining of 3 the petitioner was rejected. Accordingly, the contempt application was disposed of with liberty to the petitioner to challenge the order dated 04.08.2006. Thereafter, the petitioner again moved this Honble Court vide W.P.(L). No. 2984 of 2007 with a prayer for reinstatement in service with full back wages from the date of termination till date as per the Award and to pay interest at the market rate on the due amount and a compensation of Rs.5.00 lakh for harassment caused to the petitioner at the hands of the respondents. The Honble Court vide its order dated 27.02.2008 disposed of the writ petition with an observation, the Superintending Engineer is hereby directed to accept the joining of the petitioner and to implement the Award within the period of one week from the date of receipt/ production of a copy of this order.

6. In view of the aforesaid observations, the petitioner filed representation before the respondent No. 2 annexing copy of this order for accepting his joining and also for compliance of the Award. The said representation of the petitioner was not considered and no orders were passed and again, the petitioner moved in Cont. Case No. 119 of 2009, in which it was stated by the respondents that already a sum of Rs.11,75,818/- has been paid to the petitioner and therefore, contempt proceeding was dropped.

7. It is the specific case of the petitioner that though the respondents have paid the entire back wages but the same has been paid without adding annual increment and hence, again the petitioner approached this Court in W.P.(S). No. 1334 of 2010 with a prayer to recalculate the entire dues towards salary of the petitioner

for the period 01.01.1989 to 26.09.2008 after adding annual increment, difference in dearness allowances, house rent allowances and vide order dated 18.05.2010, the matter was withdrawn on the assurance of the respondents that if the petitioner files a representation, the admissible amount will be paid to him. In view of instructions of the respondents, the petitioner filed a fresh representation. It is further stated that though the writ petition was withdrawn but the amount due towards salary and increment was never paid to the petitioner after repeated requests. Thereafter, the petitioner represented before the respondents for granting the benefits of ACP/ MACP and also the increments 4 on the salary but till date no decision has been taken though the petitioner is entitled for the same and hence, this writ petition has been preferred.

8. Mr. Suraj Kumar, learned counsel appearing for the petitioner argues that though the petitioner has approached this Court on several occasions but the respondents are in habit of not complying the orders of this Court and it is only after filing of the contempt application, the orders of this Honble Court are complied. The petitioner is aggrieved only by non- payment of the increments on the salary and that also on account of ACP/MACP benefits after the revised pay-scales. Learned counsel submits that since the petitioner has already retired on 31.01.2017, so the entire amount of ACP/MACP and the increments accrued to him should immediately be disbursed within a stipulated period.

9. However, no counter-affidavit has been filed. Learned counsel appearing for the respondents submits that the petitioner has got a chequered history as he is in habit of approaching this Court without waiting for disposal of his representations. Although the entire amount due to the petitioner regarding back wages to the tune of Rs.11,75,818/- has been disbursed to him, the petitioner again approached this Honble Court for payment of ACP/MACP and also revised pay-scales.

10. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that if the petitioner files a fresh representation mentioning in details the entire amount, which is due against him, the respondents will consider the same and pass a reasoned order regarding the due amount to the petitioner and after examining every aspect of the matter, if the petitioner is found

entitled for payment of ACP/MACP as also the increment, the said benefits be extended to him within a period of six weeks from the date of receipt of a copy of this order, since the petitioner has already retired on 31.01.2017.

11. Resultantly, the writ petition stands disposed of. (Dr. S.N. Pathak, J.) kunal/-

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