

Surendra Prasad Vs. Land Reforms and Revenue Department

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Court : Jharkhand

Decided On : Nov-07-2017

Appellant : Surendra Prasad

Respondent : Land Reforms and Revenue Department

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 2482 of 2014

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Surendra Prasad, son of late Sheodani Singh, resident of Village Mahmadpur, P.S. Hasua, District Nawada (Bihar). Petitioner VERSUS1 The State of Jharkhand through the Secretary, Revenue and Land Reform Development Department, Govt. of Jharkhand, Ranchi.

2. The Secretary, Revenue and Land Reform Development Department, Govt. of Jharkhand, Ranchi.

3. The Deputy Commissioner, Ramgarh.

4. The Deputy Development Commissioner, Ramgarh.

5. The Additional Collector, Ramgarh.

6. The Deputy Collector, Land Reform, Ramgarh.

7. The Deputy Collector (Establishment), Ramgarh.

8. The Sub-divisional Officer, Ramgarh.

9. The Office Superintendent, Ramghar. ... Respondents.

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For Petitioner : Mr. Binay Kumar Pandey, Advocate Mr. Sanjay Kumar Pandey,
Advocate For Respondents : Mr. Sharad Kaushal, JC to AAG

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK10 07.11.2017 Heard
learned counsel for the petitioner and learned J.C. to AAG for the State.

2. The petitioner has approached this Court with a prayer for quashing resolution dated 18.08.2012, by which 1st ACP granted w.e.f. 09.08.1999, 2nd ACP granted w.e.f. 19.06.2003 and 3rd MACP granted w.e.f. 19.06.2009 to the petitioner vide memo No. 198/ Establishment, Ramgarh dated 14.06.2011 has been cancelled and further prayer has been made for issuance of appropriate writ/ direction to pay the benefits of 1st and 2nd ACP and 3rd MACP.

3. The facts as derived from the writ petition are that the petitioner was initially appointed against the post of Amin in the consolidation 2 department now Revenue and Land Reforms Department vide order bearing memo No. 1339 dated 13.06.1979. The petitioner gave his joining on the said post on 19.06.1976. Thereafter, the petitioner was posted in the office of Consolidation Officer, Gaya and was subsequently, posted under Consolidation Officer, Imamganj, Gaya. It is further stated that vide resolution dated 30.12.1981, the respondent-State accepted the recommendation of 4th Pay Revision Committee w.e.f. 01.04.1981 and pay-scale of the petitioner was revised to Rs.535-765/-. Thereafter, vide memo No. 505 dated 02.09.1989, the petitioner was granted Junior Selection Grade Scale in the pay-scale of Rs.580- 860/- w.e.f. 19.06.1989. The scale of Junior Selection Grade was further revised from 580-860/- to Rs.1200-1800/- w.e.f. 01.01.1986 on the recommendation of 5th Pay Revision Commission. It is the further case of the petitioner that on account of his sickness, the petitioner could not give his joining against the transferred place of posting in the office of the Deputy Director, Bhojpur and hence, the respondents have stayed his transferred order. After regaining his health, the petitioner has given his joining in

the Office of Consolidation Officer, Gurua (Gaya) on 15.10.1990. It is the specific case of the petitioner that thereafter he was relieved from the office of Consolidation Officer, Gurua (Gaya) and after that, the petitioner gave his joining to his transferred place in the office of Deputy Director, Bhojpur on 18.11.1990 and subsequently, he joined as Amin at Shahpur (Bhojpur) on 24.11.1990 and the salary of the petitioner was also released. But the salary for the period during which he was on leave on ground of illness was not paid, however, later on, vide order No. 72/1992, the said leave period was regularized but monetary benefits has not been extended to the petitioner.

4. In the meantime, the petitioner was taken into custody in pursuance to Haua P.S. Case No. 50 of 1994 in which he has been granted bail vide order dated 23.09.1994 passed in Cr. Misc. No. 11214 of 1994 by the Honble Court. Immediately after release from the judicial custody, the petitioner reported before the Consolidation Officer, Shahpur (Bhojpur) from where he was taken into custody on 31.05.1994 and it was only by another order dated 15.11.1994, that the petitioner was suspended with retrospective effect from 31.05.1994 on the ground that the petitioner was taken into custody in pursuance of the aforesaid criminal case. Being aggrieved by the said order, the petitioner moved before the Honble Court by filing CWJC No. 4390 of 3 1996 and the Honble Court vide its order dated 28.11.1996 was pleased to allow the writ application and quashed the impugned order of suspension dated 15.11.1994. Thereafter, the respondents accepted the joining of the petitioner and vide order dated 17.01.1997, the period from 03.10.1994 to 31.12.1996 was treated on duty by the respondent. It is further stated that since 1992 the offices of the Consolidation Department remained suspended and after a policy decision of the State Govt., the services of the employees of the Consolidation Department was adjusted in the Revenue and Land Reforms Department. Accordingly, the petitioner was adjusted against the post of Revenue Clerk with the same pay-scale as was getting in the Consolidation Department. Upon receipt of such order, the petitioner gave his joining in the office of the Deputy Collector (Establishment), Hazaribagh on 25.08.1998 and he was posted in the Circle Office, Mandu within the Hazaribagh district, where he was working till his superannuation. Thereafter, the petitioner along with others has been granted the benefits of 1st, 2nd ACP and 3rd MACP

vide memo No. 198/ Establishment, Ramgarh dated 14.06.2011. It is the specific case of the petitioner that without providing any opportunity of hearing or without any notice, the benefits of ACPs already granted to the petitioner has been cancelled vide resolution dated 11.08.2012, on the ground of break in service although there was no break in service of the petitioner. Hence, this writ petition has been filed by the petitioner for redressal of his grievances.

5. Mr. Binay Kumar Pandey, learned counsel appearing for the petitioner strenuously urges that the order dated 11.08.2012 (Annexure-1) is not tenable in the eyes of law. Learned counsel further argued that as the petitioner has received his salary of the aforesaid period it cannot be said that there is any break in service. It is not a case that the petitioner has not worked for that period and neither, he received any salary. It is also not a case of unauthorized absence which can be said to be break in service. Learned counsel draws the attention of the Court towards Annexure-6 and argues that the respondents, considering the entire aspects of the matter, have granted the benefits of Assured Career Progression and Modified Assured Career Progression. In view of the fact that the petitioner has retired, the order of cancellation vide Annexure-1 is not tenable in the eyes of law. Learned counsel further argues that any order visiting civil consequences cannot brush aside the principles of natural justice and that too after retirement of an employee. 4 6. Per contra counter-affidavit has been filed. Mr. Sharad Kaushal, learned JC to AAG vehemently opposes the contention of the learned counsel for the petitioner and submits that already an order of cancellation is there and in view of that the petitioner is not entitled for the benefits of ACP. However, learned counsel does not dispute the fact that the petitioner has already been paid the salary of the petitioner from 01.11.2000 to 10.12.2000, which fact has been brought on record by way of supplementary affidavit dated 06.11.2017, though the said supplementary affidavit is not filed but is taken on board by the order of this Court and copy of the said affidavit is being handed over to the Court by the learned counsel for the petitioner.

7. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. Since the petitioner has already received the salary for the period from 01.11.2000

to 10.12.2000, it cannot be said that there is any break in service. Similarly, the benefits of ACP and MACP has been granted to the petitioner by way of Annexure-6. While granting those benefits, there was no legal impediment and as such, only because there was break in service, the benefits of ACP could not have been recovered from the petitioner after his retirement that too without any notice or show-cause. It is a settled principle of law that any order visiting civil consequences cannot be passed without following the principles of natural justice. In the instant case, the said provision not been adhered to.

8. As a cumulative effect of the aforesaid observations, rules, guidelines and legal proposition, I hereby quash and set aside resolution dated 11.08.2012 (Annexure-1). In view of quashment of the aforesaid resolution, the petitioner is fully entitled for the benefits of ACPs and MACP. Accordingly, the respondents are directed to consider the case of the petitioner regarding the period from 01.11.2000 to 10.12.2000 which shall be treated as on duty as the said period cannot be said to be the break in service.

9. Resultantly, the writ petition stands allowed. (Dr. S.N. Pathak, J.) kunal/

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