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Court : Jharkhand

Decided On : Aug-11-2003

Reported in : [2003(4)JCR688(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 3445 of 1999(R)

Appellant : Bijay Kumar

Respondent : The Adityapur Industrial Area Development Authority and anr.

Advocate for Def. : R.C.P. Sah, Adv.

Advocate for Pet/Ap. : Sunil Kumar Sinha, Adv.

Judgement :

Tapen Sen, J.

1. An Amendment Application was filed in this case on 24.1.2000. However, the number was wrongly mentioned as CWJC No. 3345 of 1999(R) while this case is CWJC No. 3445 of 1999. Mr. Sunil Kumar Sinha, learned counsel for the petitioner

therefore prayed permission to make necessary corrections. Let him do so during the course of the day. The Amendment Application is allowed.

2. Mr. Sunil Kumar Sinha, learned counsel for the petitioner submits that although he had made numerous prayers, he however now, confines the writ application only to the extent indicated below :--

'(A) That his services which he was rendered on the post of Typist-cum-Clerk up to the stage when he has regularized as a Computer Assistant be ordered to be treated as a valid service so that the same enures to his benefit for all purposes;

(B) That the respondents be restrained from treating the aforementioned period i.e., from 1985 to 1998 as an ad hoc period and they be directed to treat this as valuable service rendered by the petitioner;

(C) That the respondents be directed to pay to the petitioner appropriate salary attached to the scale of Typist-cum-Clerk during the aforementioned period; and

(D) That the respondents be directed to pay the salary of Computer Assistant on and from 15.5.1998 together with all consequential benefits.

3. One of the moot questions that arise for consideration in this case is that once the services of the petitioner was regularized with effect from 15.5.1998 upon the own desire and volition of the respondents, can it be contended later on by the same respondents that the initial appointment of the petitioner was only, on an ad hoc basis, not according to rules or as stop gap arrangement?

4. The short facts that are necessary to be taken note of are, that on 28.5.1984 a letter was sent from the respondents to the Employment Exchange, Jamshedpur requesting the latter to sponsor and send the names of candidates for appointment to the post of assistant in the Adityapur Industrial Area Development Authority. In reply to the aforementioned letter, the Employment Exchange Officer, by letter dated 13.2.1985, sent the name of the petitioner along with other candidates and as a consequence thereof, they were subjected to interview on 4.6.1984. Having been found successful in the interview, the petitioner was accordingly appointed by Annexure-2 on the post of Typist-cum-clerk. He was appointed by Order dated

13.2.1985 on the post of Typist-cum-clerk in the scale of Rs. 580-860 for a period of three months on an ad hoc basis. Thereafter, it appears that by Annexure-3, the respondents accepted the fact that the petitioner had appeared and passed in the Hindi Noting and Drafting Examinations held in relation to non Gazetted employees on 12.1.1986. The petitioner was declared successful and results were published as will appear from Annexure-3. The petitioner thereafter continuously worked on the post of Typist-cum-clerk right up to the year 1988 without any break of service whatsoever.

5. According to the petitioner, in the year 1989 a department was opened relating to the computers and it was known as the 'Computer Department' where computers were made functional since 1989. Subsequently, upon installation of necessary infrastructure, in the Adityapur Industrial Development Authority, a proposal was sent by the Managing Director of the said authority before the Board of Directors. The proposal was contained in Agenda No. 16, of the 70th Meeting of the Board which was held on 20.1.1997. In support of the aforementioned fact, the petitioner has brought on record the resolution vide Annexure-4 and upon perusal thereof, it is apparent that 13 Grade-III posts of Typist-cum-clerks were sanctioned in the scale of Rs. 1,200-1,800. It was also stated that from 1989 to 1990, work was being taken from the existing employees working in the Grade of Typist-cum-Clerks and such work was continued being taken even after installation of the computer systems. The Board of Directors therefore felt the need to change the nomenclature of at least one post of Typist-cum-clerk as 'Computer Assistant' in the same scale. The aforementioned proposal was submitted by the Managing Director of Adityapur Industrial Area Development Authority and in the Meeting held on 29.1.1997, the said resolution was moved and passed/adopted. Thereafter, acceptance was conveyed to the Director, Department of Industries vide letter dated 24.4.1997 as contained in Annexure 5. On 20.3.1998, necessary intimation was also sent to the Bureau of Public Enterprises as is evident from Annexure 5/1 and their approval was sought for. Since the petitioner was working on an ad hoc basis on the post of Typist-cum-clerks since 15.2.1985 without any break whatsoever in the pay scale Rs. 560- 860 (later on substituted to the scale of Rs. 1,200-1,800), the Board of Directors in their 72nd Meeting held on 15.5.1998 finally decided to regularize his services in that scale i.e., scale of Rs.

1,200-1,800 on the post of Computer Assistant. The acceptance of the Board of Directors is evident from the Minutes of the said Meeting which has been brought on record vide Annexure-6 (Agenda No. 11).

6. The petitioner has stated that right from the date of his having been regularized on the post of Computer Assistant i.e., From 15.5.1998 (i.e., the date on which the Board passed the aforementioned Agenda) the petitioner has been working on that post as a Computer Assistant. The petitioner has further stated that after the aforementioned resolution, which is also to be found vide Annexure 6/1, the authority sent the proposal to the appropriate authority of the Government and sought approval. In reply-thereto, the Additional Secretary, Department of Industries informed the Managing Director, Adityapur Industrial Development Authority that so far as the petitioner's matter was concerned, the same having already received departmental approval and also the approval of Bureau of Public Enterprises, no separate approval was required from the Department of Industries. This letter is Annexure-7 to the Writ Application.

7. In spite of all this, instead of adding and/or taking into consideration the period rendered by the petitioner from 15.2.1985, the respondents issued an order vide Annexure-8 on 17.10.1998 whereby and whereunder the services of the petitioner was sought to be regularized on and from 15.5.1998 i.e., when the Board had first decided to change on post of Typist-cum-clerk to the post of Computer Assistant and also the date on which it was decided to give the aforementioned post to the petitioner vide Annexure-6 and 6/1.

8. Having come to know about the aforementioned Order dated 17.10.1998, the petitioner filed a representation on 20.4.1998 wherein he inter alia prayed for regularization of his services from 15.2.1985 and also for appropriate pay scale on the post of Computer Assistant from that day. The aforementioned representation was however finally turned down on 14.12.1999 vide Annexure-B.

9. The petitioner came to know about the same when it was appended as Annexure-B to the Counter Affidavit and therefore, on 24.1.2000 the petitioner has filed an application for amendment of the writ application wherein he has made a prayer that the said Order dated 14.12.1999 be quashed.

10. Before proceeding with the case any further, it is relevant to look into the aforementioned Order dated 14.12.1999 because this order has the effect of rejecting the claim of the petitioner. In that view of the matter, the Amendment Application is necessary to be allowed and it is accordingly done so and is being taken up for consideration.

11. From perusal of the order dated 14.12.1999 as contained in Annexure-B and which has now become subject matter of challenge through the Amendment Application, it is apparent that the Secretary of the Adityapur Industrial Area Development Authority has made following observations :--

'That the services of the petitioner was extended from time to time up to 31.10.1936 but thereafter such ad hoc appointment was not extended but even then the petitioner managed to continue to be in service and also drew salary.'

12. The allegation of the Secretary that the petitioner 'managed' to continue appears to be an allegation made only for the sake of making an allegation. The predecessor-in-office of the Secretary who has passed the Order dated 14.12.1999 had, while making an intra departmental movement of the file to the Managing Director on 19.8.1994 (Annexure-12 appended to Reply to the Counter Affidavit), at paragraph-2 thereof had stated that the ad hoc appointment was extended up to 30.1.1986 and no thereafter. However, his work was by an large satisfactory. Therefore, the allegation of 'managing' to hang on to the post as recorded by Sri G.R. Raman in Annexure-B appears to be not fair at all. Additionally, the predecessor-in-office while making the aforementioned movement of the file by Annexure-12, had made a recommendation that either a Typing Test be taken or taking into consideration his services for the last nine years, steps be taken to regularize his services and to get the matter passed through the Board of Directors.

13. Upon query made by the Managing Director to the effect that whether regularization was permissible, the answer of the Secretary was that as per Government guidelines and Rule, only Hindi was the requisite qualification. The petitioner has brought on record Annexure-3 which goes to show that in the Hindi Noting and Drafting Examination held on 12.1.1986, he was declared to have

passed and such communication was made on 17.7.1986 (Annexure-3).

14. The Secretary, G.R. Raman, while dealing with the representation of the petitioner on 14.12.1999 as contained in Annexure-B to the Counter Affidavit has further stated that the petitioner was asked to appear in a typing examination on 19.2.1990 but he did not appear and again on 12.4.1991, he was asked to get his typing speed examined but for some reason or the other, the test could not be held. The respondents have further stated that the examination was however held on 27.1.1995, but the petitioner could not pass.

15. After nine years, the respondents cannot be allowed and that too at the stage of rejecting the representation of the petitioner to take such a plea because it has absolutely no relationship with typing because in the year 1998 itself, the petitioner's post had changed to the post of Computer Assistant. Consequently, in 1999, the respondents cannot say that he did not pass his examination in the year 1990 because the respondents were free to take action against him but did not do so and instead, they not only allowed him to continue but also went miles ahead by regularizing his services on and from 1998.

16. Mr. G.R. Raman, Secretary has heaped a further allegation upon the petitioner to the effect that his services were not satisfactory and that in the year 1991, he had been warned. Taking into consideration a warning given almost 9 (nine) years ago, i.e., in the year 1991, and making it a reason for rejecting the representation, appears to be an absolutely arbitrary act on the part of the Secretary. If the petitioner had been censored, that itself was a punishment. When the petitioner comes up after almost nine years and prays that his services be regularized, his representation cannot be allowed to be rejected on that ground. There is neither any rationale nor reasonableness in the attitude of the Secretary who has passed the Order on 14.12.1999, In fact, the order appears to be full of uncorroborative allegations against the petitioner which appear to have been made only for purposes of rejecting his application.

17. Another reason given by the Secretary in rejecting the representation of the petitioner is that during the period 1996-98 when the matter relating to regularization of services was being taken up, the petitioner was aware of his

shortcomings but he never objected. The reference to having knowledge obviously refers to the facts referred to in the preceding paragraphs. Whatever the preceding paragraphs have recorded, the same become redundant because the authorities collectively sat together and the Board decided to regularize the services of the petitioner and this decision received the assent of the Bureau of Public Enterprises. If that be the position, then the respondents will be deemed to have waived whatever there was against the petitioner because they finally took the decision to regularize his services. That being the position, none of the reasons given by the Secretary can be said to be either proper or fair. Consequently, Annexure-B which is the communication dated 14.12.1999 refusing to grant the claim of the petitioner is hereby set aside and quashed.

18. We have now to take into consideration as to what relief is the petitioner entitled for the period rendered by him prior to 15.5.1998. In a judgment passed in the case of 'Santosh Kumar v. State of Andhra Pradesh and Ors.,' reported in '(2003) 5 SCC 511' it has been held at paragraph-10 that once services are regularized, it cannot be contended that initial appointment was only ad hoc and not according to the rules or as made as a stop gap arrangement. That apart, this Court is also of the opinion that this is not a case where the petitioner's appointment was illegal or irregular. His appointment was made from the valid source-i.e., through the Employment Exchange and his employment was made following the required procedures i.e., after subjecting him and the other candidates to face an interview. His first appointment may have been an ad hoc appointment and even if there were no extensions, the respondents nevertheless allowed him to continuously work right from the initial date of his appointment and he is still continuing till date. It was only that on 15.5.1998 his ad hoc status came to an end and he became a regular Computer Assistant. Can this therefore be a ground for the respondents to virtually destroy thirteen years life of the petitioner which he has rendered with them? If yes, then, in the opinion of this Court, this would be a travesty of Justice and would be the most arbitrary conclusion that one can ever conceive of. To sum up, therefore, it must be held that the petitioner is entitled to have his ad hoc services counted for purposes of regularity. Consequently, the period he spent on ad hoc status should now be treated on regular status. However he will not be entitled to be paid any salary because he

had received wages as an ad hoc employee. This period however, will enure to his benefit for all other purposes. However, the prayer of the petitioner that he be given the salary in the scale of Computer Assistant during the period prior to 15.5.1998 is rejected. However, the prayer of the petitioner to the effect that his services from the date of initial appointment be treated as continuous is allowed. The petitioner shall be entitled to the scale of a Computer Assistant after 15.5.1998 together with consequential benefits.

With the aforesaid observations and directions, this writ petition is partly allowed. There shall however be no order as to costs.

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