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Keshav Kumar Sinha Vs. Finance

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Court : Jharkhand

Decided On : Sep-02-2016

Appellant : Keshav Kumar Sinha

Respondent : Finance

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.1115 of 2016 Keshav Kumar Sinha ..... Petitioner Versus 1. The State of Jharkhand through Chief Secretary, Government of Jharkhand, Ranchi.

2. The Secretary-cum-Commissioner, Department of Finance, Government of Jharkhand, Ranchi.

3. The secretary-cum-Commissioner, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Ranchi.

4. The Director-in-Chief, Health Services Jharkhand, Ranchi.

5. The Civil Surgeon Cum Chief Medical Officer, Hazaribagh.

6. The Civil Surgeon Cum Chief Medical Officer, Ramgarh.

7. The Civil Surgeon Cum Chief Medical Officer, Godda.

8. The Medical Officer Incharge, Sunderpahari, Godda.

9. The State of Bihar, through Chief Secretary, Government of Bihar, Patna.

10. The Secretary-cum-Commissioner to the Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.

11. The Secretary cum Commissioner, Department of Finance, Government of Bihar, Patna. . Respondents CORAM: HONBLE MR. JUSTICE H.C. MISHRA For the Petitioner : In person For the Respondents : Mr. Bhavesh Kr. SC-II ----- 7/2.09.2016 Heard the petitioner, who appeared in person, and learned counsel for the respondent State.

2. Petitioner has filed this writ application being aggrieved by the order as contained in memo No.782 (23) dated 5.5.2015, brought on record as Annexure-8 to the writ application, issued by the Respondent No.4, Director in Chief, Health Services, Government of Jharkhand, whereby the benefit of 2 nd ACP has been denied to the petitioner, stating that the final decision shall be taken only after deciding the matter of breaks in service of the petitioner.

3. The facts of this case lie in short compass. The petitioner was appointed on compassionate ground as Male Welfare Worker, by letter No.1698 dated 21.7.1986, by the Civil Surgeon-cum-Chief Medical Officer, Hazaribagh. Pursuant thereto, the petitioner gave his joining on 22.7.1986. The petitioner was given the benefit of 1st ACP w.e.f., 9.8.1999 and the 2nd ACP became due to the petitioner in the month of July 2006, but the same was not granted. The petitioner earlier moved this Court for redressal of his grievance, in WP(S) No.2495 of 2012, which was disposed of by order dated 6.5.2013, as contained in Annexure-1 to the writ application, directing the petitioner to give his representation to the Director-in-Chief, Health Services, Govt. of Jharkhand, who was directed to dispose of the representation of the petitioner within the period of six weeks. Pursuant thereto, the reasoned order has been passed by the Respondent No.4, 2 Director-in-Chief, Health Services, Govt. of Jharkhand, as contained in Memo No.782 (23) dated 5.5.2015, denying the claim of the petitioner, stating that the final decision shall be taken only after deciding the matter of breaks in service of the petitioner, which has been impugned in the present writ application.

4. Though the impugned order dated 5.5.2015 passed by the Respondent No.4, is a very lengthy order, but the crux of the order is that there was a break in service of the petitioner from 15.1.1987 to 20.2.1987, due to which, even the 1st ACP granted to the petitioner was against the Rules. It is also stated in the impugned order that the petitioner was given a promotion w.e.f., 2.4.2008, and there was another break in service of the petitioner from 13.3.2012 to 4.07.2013, for which period, the petitioner has not been paid his salary on the principle of 'No work No Pay'. Finally, it is stated that the 2 nd ACP to the petitioner shall be considered only after the breaks of service are finally regularised.

5. The petitioner, who appears in person, has pointed out from the impugned order itself that admittedly, he joined his service on 22.7.1986 and accordingly, he shall be entitled to the benefit of 2 nd ACP in the month of July 2006. It is submitted by the petitioner that the first alleged break in service, i.e., 15.1.1987 to 20.2.1987, is not at all the break in service of the petitioner, in as much as, he was granted earned leave for that period and in support of his contention, the petitioner has drawn the attention of this Court towards Annexure-9, which is the document relating to leave account of the petitioner, showing that the petitioner was granted earned leave for 29 days for that period. Corresponding statement has also been made in paragraph-16 of the writ application, stating that from 15.1.1987 to 20.2.1987, the earned leave was sanctioned to the petitioner. Petitioner accordingly, submitted that it is falsely stated in the impugned order dated 5.5.2015 that there was break in service from 15.1.1987 to 20.2.1987, due to which the 1st ACP granted to the petitioner was against the Rules. It is further pointed out by the petitioner that there was actually no break in service and due to continued service, the 2nd ACP also became due to the petitioner in July 2006, but it is again stated in the impugned order that there was a break in service from 13.03.2012 to 4.07.2013. It is submitted that the petitioner has filed another writ application challenging the said break in service, but even if it is accepted for the arguments sake, that it was a break in service, the same cannot affect the 2 nd ACP of the petitioner, which was due to the petitioner much prior to that, i.e., from the year 2006 itself. Petitioner further submitted that the promotion was also granted to the petitioner w.e.f., 2.4.2008, i.e., much after the date when the 2 nd ACP became due to the petitioner, and on this count also the said benefit cannot

be denied to the petitioner. Accordingly, it is submitted that the impugned order as contained in Annexure-8 to the writ application is absolutely illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India and cannot be sustained in the eyes of law. 3 6. Learned counsel for the State on the other hand has opposed the prayer and has submitted that the impugned order contained in Annexure-8 clearly shows that there were breaks in service of the petitioner. It is also submitted that the impugned order also shows that the petitioner was also granted one promotion w.e.f., 2.4.2008. It is submitted that since the petitioner had been granted the promotion, there was no question of granting the 2 nd ACP to the petitioner. Learned counsel for the State tried to impress upon this Court that there was break in service of the petitioner during 15.1.1987 to 20.2.1987, due to which the 1st ACP granted to the petitioner was also against the Rules. It is also submitted that there was another break in service from 13.3.2012 to 4.7.2013 and only after regularisation of the said period, the 2 nd ACP to the petitioner may be considered.

7. The submissions of the learned counsel for the State per se are not acceptable. Admittedly, the 1 st ACP was granted to the petitioner w.e.f. 9.8.1999. The first alleged break in service, as per the impugned order itself, is from 15.1.1987 to 20.02.1987, which according to the learned counsel, made the 1st ACP of the petitioner doubtful. The petitioner has clearly stated in paragraph-16 of the writ application that for this period, he was granted earned leave and has also brought on record the document in support of the same as Annexure-9 to the writ application, which is his leave account. The counter affidavit has been filed by the State and it is only stated in para-30 of the counter affidavit that the statements made in paras 16 and 18 of the writ application, have already been replied herein above. In the entire counter affidavit, there is no denial to the fact that the petitioner was granted earned leave for the period 15.1.1987 to 20.2.1987, nor the leave account of the petitioner as contained in Annexure-9, is denied. Accordingly, it has to be deemed to be admitted that the petitioner was sanctioned earned leave from 15.1.1987 to 20.2.1987. This clearly shows that the statement in the impugned order that even the 1 st ACP of the petitioner was against the Rules, is absolutely baseless. The remaining grounds for denying the 2nd ACP to the petitioner, i.e., he had been given promotion w.e.f., 2.4.2008, and that there was

another break in service from 13.3.2012 to 04.07.2013, are also equally baseless and frivolous. The fact remains that the 2nd ACP also became due to the petitioner in July 2006, i.e., much prior to the promotion granted to the petitioner and much prior to the alleged break in service. Both these grounds could not have come in way of granting the benefit of 2nd ACP to the petitioner, had the same been granted when due.

8. For the foregoing reasons, I find and hold that the impugned order contained in memo No.782 (23) dated 5.5.2015 passed by the Respondent No.4, Director-in-Chief, Health Services, Government of Jharkhand, brought on record as Annexure-8 to the writ application, is absolutely illegal and cannot be sustained in the eyes of law. The same, is hereby, quashed.

9. In view of the fact that the grounds stated in the impugned order for not giving the benefit of 2nd ACP to the petitioner w.e.f., July 2006, are absolutely 4 baseless and non-sustainable in the eyes of law, the respondent authorities, particularly the respondent No.4, Director-in-Chief, Heath Services, Government of Jharkhand, is hereby, directed to forthwith allow the benefit of 2 nd ACP to the petitioner w.e.f., July 2006, with all due monetary benefits, positively within the period of six weeks from the date of communication / production of this order.

10. The petitioner also claims that though the benefit of 1 st ACP was granted to the petitioner w.e.f., 9.8.1999, but actual payments were made only w.e.f., 15.11.2000, i.e., the date of creation of the State of Jharkhand. It is submitted by the petitioner that the orders have been issued by the State Government for making the payment of the aforesaid period also and some employees have also been paid the arrears of such benefits.

11. Without entering into the merits of this submission of the petitioner, it is made clear that it shall be open to the respondents to look into this claim of the petitioner and if the submission of the petitioner is true, the same should be allowed to him also.

12. This writ application accordingly, stands allowed, with the directions as above. (H. C. Mishra, J) R.Kumar

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