

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14518 of 2013

Radhika Raman Prasad Son Of Late Mathura Prasad Resident Of Kashi Dropti Bhavan, Raghunath Tola, P.O. - Anisabad, P.S. - Gardanibagh, District - Patna - 800002

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administrative Department, Government Of Bihar, Patna
3. The Principal Secretary, Department Of Personnel Administrative Reforms And Rajbhasha, Government Of Jharkhand, Project Bhawan, Dhurwa, Ranchi
4. The Accountant General, Jharkhand At Ranchi

.... Respondent/s

Appearance :

For the Petitioner/s : Ms. Mahasweta Chatterjee, Adv.
For the State : Mr. Umesh Narayan Dubey, AC to GP-27
For the State of Jharkhand : Mr. Satya Vrat Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-11-2016

Heard learned counsel for the parties.

In this case, the petitioner is seeking relief of quashing the order vide Memo No. 290 dated 19.11.2009 (Annexure-7), whereby and whereunder, the Principal Secretary, General Administrative Department, Government of Bihar, Patna (Respondent No.2) has rejected the representation filed by the petitioner and refused to count the period of service for the purpose of A.C.P. from the date the petitioner has entered into service as a Steno Typist.

As per case of the petitioner, he was appointed as a Steno Typist on 20.7.1974 in the Irrigation Department and worked on that post till 14.1.1986. A written examination was conducted for the post



of Personal Assistant by the Personnel & Administrative Reforms Department, the petitioners and others also appeared for that post and the petitioner was selected and joined the same on 15.1.1986. The Government took a policy decision which was communicated vide letter no. 541 dated 23.2.1987 issued by the Deputy Secretary, Personnel & Administrative Reforms Department to all Heads of the Department for merger of the post of Steno Typist with the Personal Assistant. Accordingly, the post of Steno Typist and the Personal Assistant was merged. The name of the petitioner after merger stands at Serial No. 37 and, accordingly, the petitioner became Personal Assistant. The petitioner has been granted 1st ACP vide order no. 250 dated 19.10.2004 with effect from 9.8.1999 in the pay-scale of Rs. 6,500-10,500/-. The petitioner has already superannuated from service on 31.3.2009.

A claim has been made by the petitioner that he is entitled to the 2nd A.C.P. as well as 3rd A.C.P. claiming that the period he has spent as a Steno Typist prior to the his appointment on the post of Personal Assistant should also be considered and has given example that one Jang Bahadur Sharma and others filed CWJC No. 4944 of 1993 and, vide order dated 6.1.1995, a Single Bench of this Hon'ble High Court was pleased to allow the writ application holding that the period spent on the post of Steno Typist will be considered for the



purpose of Time Bound Promotion. It has been claimed that Jang Bahadur Sharma and others have been given the benefit of reckoning the period of Steno Typist for the purpose of giving A.C.P. He has also given other example but specifically claimed the case of Md. Khurshi who had filed CWJC No. 9485 of 2009 which was disposed of with a direction to file representation which will be considered in accordance with law, whereupon, the Department reckoned the period he had spent as a Steno Typist.

It has been claimed by the learned counsel for the petitioner that the case of the petitioner and the others whose examples are given hereinabove are identical and there cannot be a hostile discrimination with the petitioner. It has further been argued that the period the petitioner spent as a Steno Typist cannot be taken away as both the post of Steno Typist and Personal Assistant were merged by the State Government and the persons who basically are junior to the petitioner have been given the said benefit of 2nd ACP but, the petitioner has been deprived of the same.

Learned counsel for the State submits that the scheme does not envisage of counting the period spent by an employee before selection in a different post having lower pay-scale and, as such, the petitioner cannot be granted the benefit as has been given to Md. Khurshi.



Learned counsel for the State of Jharkhand submits that Rule 4(1)(2) does not contemplate that in a case of selection on a higher grade, the previous period, spent by the employee, will be counted for the A.C.P. but Rule 4(2) does not envisage not to consider earlier period in the case of merger of two cadres. If the two cadres have been merged and become a single cadre, the question of having higher pay-scale of different post does not arise as it has become one cadre and one post and so much so that other persons, who are similarly situated basically Md. Khurshi had also worked as a Steno Typist, was selected along with the petitioners. In the case of Jang Bahadur Sharma also, the period spent by him was counted for the purpose of A.C.P. Learned counsel for the State cannot adopt a selective decision and cannot apply a hostile discrimination between the identical set of persons.

In that view of the matter, this Court is of the view that the order dated 19.11.2009 (Annexure-7) is not sustainable in law and the same is quashed with a direction that the period spent by the petitioner on the post of Steno Typist will be considered for the purpose of A.C.P. The State is also directed to give all consequential benefit as the petitioner has superannuated from service on 31.3.2009 and the Government of Jharkhand has enforced the M.A.C.P. with effect from 1.9.2008.

It goes without saying that if the petitioner has superannuated after the enforcement of the M.A.C.P. then he cannot be deprived of the benefit arising from M.A.C.P. Scheme.

In the result, this application is allowed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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