

SUPREME COURT OF INDIA

Parmeshwar Nanda

Vs.

State of Jharkhand

C.A.No.505-531 of 2020

(L.Nageswarar Rao and Hemant Gupta,JJ.,)

07.02.2020

JUDGMENT

Hemant Gupta,J.,

SLP(Civil)No.27922-27948 of 2017

1. The present appeals are directed against an order passed by the Full Bench of High Court of Jharkhand on 16th June, 2017 wherein it has been held that the services rendered by the appellants under the Adult Education and *Non-Formal Education Project*¹ cannot be counted under a Government scheme for the purpose of pensionary benefits after the appellants were appointed by the State.

2. Briefly, the facts are that the appellants were appointed under the Project, co-sponsored by the Central Government and the State Government, in the erstwhile undivided State of Bihar between the period 1978 to 1990. Some of the appellants were appointed as Adult Education Supervisors whereas other appellants were appointed in the ministerial cadre such as Stenographer, Clerk cum Accountant, Clerk cum Typist, Peon as well as Drivers. The appellants were working under the Project during the bifurcation of the State and their services fell in the successor State of Jharkhand which was formed on 15th November, 2000. The Government of India vide policy decision dated 1st April, 2001 closed the Project. The Government of Jharkhand, consequent to the bifurcation of State of Bihar, declared the employees to be surplus w.e.f. 16th May, 2001.

3. The Government of Jharkhand issued a notification dated 30th May, 2007 for absorption of the employees engaged in the Project in the Departments of Food, Public Distribution and Consumer Affairs, Finance, Social Welfare, Women and Child Development, Urban Development etc. on different posts, in their respective prescribed scales of pay. A perusal of the said notification shows that there were 756 employees who were declared as surplus and were to be absorbed by the State. It appears that most of the surplus employees were absorbed in different scales of pay vide letter of appointments starting from 24th July, 2007 except those who had attained the age of superannuation or had died prior to such

absorption.

4. As per Clauses 11 and 12 of the notification dated 30th May, 2007, the surplus employees absorbed were to be treated as new appointments and the services rendered by them prior to their declaration as surplus i.e. prior to 15th May, 2001, would not be counted for the purpose of their seniority and pay protection.

Clauses 11 and 12 of the notification read as under:

"11. The adjustment of surplus personnels will be considered new appointment and being surplus on the basis of prior service, they will not be benefitted of seniority.

12. These surplus personnels will not be benefitted by pay protection."

5. 59 writ petitions came to be filed claiming pensionary benefits and seniority before the High Court. The matter was placed before the Full Bench in view of the divergence of opinions of the two Division Benches of the Jharkhand High Court in *State of Jharkhand & Ors. v. Bhubneshwar Mahto*² and *State of Jharkhand & Ors. v. Bimal Kumar Sinha*³.

6. LPA No. 515 of 2004 was preferred by the State against the order of the learned Single Bench passed on 21st November, 2003. The writ petitioner was directed to be paid salary for the period 16th May, 2001 to 31st July, 2001 i.e. the date of his retirement. The writ petitioner was ordered to be treated as a regular employee of the State, having been appointed on 10th December, 1968, much before the Project started in the year 1978. LPA No. 188 of 2004 was preferred by the State against the order of the learned Single Bench. In the appeal, it was held that the writ petitioner therein was appointed under the Project which was abolished on the specific condition that past service rendered by him will not be taken into account. Such writ petitions were categorized into three groups by the Full Bench. The first group of petitions were from those employees who had retired after being declared surplus w.e.f. 16th May, 2001 but before they were absorbed pursuant to the notification dated 30th May, 2007. In this category, some of the writ petitioners were legal heirs of those employees who had died during this period before being absorbed. The second group of petitions were from those employees who were declared surplus but were absorbed by the Government of Jharkhand vide notification dated 30th May, 2007 and had retired thereafter. The third group of petitions were from those employees who were working on the date of filing of the writ petitions, after being absorbed by the Government of Jharkhand vide the aforementioned notification. The employees in writ petitions comprising of Categories I and II claim pensionary benefits whereas the writ petitions filed in Category III claim seniority by taking into consideration their past services rendered under the Project resulting into payment of pension after attaining the age of superannuation.

7. The common challenge in all the writ petitions were to clauses 11 and 12, as reproduced above. It was the stand of the writ petitioners that they are being treated as fresh appointees and their past service has not been counted for the purposes of seniority or fixation of their

initial salary.

8. The High Court in the impugned order referred to Jharkhand Pension Rules to hold that the following three conditions are required to be satisfied before the service can be treated to be pensionable service-

- (i) Service must be under Government.
- (ii) Employment must be substantive and permanent.
- (iii) Service must be paid by Government.

9. Rule 59 provides that the State Government can declare any specific kind of service rendered in a non-gazetted capacity to qualify for pension even though either or both of conditions (1) and (2) are not fulfilled. The High Court held that no declaration of the State Government in general terms has been made nor any direction in individual cases issued in favour of any such petitioners.

10. Before this Court, learned counsel for the appellants referred to Circular issued by the State Government under Rule 59 of Bihar Pension Rules, 1950 which would be applicable in the State of Jharkhand after its bifurcation in terms of State Reorganization Act. The Circular dated 12th August 1969 reads thus:

"Regarding: - Declaration of a temporary service of a Government Servant who is not confirmed as pensionable. Under the existing pension rules, a temporary Government servant if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under Rule 59 of the Bihar Pension Rules.

2. There are a large number of temporary Government servants employed under different Schemes which are in existence for the last 15-20 years and it will cause hardship to them if they are not allowed pension after their retirement.

3. The State Government after careful consideration have, therefore, been pleased to decide that if the service of the temporary or officiating government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under rule 59 of the Bihar Pension Rules.

4. These orders will be applicable to government servants retiring on or after 12 August, 1969."

11. The argument is that the issue relating to arrears of salary for the period 16th May, 2001 till the date of the absorption of the employees under notification dated 30th May, 2007 stands concluded by an order passed by this Court in *State of Jharkhand & Ors. v. Asgar AH & Ors*³, therefore, the appellants are entitled to consequential benefits of pension.

12. On the other hand, the argument of learned counsel for the respondents is that the said

Circular was not referred to by the appellants before the High Court and rightly so, as such Circular is not applicable to the employees engaged under Central Government sponsored project. Still further, it is the temporary or officiating service of a Government servant which is to be considered as pensionable under Rule 59 of the Rules. Since the employees engaged under the Project were not discharging duties as temporary or officiating Government servants, therefore, such Circular will not be applicable to them. It is, thus, argued that the view of the Full Bench of the Jharkhand High Court does not warrant any interference in the present appeals.

13. Before we consider the respective arguments of the learned counsel for the parties, some of the statutory provisions of Jharkhand Pension Rules are required to be reproduced:

"Rule 31:- Permanent post means a post carrying a definite rate of pay and sanctioned without limit of time.

Rule 38:- Substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the Provincial government under rule 26(a)(iii) to which a government servant is entitled on account of a post to which he has been appointed substantively or by reasons of his substantive position in a cadre.

Rule 40:- Temporary post means a post carrying a definite rate of pay and sanctioned for a limited time.

CHAPTER III GENERAL PROVISIONS RELATING TO GRANT OF PENSION SECTION-1- GENERAL

Rule 58:- The service of Government servant does not qualify for pension unless it conforms to the following three conditions:-

First-The service must be under Government.

Second-The employment must be substantive and permanent.

Third-The service must be paid by Government.

Rule 59:- The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled-

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension.

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for

pension.

Rule 60:- The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government servants exclude from pension by this rule;

- (1) Employees of a municipality,
- (2) Employees of grant-in-aid schools and institutions.
- (3) Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance.

Rule 61:- Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

Rule 74:- Services which satisfied the conditions prescribed in sub-sections (2) and (3) qualifies, or does not qualify, according to the source from which it is paid; with reference to this rule, service is classified as follows:-

- (a) Paid from the general revenues.
- (b) Paid from local funds.
- (c) Paid from funds in respect to which the Government hold the position of trustee.
- (d) Paid by fees levied by law, or under the authority of the Govt. or by commission.
- (e) Paid by the grant, in accordance with law and custom, of a tenure in land, or of a source of income, or right to collect money.

Rule 103:- An interruption in the service of a Government servant entails forfeiture of his past service, except in the following case:-

- (a) Authorised leave of absence.
- (b) Unauthorized absence in continuation of authorized leave of absence so long as the post of the absentee is not substantively filled; if his post is substantively filled, the past service of the absentee is forfeited.
- (c) Suspension, where it is immediately followed by reinstatement whether to the same or to a different post, or where the Government servant dies or is permitted to retire or is retired while under suspension.

(d) Abolition of the post or loss of appointment owing to reduction of establishment.

(e) Transfer or non-qualifying service in an establishment under Government Control. The transfer must be made by a competent authority; a Government servant who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.

(f) Time occupied in transit from one appointment to another provided that the Government servant is transferred under the orders of competent authority, or, if he is a non-gazetted Government servant with the consent of the head of his old office."

14. Before this Court, 3 writ petitioners are in appeal falling in category I, 18 falling in category II and 6 falling in category III.

15. In the order under appeal, the claim of the employees for pension was declined for the reason that no declaration within the meaning of Rule 59(1) in general terms has been made nor any direction in individual cases issued in their favour. The High Court relied upon judgment of this Court reported as *Dhyan Singh & Ors. v. State of Haryana & Ors*⁴. . The High Court also held that judgment of Single Bench of Patna High Court in *Baliram Singh & Ors. v. State of Bihar & Ors*⁵. is per incuriam. The High Court concluded as under:

"The foregoing discussion therefore makes it clear that past services of these petitioners/employees were under the centrally sponsored scheme known as Adult Education/Non-formal Education/Mass Education Project which was abolished w.e.f. 1.4.2001 by the Central Government and consequently w.e.f. 15.5.2001 by the Government of Jharkhand. Appointment of these petitioners/employees under such a scheme/project therefore, cannot be treated as under regular establishment of the Government on a permanent and substantive post. Moreover, their pay and allowances were borne by the grant-in-aid released by the Central Government from time to time. That is the reason why their services were treated as surplus once the Central Government closed the scheme w.e.f. 1.4.2001. Petitioners have failed to controvert the aforesaid position on facts."

16. The judgment in *Baliram Singh* has attained finality with the judgment of this Court reported as *State of Bihar & Ors. v. Baliram Singh & Ors*⁶. . In the aforesaid case, the policy decision of absorbing the writ petitioners appointed under the Project contained a clause that the candidates will be treated as fresh appointments and that the earlier services rendered by them shall be calculated for their pension. The writ petitioners before the Patna High Court claimed back wages from the date of their termination till the date they were absorbed. This Court declined the claim of back wages. The Court held as under:

"18. In the present case, however, the respondents have neither challenged the

termination order after closure of the Non-Formal Education Scheme with effect from 1-4-2001 nor the policy dated 20-5-2005 under which they have been appointed or the appointment letter dated 16-3-2007. Even the appointment letter dated 16-3-2007 unambiguously predicates that the appointment was a fresh appointment and the past services would be reckoned only for the purpose of grant of pension and nothing more. Indisputably, the respondents acted upon such terms and conditions of appointment without any demurrer. They chose to file the subject writ petition only in the year 2013, when the cause of action first arose on 1-4-2001, then on 20-5-2005 and once again, on 16-3-2007. Unless the respondents are to be reinstated in their previous post (held prior to 1-4-2001), the question of awarding back wages would not arise at all. The relief of back wages is and can be linked only to the order of reinstatement. It cannot be awarded in isolation or, for that matter, during the period when the respondents were not in employment at all."

17. The case of Dhyan Singh was in respect of appointments under the Project in the State of Haryana. The services of the employees were discharged upon abolishing of the aforementioned Project. The employees invoked the writ jurisdiction of the court claiming fixation of their salary by taking past service and for pension. This Court declined such claim and held as under:

" The continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is provided either by the Central Government or at times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed."

18. In the present case, Clause 11 of the notification dated 30th May, 2007 issued by Government of Jharkhand is to the effect that absorption of the surplus personnel will be considered as new appointments and they will not be granted benefit of seniority on the basis of their past service. Neither will such past service entitle them to such pay protection. One of the appointment letters appointing 65 candidates as Project Officers was issued on 20th December, 2007. Such appointment letter had following clauses which read as under:

"4. Adjusted employees shall be covered under the old Pension Scheme. Their service period prior to retrenchment shall be counted for the purpose of pension. Period of retrenchment shall not be counted for the purpose of pension.

5. Adjustment of above surplus Project Officers shall be considered as fresh appointment and benefit of seniority on the basis their service rendered prior to becoming surplus shall not be admissible to them."

The appointment letters to the other employees is on similar lines.

19. The argument of the learned counsel for the appellants is that the policy decision of the State, vide notification dated 30th May, 2007 only denies them the benefit of seniority or pay protection but not of their past service being counted towards pensionary benefits. It is contended that in terms of Rule 59 of the Rules, the State Government has declared that the services rendered by a temporary Government servant employed under different schemes would be entitled to pension after the completion of 15 years of service.

20. The entire case is based upon Rule 59 of the Rules and the Circular dated 12th August, 1969 of the erstwhile State of Bihar. We do not find any merit in the arguments raised by the learned counsel for the appellants. Rule 59 of the Rules empowers the State Government to declare any specified kind of service rendered by one in a non-gazetted service to qualify for pension, provided, that the salary is paid from the general revenue. Rule 58 of the Rules contemplates the conditions that are required to be satisfied for services to be pensionable. Herein, as it has been reiterated before, first condition is that the service must be under the Government; second, that it must be substantive and permanent; and third, that it must be paid by the Government.

21. The appellants were appointed under a specific Scheme i.e. the Project. Such project was not a permanent establishment of the Government as it was meant for a specific purpose funded by the Central Government for a specified period. The appointment of the appellants under the Project is not a part of any cadre of the State Government. Therefore, the first condition of Rule 58 that the service rendered must be under the State Government is not satisfied by the appellants having been appointed under the Project. The second condition that employment must be substantive and permanent is again not satisfied by the appellants as the employment of the appellants was under the Project. A permanent post in terms of Rule 31 of the Rules means a post carrying a definite rate of pay and that is sanctioned without a time limit. The appointment of the appellants under the project was not in a pay scale nor was it sanctioned without a time limit. Further, substantive pay is defined in Rule 38 of the Rules as a person who is appointed in a cadre. At best, the appellants satisfied only the third condition i.e. that they were paid by the Government.

22. If the first and second conditions mentioned in Rule 58 of the Rules are not satisfied, the State Government can declare any specified kind of service rendered in a non-gazetted capacity to qualify for pension. The Circular dated 12th August, 1969 deals with pensionary benefits to a temporary Government servant. The appellants were never appointed by the Government either on a temporary or on permanent basis. The appellants were engaged under the Project i.e. a scheme, therefore, the benefit of such a Circular cannot be claimed by the appellants. Still further, sub-rule (1) of Rule 59 of the Rules empowers the State to declare any specific kind of service to qualify for pension. The notification for absorption circulated on 30th May, 2007 and the subsequent letter of appointments do not contain any condition that the services rendered by the appellants under the Project shall qualify for pension. The policy decision contemplates that it is a fresh appointment and no benefit either of seniority or pay protection shall be given. The

appellants have not disputed such condition of appointment having been appointed under such policy decision vide the notification dated 30th May, 2007. The Circular has not granted pensionary benefits. In the absence of any specific condition in the Circular to grant pensionary benefits, it is not possible to read that pensionary benefits are to be granted to the erstwhile employees of the Project. The appellants cannot turn around to say that the services rendered by them under the Project shall be counted for pension. The Circular dated 12th August, 1969 is not even remotely applicable to the employees appointed under the Project as the very nature of the appointment was for a specific purpose and not for an unlimited period of time.

23. The case of Baliram Singh arises out of the policy of the State of Bihar wherein the past service has been specifically ordered to be considered for pension. Since in the State of Jharkhand, the policy decision is to treat them as fresh appointments without any benefit of seniority and pay protection, therefore, to count the period when the appellants were working under a Project as pensionable service is beyond comprehension. The appellants have been appointed as fresh candidates and, therefore, their period of service for pension has to be calculated from the date of their regular appointment and therefore they cannot get any benefit of past service rendered by them.

24. Learned counsel for the appellants have referred to an order passed by this Court in *Asgar AH & Ors. v. State of Jharkhand & Ors*⁷. wherein the direction of the High Court for payment of arrears was not interfered with. It is contended that since the appellants have been paid salary for the period prior to their regular appointment, the appellants would be entitled to pension as well.

25. The Single Bench of the Jharkhand High Court in a judgment reported as *Asgar AH* dealt with a prayer for absorption and for payment of arrears of salary from 16th May, 2001, i.e. when the employees were rendered as surplus, till January, 2008, i.e. the date of their absorption, in Writ Petition No.729 of 2004. The learned Single Bench vide order dated 4th January, 2010, directed the state for the payment of salary for the reason that the services of the employees under the Project were not retrenched, therefore, the employees were entitled to their salary. In such petition the employees had made no claim for counting of past services for the purposes of pensionary benefits. As against such order of the learned Single Judge, the state sought LPA No.533 of 2012 which was dismissed vide order dated 1st October, 2013. Thereafter the State sought a Special Leave Petition which was also dismissed with a direction to make phased payments of salary to the writ petitioners/employees. Again, no claim for counting of past services for the purposes of pension was made or allowed by the Court. It was merely a monetary benefit which was granted on account of no formal order of retrenchment being passed against the employees employed under the Project.

26. Since the appellants were absorbed as fresh appointees without pay protection and seniority, as a consequence thereof, they will not be entitled to count their past service rendered under the Project for the purpose of pension. We, thus, do not find any error in the order passed by the High Court which may warrant interference in the present appeals.

Accordingly, the appeals are dismissed.

27. The present appeal is directed against an order passed by Division Bench of the High Court of Patna on 20th June, 2018 whereby LPA No.189 of 2018 filed by the State was dismissed relying upon an order passed by the Single Bench in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010 on 19th April, 2011 wherein referring to Rule 103 of Bihar Pension Rules, 1950, it was held that an interruption in service on account of the abolition of a post shall not entail forfeiture of the past service of a Government servant, i.e. the intervening period can be counted for pensionary benefits. In view of the said fact, the State was directed to consider the writ petitioners as continuing in service between 1992 and 1998 solely for the purpose of granting personal monetary benefits. The petitioners were not to be entitled to payment of salary for the period in any manner and neither claim any seniority over other Government servants.

28. After the aforesaid judgments, Baliram Singh along with others filed CWJC No. 22208 of 2013⁹ to claim back wages for the period from 1st October, 2001 to 3rd July, 2007. The learned Single Bench allowed the writ petition on 22nd August, 2016. Thereafter, LPA No. 2307 of 2016 was dismissed on 15th January, 2018. The said orders were set aside by this Court in Baliram Singh. Therefore, the reliance of the High Court on an order passed at earlier stage on Baliram Singh no longer holds good. It may be noticed that in the State of Bihar, past services rendered by employees under the Project were taken into consideration for pensionary benefits. In view of the said fact, the present appeal is disposed of in the same terms as in Baliram Singh.

Judgment Referred.

¹for short, 'Project'

²LPA No. 515 of 2004

³LPA No. 188 of 2004

⁴Special Leave to Appeal (Civil) CC Nos. 10361-10364 of 2014 decided on 18th July, 2014

⁵(2002) 10 SCC 0656

⁶(2016) SCC OnLine Pat 9958

⁷(2018) 18 SCC 0046

⁸(2010) SCC OnLine Jhar 0008

⁹(2016) SCC OnLine Patna 9958