# IN THE HIGH COURT OF JHARKHAND AT RANCHI

### W.P. (S) No. 3943 of 2010

- 1. Ramdhyan Mishra, son of late Jouha Mishra, Resident of Social Forestry Division, P.O. Chaibasa, P.S. Sadar, District- Singhbhum West, Jharkhand
- 2. Jagdish Narayan Verma, son of Late Shiv Dayal Verma, Resident of Baranimdih, P.O.-Chaibasa, P.S. Sadar, District-Singhbhum West
- 3. Ashok Kumar Sinha, son of late Shyam Narayan Prasad, Resident of Saranda State Trading Division, Chaibasa, P.O. Chaibasa, District-Singhbhum West
- 4. Om Prakash Ambastha, Son of Late Chandra Sekhar Prasad, Resident of Chaibasa, South Division, P.O. Chaibasa, P.S.-Sadar, District-Singhbhum West
- 5. Anjani Kumar Singh, son of Late Kamauda Prasad Singh, Resident of South Division, Chaibasa, P.O. Chaibasa, P.S. Sadar, District-Singhbhum West
- 6. Nikunj Bihari Mahto, Son of Sri Ram Krishna Mahto, Resident of Forest Colony, European Quarters, P.O. Chaibasa, P.S. Sadar, District Singhbhum West
- 7. Jitendra Kumar, son of Late Bundi Choudhary, Resident of D.F.O. Office, Kolhan Division, P.O. Chaibasa, P.S. Sadar, District Singhbhum West
- 8. Md. Ilyas Ansari, son of Late Abdul Rahim Ansari, Resident of Forest Colony, Qrt. No. 27, P.O. Chaibasa, P.S. Sadar, District-Singhbhum West
- 9. Shyam Lal Soy, Son of Late Agar Singh Soy, Resident of South Division, P.O. Chaibasa, P.S. Sadar District Singhbhum West
- 10.Gopal Pan, Son of Sri Sukhdeo Pan, Resident of South Division, Chaibasa, P.O. Chaibasa, P.S. Sadar, District Singhbhum West
- 11.Jamadar Oraon, Son of Late Sukara Oraon, Resident of C.F. Southern Circle, P.O. Chaibasa, P.S. Sadar, District-Singhbhum West
- 12.Binod Kumar Sinha, Son of Late Regishwari Prasad Sinha, Resident of Forest Colony, Near Police Line, P.O. Chaibasa, P.S. Sadar, District-Singhbhum West
- 13.Degan Gope, Son of Late Bhawani Gope, Resident of C.P. Office, Southern Circle, Chaibasa, P.O.-Chaibasa, P.S. Sadar, District-Singhbhum West ... Petitioners

Versus

- 1. The State of Jharkhand
- 2. The Commissioner, Singhbhum, Kolhan Division, P.O. Chaibasa, P.S. Sadar, District-Singhbhum West
- 3. The Principal Secretary, Forest and Environment, Nepal House, P.O. and P.S. Doranda, District-Ranchi
- 4. The Principal Chief Conservator of Forest, Forest Colony, P.O. and P.S. Doranda, District-Ranchi
- 5. The Regional Chief Conservator of Forest, Jai Prakash Uddyan, P.O. and P.S. Adityapur, Jamshedpur, District-Saraikela-Kharsawan
- 6. The Conservator of Forest, Southern Circle, Near Police Line, P.O. Chaibasa, P.S. Sadar, District Singhbhum West
- 7. The Conservator of Forest, Afforestation and Social Forestry, Jai Prakash Uddyan, Adityapur, Jamshedpur, P.O. and P.S. Adityapur, District Saraikela-Kharsawan
- 8. The Conservator of Forest, Singhbhum State, Trading Circle, Jai

Prakash Uddyan, Adityapur, Jamshedpur, P.O. and P.S. Adityapur, District-Saraikella-Kharsawan ... Respondents

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# CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

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For the Petitioners : Mr. Rajendra Prasad Gupta, Advocate For the Respondent : Mr. Ashwini Bhushan, Advocate

Through Video Conferencing

### 10/04.02.2022

- 1. Heard Mr. Rajendra Prasad Gupta, learned counsel appearing on behalf of the petitioners.
- 2. Heard Mr. Ashwini Bhushan, learned counsel appearing on behalf of the respondent-State.

### **Arguments of the Petitioner**

- 3. The present writ petition has been filed seeking a direction upon the respondents to confirm Assured Career Progression (A.C.P.) to the petitioners from the date of joining who have been working in different posts in the Forest Department in the District of Singhbhum West. Further prayer has been made for quashing of letter dated 656 dated 27.02.2008 (Annexure-10) as well as letter No. 639 dated 08.03.2010 (Annexure-11), by which it has been said that the date of joining prior to issuance of appointment letter is not proper and as such the date of appointment letter will be treated as date of joining.
- 4. Learned counsel for the petitioners submits that there are altogether 13 writ petitioners and the case of all the writ petitioners stand on similar footing.
- 5. Learned counsel has referred to Annexure-1 series which relate to appointment letter of one Ram Dhyan Mishra, Petitioner No. 1. Learned counsel has submitted that the letter dated 26.05.1980 was issued to petitioner No. 1 asking him to join by 20.06.1980 with clear stipulation that if he does not join by 20.06.1980 offer of appointment will stand cancelled. It was also mentioned in the said letter that after joining, letter of appointment will be issued. Learned counsel submits that petitioner No. 1 accordingly joined on 17.06.1980 and thereafter vide memo No. 1078 dated 30.06.1980, formal letter of appointment was issued and in the letter of appointment also, the date of joining of the petitioner No. 1 was clearly mentioned as 17.06.1980. Learned

- counsel submits that similar is the situation with all the present writ petitioners whose details has been mentioned in para-6 of the present writ petition.
- 6. Learned counsel submits that one similarly situated person namely David Angaria was granted the benefit of A.C.P. by treating his date of joining as the date of appointment and this fact has been mentioned in para-12 of the writ petition. He submits that the fact about grant of aforesaid benefit to David Angaria is not in dispute and the petitioners are praying for similar reliefs.
- 7. Learned counsel has referred to the impugned orders contained at Annexures-10 and 11 wherein a decision has been taken that the date of appointment letter is to be treated as the date of joining irrespective of the fact that incumbent may have joined the service prior to formal issuance of appointment letter. Learned counsel has also referred to Annexure-9 of the present writ petition to submit that such practice has been continuing in the department for the last 30 years and it has been mentioned in the said communication by the Commissioner Singhbhum (Kolhan) Division, Chaibasa to the Secretary of the Forest and Environment Department, State of Jharkhand. Learned counsel submits that as the mode and method of appointment and joining has been done as per the various letters issued by the respondent themselves and the respondents have asked each of the petitioners to join within the stipulated time frame with a clear stipulation that letter of appointment will be issued after they join, the petitioners cannot be put at a loss by treating the issuance of date of appointment letter as the date of joining, although they have actually joined a couple of days prior to date of issuance of appointment letters to the respective petitioners as per the instructions of the Respondents and mentioned in the offer letters for appointment. Learned counsel submits that in view of the aforesaid circumstances, present writ petition is fit to be allowed and the impugned orders be set aside and the date of joining of service by the petitioners be directed to be treated as date of appointment, although the appointment letter was issued after a couple of days.

### **Arguments of the Respondents**

8. Learned counsel appearing on behalf of the State on the other hand

has referred to the counter affidavit and has submitted that with regards to all similarly situated persons whose appointment letters were issued subsequently, it has been clarified by letter dated 02.08.2007(Annexure-2) and decision has been taken to stop such situation in future which has happened in the case of David Angaria. Learned counsel submits that in view of the letter dated 02.08.2007 which specifically deals with the case of David Angaria, the same benefit cannot be extended to the present petitioners as such practice has been discontinued. However, it is not in dispute that so far as David Angaria is concerned, he has been granted benefit of A.C.P. from the date of his joining and not from the date of issuance of his appointment letter which was issued subsequent to the date of his joining. Learned counsel has also referred to Annexure-1 series to the writ petition to submit that initial letter dated 26.05.1980 which was issued to the petitioner no. 1 was only an offer of appointment and not the appointment letter and the appointment letter having been issued subsequently, his appointment cannot be treated to be from the date of his joining pursuant to the offer of appointment. It is not in dispute that the case of each of the petitioners stand on similar footing.

### Point to be determined in this case

# 9. The point to be decided in the present case is

(a)whether the petitioners, who were made to join pursuant to their respective offer of appointment but their appointment letters were issued just a few days after their date of joining, which also mentioned their date of joining, can be deprived of benefit of A.C.P. from the date of joining on the basis of impugned letters subsequently issued discontinuing such long practice followed in the department for a number of years and directing to treat the date of issuance of appointment letters as the date of joining?

(b)whether the petitioners are entitled to the same relief as has been admittedly extended to one similarly situated person, namely, David Angaria, but in the impugned letters such benefit is being denied to others by stating that such practice of issuance of appointment letter after date of joining has to be discontinued and therefore his case cannot be treated as a precedent?

# **Findings of this court**

10. After hearing the learned counsel for the parties, it is not in dispute that case of all the petitioners is on similar footing, in as much as their date of joining is prior to the date of issuance of their respective appointment letters. The petitioners have given the chart at Paragraph 6 of the writ petition mentioning about the date of joining and the date of issuance of appointment letter and also the claim of the petitioners for confirmation of first and second A.C.P. The aforesaid details mentioned in Paragraph 6 of the writ petition is as follows: -

SI.	Name of the	Working	<b>Date of Joining</b>	Appointment
No.	petitioners and	Place		Letter and
	Designation			Date
1	Ramdhyan	Social	17.06.1980	O. O. No85
	Mishra	Forestry		dt. 30.06.1980
	(Assistant)	Division		
2	Jagdish Narayan	Saranda	19.04.1973	O. O. No108
	Verma	Division		dt. 02.05.1973
	(Head Clerk)	Chaibasa		
3	Ashok Kumar	Saranda	03.12.1982	O. O. No56
	Sinha	State		dt. 17.12.1982
	(Assistant)	Trading		
		Division		
4	Om Prakash	Chaibasa	07.12.1978	O. O. No139
	Ambastha	South		dt. 15.01.1979
	(Assistant)	Division		
5	Anjani Kumar	Gandhi Tola	02.04.1988	O. O. No62
	Singh	Chaibasa		dt. 07.05.1988
	(Assistant)			
6	Nikunj Bihari	Chaibasa	20.01.1983	O. O. No15
	Mahto	South		dt. 22.02.1983
	(Assistant)	Division		
7	Jitendra Kumar	Kolhan	19.10.1976	O. O. No213
	(Assistant)	Division		dt. 16.11.1976
		Chaibasa		

8	Md. Ilyas Ansari	D.F.O.	03.06.1980	O. O. No86
	(Assistant)	Office		dt. 04.07.1980
		Porahat		
		Division		
		Chaibasa		
9.	Shyam Lal Soy	Gandhi Tola	02.04.1988	O. O. No 62
	(Assistant)	Chaibasa		dt. 07.05.1988
10	Gopal Pan	Chaibasa	02.08.1988	O. O. No116
	(Assistant)	South		dt. 01.09.1988
		Division		
11	Jamadar Oraon	C.F.	14.08.1972	O. O. No221
	(Daftari)	Southern		dt. 16.08.1972
		Circle		
		Chaibasa		
12	Binod Kumar	D.F.O.	01.04.1982	O. O. No79
	Sinha	Porahat		dt. 24.06.1982
	(Mali)	Division		
13	Degan Gope	C.F. Office	16.01.1982	O. O. No05
	(Peon)	Southern		dt. 06.02.1982
		Circle		
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11.From perusal of one set of documents which relates to petitioner No.1 as contained in Annexure-1 series, it is apparent that a letter dated 26.05.1980 was issued to the petitioner No.1 asking him to join his duty latest by 20.06.1980, failing which the offer of appointment of the petitioner, will stand cancelled. It has also been mentioned in the said letter that appointment order will be issued after joining. The petitioner No.1 joined his duty w.e.f. 17.06.1980 in terms of the aforesaid letter dated 26.05.1980 and the appointment letter was issued after a few days on 30.06.1980 clearly mentioning that the petitioner no. 1 has given his joining on 17.06.1980 and is appointed as Assistant in Social Forestry Division, Chaibasa Division in the pay-scale mentioned therein. Thus, the letter of appointment dated 30.06.1980 acknowledges the joining of the petitioner on 17.06.1980 and it is not in dispute that the petitioner No.1 was compelled to give his joining prior to 20.06.1980 pursuant to offer letter dated

26.05.1980, failing which, offer of appointment would have been cancelled. The offer of appointment also clearly stipulated that the letter of appointment would be issued after joining. Thus, it is not in dispute that the petitioner no. 1 has also worked in the department right from his date of joining and not from the date of issuance of appointment letter. The aforesaid method of joining and issuance of appointment letter is totally attributable to the department which such method was being followed in the department for a considerable long time. The case of different petitioners in the present case relate to different years right from 1972 to 1988. It is not in dispute that similar situation is with respect to each of the petitioners whose date of joining and issuance of appointment letter has been mentioned in the aforesaid charge.

- 12.It is not in dispute that one person, namely, David Angaria who had similarly given his joining and thereafter, appointment letter was issued, has been given all benefits which have been claimed by the petitioners in this writ petition with effect from the date of joining and not from the date of issuance of appointment letter. It is further not in dispute that such practise was followed by the department for a long period of about 30 years as is mentioned in letter dated 25.10.2010 issued by the Commissioner, Singhbhum Kolhan (Division), Chaibasa to the Chief Secretary, Forest and Environment Department, Jharkhand, Ranchi. In the said communication, it has also been mentioned that various persons have also been paid salary from the date of joining.
- 13.It further appears that after a long time a letter dated 02.08.2007 was issued by the Principal Chief Conservative of Forest, Jharkhand, Ranchi to the Chief Secretary, Forest and Environment Department, Jharkhand Ranchi clearly mentioning that the records of the department shows that the joining of the employees have been accepted prior to issuance of appointment letter and the appointment letter is preceded by issuance of offer letter and upon receipt of offer letter, the employees may give their joining and after joining, the appointment letter is issued accepting the joining. It has also been mentioned in the said letter that under such circumstances, the cases like that of David Angaria emerged and created problem. Thereafter,

a letter dated 27.07.2008 was issued by the Deputy Secretary of Forest and Environment Department, Government of Jharkhand, Ranchi mentioning that there is no concept of giving joining prior to issuance of appointment letter and the issuance of appointment letter giving the date of joining prior to the date of appointment letter is not in accordance with law and therefore, the date of joining cannot be treated as the date of appointment. In the said letter, a specific reference has been made to the case of David Angaria by stating that the case of David Angaria should not be treated as a precedent. Letter dated 08.03.2010 (Annexure-11) was issued as a follow up letter indicating that the date of issuance of appointment letter will be taken as the date of joining the service and all service benefits are to be paid accordingly.

14. This court finds that that the aforesaid method of joining and subsequent issuance of appointment letter, clearly mentioning the prior date of joining, has been followed by the respondent department for a very long time and petitioners are certainly not responsible for the acts and omissions of the respondent department and it is not in dispute that the respondents have taken work from the petitioners right from their date of joining and not from the date of issuance of appointment letters. This court is of the considered view that subsequent letters issued by the respondents as contained in Annexure-10 dated 27.07.2008 and Annexure-11 dated 08.03.2010 discontinuing the long practice cannot deprive the petitioners from service benefits right from the date of joining which has been mentioned and acknowledged in the appointment letters for no fault on their part. It is not in dispute that the petitioners have acted strictly in terms of the communications (offer letters). The respondents have admittedly extended such benefits to one similarly situated person, namely, David Angaria and there is no justification for denying the same reliefs to the petitioners. The case of the petitioner being on identical footing, the same benefit cannot be denied to the petitioners on the basis of impugned letters dated 27.07.2008 (Annexure-10) and 08.03.2010 (Annexure-11). In view of the aforesaid findings both the points mentioned in para-9 are decided in favour of the petitioners.

15. Accordingly, the impugned letters as contained in Annexure-10 and

11 have no applicability, so far as the petitioners are concerned and it is held that the date of joining of the petitioners is to be taken into consideration while calculating the period for grant of A.C.P as prayed for by the petitioners. All necessary consequences to follow. The petitioners may file representation along with a web copy of this order before the Respondent no. 3 who in turn is directed to ensure compliance of this order and also ensure payment of any amount if found payable to the petitioners pursuant to this order within a period of 6 months from the date of receipt of representation. The petitioners may also mention their e- mail id in the representation for better communication and also furnish their bank account details for receiving the payments, if any.

- 16. Accordingly, the present writ petition is disposed of.
- 17. Interim order, if any, stands vacated.
- 18. Pending interlocutory application, if any, is dismissed. as not pressed.

(Anubha Rawat Choudhary, J.)

Binit/