(2004) 09 PAT CK 0172

In the Patna High Court

Case No : C.W.J.C. No. 7784 of 2004

Abdul Hakim APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Citation : (2004) 4 PLJR 508

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved by the order dated 14.11.2003, contained in Annexure 7, whereby and whereunder he has been superannuated from the service with retrospective effect from 31.1.2003 as per the date of his superannuation because by mistake he was not made to superannuate from that date and consequently by order dated 29.3.2004, contained in Annexure 8/1, a sum of Rs. 66,452/- has been recovered. A counter affidavit has been filed on behalf of the District Provident Fund Officer, Samastipur (respondent no. 8) and a separate counter affidavit has been filed on behalf of the Collector, Samastipur, Additional Collector, Samastipur, Sub-divisional Officer, Dalsingsarai and Anchal Adhikari, Ujiarpur (respondents no. 2 to 5 respectively). From the said counter affidavits it appears that for the G.P.F. amount, a cheque for Rs. 2,13,360/- was issued on 3.9.2004 and the same has been produced for payment to the petitioner. Accordingly, the said cheque has been handed over to the learned counsel for the petitioner.

2. Learned counsel for the petitioner, however, submits that as per the authority for G.P.F. issued statutory interest has been calculated only upto July, 2004 whereas the cheque has been issued on 3rd September, 2004 and the same has been handed over today. As such, according to him, the petitioner is entitled for statutory interest on the said amount for the months of August and September, 2004 also.

3. Learned counsel for the State in view of the law settled has not been able to contest the said claim of the petitioner. Accordingly, this Court directs that the statutory interest on the said amount of G.P.F. for the months of August and September, 2004 shall also be paid to the petitioner within a week of the receipt/ production of a copy of this order.

4. As regards the recovery, it is stated that the order, contained in Annexure 7, was passed when it came to the knowledge that the actual date of retirement of the petitioner is on 31.1.2003 but due to mistake and oversight, the petitioner was not retired on the actual date of his retirement i.e. 31.1.2003.

5. In the counter affidavit it is stated that the petitioner also pointed out regarding his date of retirement and continuance in service by submitting an application on 14.11.2003 in which he requested to allow him to retire from the date of his actual date of retirement and the amount he has drawn after his actual date of retirement i.e. his salary and allowance may be adjusted. Accordingly, the petitioner also deposited the aforementioned amount in Sub-Treasury on 18.11.2004. This fact has been denied by the petitioner in paragraph 13 of the writ petition itself. It is stated that the respondent Anchal Adhikari, Ujiarpur sanctioned a sum of Rs. 82,724/- on account of provisional gratuity payable to the petitioner, vide his letter no. 140 dated 29.3.2004 addressed to the Sub-Treasury Officer, Dalsingsarai clearly stating that there was no Government dues outstanding against the petitioner. But, after drawing the aforesaid amount sanctioned as provisional gratuity, the respondent Anchal Adhikari, Ujiarpur withheld payment of Rs. 66,452/- on account of pay and allowances drawn by the Anchal Adhikari, Ujaiarpur from the Government Treasury and paid to the petitioner regularly between 1.2.2003 and 31.10.2003 and deposited a sum of Rs. 66,452/- into the Sub-Treasury at Dalsingsarai, vide Treasury Challan dated 18.11.2004. Learned counsel for the petitioner contended that this has been done by the respondents only to save their own skin.

6. Learned counsel for the petitioner submitted that in view of the law settled by this Court in the case of Kaushalya vs. State of Bihar, reported in 2000(1) PLJR 505, recovery of alleged excess payment is not permissible. He also relied upon a Division Bench order passed in L.P.A. No. 1145 of 2002 disposed of on 31.10.2002 in which this Court has held that there was no occasion for the recovery of the amount which was paid to the petitioner for having worked but after the period of retirement.

7. In the case of Kaushalya (supra) this Court after considering the decision of the Supreme Court held that the payment of salary for the services rendered by the employees beyond the actual date of superannuation without any misrepresentation or manipulation cannot be directed to be recovered from the pension or gratuity of such employees.

8. Under such circumstances, this Court finds no justification for recovery of the aforementioned amount from the petitioner as it is not even alleged in the

counter affidavit that he continued to work beyond his date of superannuation by misrepresentation or manipulating before the authority concerned. Accordingly, the writ application is allowed. It is made clear that in view of the law settled by this Court in the case of Smt. Sushma Prasad Vs. The State of Bihar and Others, , fixation of pension of the petitioner as per actual date of superannuation cannot be interfered with and the authority be issued accordingly.