

(2016) 05 PAT CK 0026

In the Patna High Court

Case No : Letters Patent Appeal No. 111 of 2015, Arising out of Civil Writ Jurisdiction Case No. 8434 of 2007 along with Interlocutory Application No. 483 of 2015

Ambika Prasad Das

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Citation : (2017) 1 PLJR 441

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Brisketu Sharan Pandey, Advocate, for the Appellant; Mr. Dhurjati Kumar Prasad, G.P.-7, for the State; Mr. J.P. Karn, Advocate, for the Accountant General

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J. (CAV) - Heard learned counsel for the parties.

Re.: Interlocutory Application No. 483 of 2015

2. Interlocutory Application has been filed by the appellant seeking interim stay of order dated 17.07.2014 passed in CWJC No. 8434 of 2007 as well as of the order dated 06.11.2002, which was impugned in the writ application.

3. In view of the matter being finally heard and disposed off, no order is required to be passed on the Interlocutory Application which stands disposed off.

Re.: Letters Patent Appeal No. 111 of 2015

4. The present intra-court appeal under Clause X of the Letters Patent of the Patna High Court has been filed by the appellant against the order passed by the learned Single Bench dated 17.07.2014 by which CWJC No. 8434 of 2007 filed by the appellant has been dismissed.

5. The brief facts of the case are that the appellant having superannuated from the post of Headmaster, Middle School, Gurudwar, Dhoraya in the district of Banka in December, 1997, was issued letter dated 06.11.2002 by the Senior Accounts Officer in the office of the Accountant General (A&E) II, Bihar and Jharkhand informing him that his pension and D.C.R.G. have been finalized by the office on the admissible pay without allowing any increment as he had not passed the Hindi Noting and Drafting Examination. The appellant represented before the Chief Secretary in November, 2003 and thereafter before the Hon''ble Chief Minister in December, 2005 and further before the District Superintendent of Education in September, 2006 and February, 2007. He also represented before the Director, Rajbhasha in March, 2007 and thereafter, before the District Education Officer in April, 2007. The same remaining unheeded, he approached this Court in CWJC No. 8434 of 2007 which was dismissed by order dated 17.07.2014 leading to filing of the present Letters Patent Appeal.

6. Learned counsel for the appellant submitted that the appellant, having been granted the benefit of increments in his career, for the purpose of fixing his pensionary benefits, cannot be denied taking into account the same. He submitted that such computation of his pensionary benefits, without giving him the benefit of increments, is erroneous in view of the Circular of the Government dated 13.11.1987 granting such exemption to teachers. Learned counsel submits that such action is also untenable in terms of Rule 43 of the Bihar Pension Rules, 1950 and only upon proved misconduct the same is permissible. Learned counsel further submitted that the appellant has also not been noticed or given opportunity to show cause, which is against the principles of natural justice. Learned counsel submitted that such action is also impermissible in view of the decisions of this Court in the case of Punit Lal Das v. State of Bihar reported as 1998 (3) PLJR 920; Abdul Qayum Ansari v. State of Bihar reported as 1998 (3) PLJR 902; Ras Bihari Singh v. State of Bihar reported as 1998 (3) PLJR 67; Dr. Junul Bhengraj v. State of Bihar reported as 1999 (2) PLJR 170 and Most. Kanti Devi v. State of Bihar reported as 2003 (1) PLJR 9 as well as that of the Hon''ble Supreme Court in the case of Syed Abdul Qadir v. State of Bihar reported as (2009) 3 SCC 475. He further submitted that the plea of delay and laches against the appellant is also not sustainable in view of the decision of the Hon''ble Supreme Court in the case of Ramchandra Shankar Deodhar v. State of Maharashtra reported as (1974) 1 SCC 317.

7. Learned counsel for the respondents submitted that the writ petition as well as the present appeal are both misconceived. It was submitted that the appellant cannot take the benefit of a wrong committed by himself and in fact the respondents have been indulgent by not directing for recovery and lodging of criminal case against him for his fraudulent act. It was submitted that the appellant, being the Drawing and Disbursing Officer, had himself prepared his salary bills and taken such payment. He submitted that the appellant cannot be said to have been unaware of the requirement of law of passing Hindi Noting and Drafting Examination, which was made pre-condition for grant of increment and

promotion, as per the State Government resolution dated 15th June, 1968 read with paragraph 3 of the clarification dated 25th May, 1977, which has further been clarified by letter dated 13th November, 1987 and also by letter dated 17th May, 1999. It was submitted that the appellant, having joined government service in the year 1973, was well aware of the resolution of the year 1968 requiring passing of Hindi Noting and Drafting Examination for any future payment of annual increment as well as promotion, but chose not to clear the said examination. It was submitted that such decisions were time and again reiterated by the State Government and also clarified subsequently in 1987 and 1999 but there was no addition or new condition imposed as the original decision of the State Government was of the year 1968 itself. Learned counsel submitted, at the cost of repetition, that the appellant himself, being the Drawing and Disbursing Officer for the period he was in government service on the post of Headmaster, having taken such benefit, cannot now be a judge in his own cause and also cannot be permitted to take the stand that because he has taken payment of such increments, his calculation with regard to post retiral benefits should be made taking into account such increments, as an illegal act tantamounting to fraud does not confer any right on the appellant and illegality cannot be perpetuated, muchless fasten any liability on the State Government. It was submitted that in the present case even the appellant was aware of him having to pass the said examination which made him represent before the Chief Secretary on 27.11.2003 seeking exemption from passing of the said examination and also the Hon"ble Chief Minister on 09.12.2005. It was submitted that cause of action having arisen in the year 2002, and the writ petition having been filed after a delay of almost five years is also indicative of the laches on the part of the appellant, which is a good ground for not interfering in the matter. Learned counsel submitted that the decisions relied upon by the appellant are distinguishable on the basic fact that there has not been any recovery of what has been paid to him, and is a case of mere computation of his post retiral dues, in accordance with law. It was submitted that the appellant has not been able to justify non-passing of the Hindi Noting and Drafting Examination and in fact has rather admitted the fact that there could not be automatic exemption unless asked for due to which he had applied before the Chief Secretary and the Hon"ble Chief Minister. It was submitted that in view of him having made an attempt for the first time for seeking exemption from passing of the aforesaid examination in the year 2003 itself dis entitled him for any consideration since the stipulation for granting exemption clearly states that exemption cannot be demanded as a matter of right and is discretionary and further such exemption can only be granted with effect from the date of making such application for exemption by the employee. It was submitted that in the present case, the appellant himself admits that he made a request for exemption only in the year 2003, i.e., after almost six years of his superannuation, and, thus, the same was a dead cause as no exemption with retrospective effect could have been granted to him as in effect he was asking for exemption right from the year 1973. Learned counsel submitted that the State being an impersonal body

cannot be made to suffer the wrongs committed by its officers which in the present case is the petitioner himself who has wrongly derived the benefit by his own acts. He submitted that the decisions relied upon by learned counsel for the appellant are thus not applicable to the facts of the present case as it is not a case of any recovery. Learned counsel submitted that for the same reason a mere correction in the computation, which is in accordance with law and which has not been disputed by the appellant either before the Writ Court or before this Court, the requirement of a show cause notice to him is also not a good ground for interference as he has been unable to show that he was not required to pass such examination or that he was not himself the Drawing and Disbursing Officer and, thus, when the benefits derived to him by his own act have been proved to be contrary to the legal provisions, the State cannot be estopped from taking corrective measures and further that the principles of natural justice is not a loose canon to be used in each and every case and unless it is shown that by giving him opportunity to show cause he could have convinced the authorities or by non-opportunity any prejudice has been caused, such issuance of show cause which would be a mere formality, and not in tune with either the spirit of such principle or law laid down by the Courts requiring adherence to the principles of natural justice of issuing show cause before taking any action. Learned counsel further submitted that the appellant has availed two opportunities but is unable to explain his position, i.e., before the learned single Bench as well as before this Court, and any interference on the ground of giving him opportunity of being heard shall be an academic exercise in view of the result being known, as the action of the authorities is legal and in accordance with law.

8. Having considered the rival contentions, we find force in the submissions of learned counsel for the respondents. The appellant has not been able to convince the Court with regard to his entitlement to receive annual increments without having passed the Hindi Noting and Drafting Examination. He has also not been able to rebut the contention of the respondents that he, as a Headmaster, was the Drawing and Disbursing Officer with regard to his own salary also, and, thus, him having prepared his own salary bills and taken such benefit, shall not give him the protection of a wrong, which he had committed in his favour, to be perpetuated and shall not prevent the State from making appropriate amends and that too in matters relating to public money. Our view finds support in the decision of the Hon'ble Supreme Court in the case of Union of India v. Bhanwar Lal Mundan reported as (2013) 12 SCC 433 wherein it has been held as under :

"14. In the case at hand, as stated earlier, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, needless to say, was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus analysed, the irresistible conclusion is that the Tribunal and the High Court have fallen into error by opinion that the respondent would

be entitled to get the pension on the basis of the pay drawn by him before his retirement.

15. Consequently, the appeal is allowed in part and the orders passed by the Tribunal as well as by the High Court are set aside directing fixation of pension on the base of pay drawn by the respondent. However, as conceded By Mr. Singh, there shall be no recovery from the excess amount paid to the respondent. There shall be no order as to costs."

9. We are further in agreement with the submissions of learned counsel for the respondents that the writ petition also having been filed after almost five years of the cause of action having arisen, dis entitled him to any interference by the Court in its extraordinary prerogative writ jurisdiction. 10. Accordingly, as no ground has been made out warranting interference, either in the order of the authorities or of the learned Single Bench, the Letters Patent Appeal stands dismissed.

Hemant Gupta, J.—I agree.