(2002) 07 PAT CK 0032

In the Patna High Court

Case No : C.W.J.C. No. 8791 of 1998

Anirudh Tiwary APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Citation : (2002) 4 PLJR 131

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Subhash Prasad Singh, for the Appellant; J.P. Kishore, for State and Navin Sinha, for the Respondent

Final Decision : Allowed

Judgement

P.K. Deb, J.—The short point involved in this writ petition as to whether the Petitioner, a retired fourth grade employee of Patna University, is entitled to pensionary benefit or not.

2. Admitted factual position is that the Petitioner was appointed under the State Government as Peon in the year 1944 and he was appointed as Peon in Patna University on 1.6.1954 and then promoted to the post of Daftari and after serving the University for a long time he retired on superannuation on 3.9.1991. According to the Petitioner, his last pay drawn in the Scale Rs. 1425/- has been fixed on 1.4.1990 and he was entitled to two time bound promotions as per the suggestions of the State Government and being adopted by the Patna University. But he had hot been given so nor he has been given the benefits of revised pay scale. After retirement when he made an application for getting the retiral benefits including gratuity, pension etc. he was not paid anything. Then he went on hunger strike on 29.4.1994, but at the intervention of the authorities of the University on assurance of part payment of gratuity amount, such hunger strike was called off on 30.5.1994. But still then except payment of some part of gratuity, the Petitioner had not been paid other retiral benefits nor he has been allowed pensionary benefits. Then the Petitioner came up before this Court in

C.W.J.C. No. 4139/1996 but the same was disposed on the basis of the direction given to the employer as was done in a general order in Rukmini Devi''s case. Then also, the Petitioner had not been paid his retiral benefits, pension etc. Then the Petitioner made a detailed representation on which the officials of Patna University had given opinion in their office notes in favour of the Petitioner for granting him pension and the legal opinion taken in this regard was also in favour of the Petitioner. But still then the representation of the Petitioner had been rejected regarding his pensionary benefits vide order dated 17.6.1997 (Annexure-4) wherein it was held that as the Petitioner had given option for Contributory Provident Fund Scheme vide Annexure-5 dated 4.5.1981, he is not entitled for pensionary benefits.

3. A dispute has been raised in this writ petition that when the University authorities relied on their own decisions as contained in Annexure-4 on the interpretation of Annexure-5 the so-called option being given by the Petitioner, then the date of option is of much importance here. The same is dated 4.5.1981 and in that option it has been declared in the following manner:

To, The Registrar Patna University, Patna-5.

Sir,

I opt for the existing University Contributory Provident Fund Scheme and Gratuity as admissible to pre-1952 members of the Registrar''s Establishment, transferred to the University under the Patna University Act, 1951 under the Old Patna University Regulations.

4. Now, the question remains as to whether such option can be construed to be legal option by the Petitioner when already statutes for grant of retiral benefits to the employees of Bihari Ranchi/Bhagalpur/Magadh/Lalit Narayan Mithila/ Kameshwar Singh Sanskrit University had come into force from 14.11.1980. Clause-3 of that Statute specifically mentions that those Statutes shall apply to both teaching and non-teaching staff of the University and also such employees of the constituent colleges of the University who were in service on 1.4.1972 or joined service after that date. They shall be entitled to opt for one of the alternative Schemes set out in Appendix A and B to the Statute or to continue in the Scheme mentioned at Clause-C of the Article-1. It has also been mentioned in that Statute that if such option has not been given by any application within three months from the date of publication of the Statute, then it will be construed that those employees have opted for Appendix-A meaning thereby pension and gratuity benefits. From the wordings of the option as given by the Petitioner shows that he had opted for ''existing" University Contributory Fund Scheme and gratuity as admissible to pre-1952 members of the Registrar''s establishment transferred to the University under the Patna University Act, 1951 under the old Patna University Regulation. The wordings are not convincing on the face of It as at the time when such option had been given there was no "existing" C.P.F. Scheme of the pre-1952 members." This can be clarified more in

the following manner:The old University Regulations framed under the P.U. Act, 1917 mentions about the pre-1952 members of the Registrar''s Establishment transferred to the University. Therein there was a clause regarding the grant of gratuity to the members of the Registrar''s Establishment having service of acceptional merit for not less than ten years, Patna University Act had gone through amendments time to time. It was amended iin the year 1961. It was again amended in the year 1976. In the subsequent amended Act those provisions of the transfer of Registrar''s Establishment as contained in P.U. Act, 1917 did not take place. Moreover, the controversy had been resolved when the Statute for grant of retiral benefits came into force in the year 1980 and after coming into force of that Statute there is no scope of giving any option as per the provision which was in P.U. Act, 1917. There is merit in the Statute itself and that Statute has specifically given provisions for giving option either in Clause A and B of the Appendix or Clause-C of Article-1 and it has also been mentioned in the Statute itself that if such option had not been given within three months then it should be construed that the employees had opted for the Pension Scheme itself as per Clause-A of the Appendix. I have already mentioned that the said Statute came into force in the last part of 1980 and the Petitioner''s so called option as per Annexure-5 is 4.5.1981. At that time the question of option was not there because after the time frame has been lapsed the employees like that of the Petitioner of Patna University are to be construed as opted for pensionary benefits. The wordings of the option show that such option was given in respect of "existing" regulations of pre-1952 members. Those were not existing at the time such option was given. In that way, the so-called option as contained in Annexure-5 could have no legal validity rather should be construed only as scrap of paper. The matter should also be considered in that light that the Petitioner is not a well educated man rather fourth grade employee who has retired as Daftari alone. He can not be construed to be a man of 3 Rs. (reading, writing and arithmetic). Then such writing in the form option must be by some man and not by the Petitioner himself and he must have signed without understanding what has been written. The date when such option had been taken or given does not give any scope to any employee to give any option because the date of option regarding the Statute which came into force in the year 1980 had already been elapsed by that time and for that reason I have mentioned earlier that such option as contained in Annexure-5 should be construed only a scrap of paper. It appears that while passing the order as contained in Annexure-4 the authorities of the University had not considered the matter in its proper perspective. Even the legal opinion given which is very much elaborate on the basis of the office note by the University officials had not been considered in its proper perspective while passing the order as contained in Annexure-4.

5. From all these circumstances and the legal position as discussed above, I have no other alternative but to hold that the Petitioner on the date of his superannuation was entitled for pensionary benefits and not of Contributory Provident Fund Scheme alone. In that way, the Petitioner should be given his

pensionary benefits together with other retiral benefits available under the law and he should be paid so within a period of two months from this date alongwith 5% penal interest for delayed payment on the arrears. It is also made clear that if anything has been paid to the Petitioner towards Contributory Provident Fund Scheme the same should be adjusted towards the pensionary benefits or if the University rules provide the Petitioner shall have to deposit the same back, if necessary, for the purpose of granting him pensionary benefits. Regarding Leave Encashment, Time Bound Promotions, Revised Scale etc. it appears that some payments have been made to the Petitioner and part of the gratuity which should be adjusted towards his pensionary benefits and other benefits which had been stated in Annexure-4 that would be paid as soon as the Government approves the same, should also be made available to the Petitioner because by this time approval must have been there from the side of the State Government.

6. In that way, this writ application is allowed. But no order as to cost in the circumstances of the case.