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(2009) 04 PAT CK 0073

In the Patna High Court

Case No : CWJC No. 12741 of 2001

Baidyanant Prasad Verma — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 04 PAT CK 0073

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—In this writ application the petitioner has prayed for the following relief:

The present writ application is being filed for issuance of an appropriate writ order/orders/direction/ directions commanding the respondents for further commutation of pension and gratuity of the petitioner in the light of Finance Department letter No. 11556 dated 22.12.1999 and letter No. 6469 dated 26.9.2000 issued under the signature of Special Secretary, Department of Finance, Govt. of Bihar, Patna and further direction to the respondents to pay amount in lieu thereof as well as statutory interest and any other relief or reliefs for which the petitioner entitled under law.

2. It is the case of the petitioner that he entered in service on 4.3.1960 on the post of Anchal Amin and had retired on 31.1.1997, whereafter he was paid all his retirement benefit as also even his pension was commuted by an order dated 28.6.1999. The grievance of the petitioner, however, is that his commutation was made in the old pay scale and when the State Government has revised the pay scale with effect from 1.1.1996 the petitioner became entitled for further gratuity and further commutation as the ceiling also had been raised by the State Government in the revised pay scale for such gratuity and commutation of pension.

3. The respondents have filed a counter affidavit wherein a clear stand has been taken that the revision of pension as per Government Resolution dated

22.12.1999 was to be made effective from 1.4.1997 for the purpose of calculation of monetary benefit and that the very resolution clearly said that though notional fixation of pay will be made with effect from 1.1.1996 but no arrears would be payable for the period of 1.1.1996 to 31.3.1997. It was further clarified that the Government Resolution No. 11556 dated 22.12.1999 in paragraph No. 7 had specifically mentioned that the employees, who retired on or after 1.4.1997 alone would be entitled for fixation of pension at the rate of 50% of the last salary drawn and would be also sanctioned maximum of 40% as commutation of pension. It was in this context that it was stated that the petitioner had retired on 1.2.1997 and therefore, was not entitled to take 40% of commutation of pension as well as enhanced amount of gratuity by the Government Resolution dated 22.12.1999.

4. The petitioner, however in the rejoinder had taken a plea that this fixation or cut off date of 1.4.1997 was itself arbitrary and in this context had referred to the judgment of the Apex Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), , to contend that the Government could not pick up a date out of hat and once pay revision was to be effected from 1.1.1996 the monetary benefit also either for payment of salary or revision of pension including commutation had to be from that very date and to that extent the date of 1.4.1997 was wholly arbitrary and irrational. In this context learned Counsel had also relied on the earlier principles adopted by the Govt. of Bihar while accepting the report of pay revision committee in 1989 and had submitted that the same should have been followed in 1999. He however in course of rehearing of this case had clarified that the grievance of the petitioner is confined to commutation of pension and would not press for the revised amount of gratuity.

5. In order to appreciate the aforementioned submission of the petitioner this Court will have to examine the relevant Government decision contained in resolution of the Finance department dated 22.12.1999 which is Annexure ''A'' to the counter affidavit filed by the Accountant General. The said Government Resolution so far it relates to the payment of revised gratuity and/or commuted value of pension which alone are the subject matter of this writ application lays down as follows:

ladYi

fo"k;& jkT; ljdkj ds lsohoxZ ds fy, ikfjokfjd ias''ku rFkk minku ds izko/kkuksa esa fQVeasV dfeVh ds vuq''kalk ds vkyksd esa fnukad 1-1-1996 ds izHkko ls iqujh{k.kA

jkT; ljdkj ds inkf/kdkjh;ks@deZpkjh;ksa ds isa''ku ikfjokfjd isa''ku miknku vkfn ls lEcfU/kr ekeyks ij Hkkjr ljdkj ds dkfeZd ,oa yksd f''kdk;r ias''ku ladYi ?isa''ku ,oa isa''ku Hkksxh;ksa dY;k.k ea=ky;? ds i=kad ,Q45@96&97 ih0 ,.M ih0 MCyw0 ?,0? Hkkx 1 fnukad 27 vDVwcj 97 ds vkyksd esa fQVeasV dfeVh dh vuq''kalk dks /;ku es j[krs gq, lE;d fopkjksijkUr] jkT; ljdkj }kjk vius lsokoxZ ds isa''ku@ikfjokfjd ias''ku ds izko/kkuksa esa dsUnz ljdkj ds rRlEcU/kh fu;eksa ds

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vuq:i ijorhZ dafMdkvksa ds vuqlkj iqujh{k.k djus dk fu.kZ; fd;k x;k gS A

2- izHkko dh frfFk &

?A? bl ladYi eas fufgr isa"ku ,oa minku ds iqujhf{kr izko/kku oSls ljkdjh lsodksa ds ekeys esa ykxw gksaxs tks fnukad 1 tuojh 1996 dks vFkok mld ckn lsok fuo`Rr gksrs gS vFkok ftldh e`R;q fnukad 1 tuojh 1996 dks vFkok mlds ckn lsokdky esa gqbZ gks A fnukad 1 tuojh 1996 ds izHkko ls isa"ku dk iqujh{k.k dsoy oSpkfjd :i ls fd;k tk;sxk ,oa is"ku iqujh{k.k dk vkfFkZd ykHk fnukad 1 vizSy 1997 ds izHkko ls gh vuqekU; gksxk A bldk vFkZ ;g gS fd 1 tuojh 1996 ls 31 ekpZ 1997 dh vof/k ds fy, fdlh izdkj dk cdk;k ns; ugh gksxkA

?AA? mDr dksfV ds ftu ekeyksa esa bl vkns"k ds fuxZr gksus ds igys gh vkSicaf/kd isa"ku Lokhd`r gqvk gks] mldk iqujh{k.k bl ladYi esa fufgr izko/kkuksa ds vuqlkj fd;k tk;sxk A ftu ekeyksa esa foRr foHkkx ds ladYi la[;k 1853 fo0 fnukad 19 vizSy 1990 ,oa vU; izpfyr fu;eksa ds vuqlkj bl vkns"k ds fuxZr gksus ds iwoZ gh ias"kukfn dh vfUre Lohd`fr iznku dj nh xbZ gks] mudk Hkh iqujh{k.k orZeku vkns"k ds vuqlkj fd;k tk;sxk c"krsZ fdl izdkj dk iqujh{k.k ias"kuHkksxh ds fy, ykHkdkjh gks A

3- ifjyfC/k;kWa% ---

4- isa"ku% ---

5- ikfjokfjd isa"ku% ---

6- e`R;q&lg&lsokfuo`fr minku&

?A? lsokfuo`fRr minku & fnukad 1-4-97 dks vFkok mlds ckn jkT; ljdkj ds lsokfuo`fRr dh jkf"k orZeku fl)kUr dh Hkkafr mldh isa"ku iznk;h lsok dks izR;sd iw.kZ Nekgh vof/k dh ifjyfC/k;ksa dh ,d pkSFkkbZ ?1@4? jkf"k gksxh tks ifjokj ds 16-5 xq.kk ls vf/kd ugh gksxh A fnukad 1-4-97 dks vFkok mlds ckn lsok fuo`r ljdkjh lsod dks lsokfuo`fRr minku dh vf/kdre jkf"k yk[k :i;s fu/kkZfjr dh xbZ gS A

?AA? e`R;q minku & ljdkjh lsod ds ljdkjh lsokdky eas e`R;q gks tkus dh fLFkfr esa iwoZ dh Hkkafr] e`R;q minku dh x.kuk foHkkx dh ladYi la[;k & 1853 fnukad 19-4-1990 dh dafM+dk 3?AAA? ds vuqlkj fuEukafdr jhfr ls dh tk;sxh%

dzekad lsok vof/k miknku dh jkf"k

1. ,d o"kZ ls de ifjyfC/k;ksa dk nks xq.kk

2. ,d o"kZ ls vf/kd ifjyfC/k;ksa dk N% xq.kk ij 5 o"kZ ls de

3- 5 o"kZ ;k vf/kd ij ifjyfC/k;ksa dk 12 xq.kk 20 o"kZ ls de

4- chl o"kZ ls vf/kd isa"ku iznk;h lsok dh izR;sd iw.kZ Nekgh ds fy, ifjyfC/k;ksa dk vk/kk tks ifjyfC/k;ksa ds 33 xq.kk ls vf/kd u gks A 1-4-97 vFkok mlds ckn lsok dky eas e`R;q gksus dh fLFkfr esa vf/kdre lhek 3-50 yk[k :i;s gksxh A

7- isa"ku dk :ikUrj.k

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(i) foRr foHkkx dh ladYi la[;k 1853 fo0 fnukad 19-4-90 dh dafMdk 5 ds izko/kkuksa dh vkaf''kd la''kks/ku djrs gq, jkT; ljdkj us fu.kZ; fy;k gS fd fnukad 1 vizSy 97 ,oa mlds ckn lsokfuo`Rr ljdkjh lsodksa ds ekeyks eas] bl ladYi dh dafM+dk 4?1? ds vUrZxr 50 dh nj ls fu/kkZfjr isa''ku dh vf/kdre 40 izfr''kr jkf''k ds :ikUrj.k dh vuqefr iznku dh tkrh gS A

(ii) jkT; ljdkj us ;g Hkh fu.kZ; fy;k gS fd lsok fuo`Rr gksus okys ljdkjh lsod] vius isa''ku dh okafNr jkf''k tks Lohd`r isa''ku dh 40 izfr''kr ls vf/kd ugh gks dk :ikUrj.k gsrq vkosnu dk] la''kksf/kr u;s isa''ku izDdu eas euks;u i= ds lkFk miLFkkfir dj ldsxs A ,sls izR;sd ekeys esa egkys[kkdkj fcgkj isa''ku Hkqxrku vkns''k ds lkFk gh is''ku dh 40 izfr''kr jkf''k vFkok isa''ku dh vkosfnr va''k ds :ikUrfjr ewy dk izkf/kdkj i= fuxZr dj nsxs A ;g izfdz;k vkxkeh foRrh; o"kZ ls izHkkoh gksxh A vFkkZr~ fnukad 1-4-2000 ds izHkko ls isa''ku ,oa :ikUrj.k gsrq u;s isa''ku izi= la[;k&4 esa vkosfnr djuk gksxk A rc rd 40 izfr''kr ;k mlls de okafNr jkf''k ds :ikUrj.k dk dk;Z iwoZ izfdz;k ds vuqlkj fd;k tk;sxk A lqyHk izlax gsrq fnukad 1-4-2000 ls izHkkoh u;s la''kksf/kr isa''ku izi= la[;k&4 dk uewuk bl lladYi ds lkFk layXu gS A

(iii) fnukad 1 vizSy 97 ds i''pkr~ lsokfuo`Rr ljdkjh lsod ftudk isa''ku :ikUrj.k foRr foHkkx dh ladYi la 3853 fnukad 19-4-90 ds izko/kkuks ds rgr fd;k gS ds ekeys es fu/kkZfjr isa''ku dh izfr''kr jkf''k ls iwoZ eas dh xbZ :ikUrfjr ias''ku dh dh jkf''k ?kVkdj ''ks"k isa''ku dh jkf''k ds :ikUrj.k dh vuqefr isa''ku /kkjh;ks dks gksxh A blds fy, isa''ku /kkjh;ksa dks LokLF; ijh{kk djkuk vko;''d ugh gksxk pkgs iwoZ esa muds isa''ku dk :ikUrj.k LokLF; ijh{kk ds v/kkj ij gh fd;k x;k gks A ,sls izR;sd ekeys esa is''ku Hkqxrku vkns''k ds lkFk gh egkys[kkdkj vUrj isa''ku ds :ikUrfjr ewY; dk izkf/kdkj i= Hkh fuxZr dj nsxs A ,oa iqujhf{kr isa''ku dk Hkqxrku Hkh isa''ku dh :ikUrfjr dh jkf''k ds dVkSrh ds ckn fd;k tk;sxk A

(iv) ---

8- eagxkbZ jkgr% ---

9- fnukad 1 tuojh 1996 ls fnukad 31 ekpZ 1997 rd lsaokfuo`Rr gq,@gksusokys ljdkjh lsodksa dks ;g fodYi nsus dh lqfo/kkk jgsxh fd bl vkns''k ds fuxZr gksus ds iwoZ izHkkfor O;oLFkk ds vUrZxr viuk isa''ku@minku izkIr dj ldrs gS A

10- cdk;s jkf''k dk Hkqxrku% jkT; ljdkj ds isa''ku Hkksxh tks fnukad 1 tuojh 1996 ds ckn lsok fuo`Rr gks pqds gS vkSj ftlds isa''ku@ikfjokfjd isa''ku dk fu/kkZj.k iwoZ fu;eks ds vuqlkj fd;k x;k gS] ds cdk;s jkf''k dk Hkqxrku foRr foHkkx }kjk fnukad 1-4-97 ds ckn le; le; ij fuxZr eagxkbZ jkgr ,ao vUrfje jkgr ls lEcfU/kr fu.kZ; ladYiks }kjk Lohd`r njksa ls Hkqxrku dh xbZ jkf''k ,oa iwoZ fu/kkZfjr isa''ku dh jkf''k dks lkeaftr dj fd;k tk;sxk A

(Underlining for emphasis)

6. From the reading of the aforementioned resolution, therefore, it becomes absolutely clear that a discernable principle was adopted while implementing the report of the Pay Revision Committee and Fitment Committee, its decision to pay the benefit of cash component with effect from 1.4.1997 cannot be said to be

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one picked up out of hat. This aspect of the matter in fact also has been clarified in the letter of the Finance Department dated 26th July 1996 (Annexure-4 to the writ petition) and the subsequent affidavit filed by the Special Secretary of the Finance Department when the petitioner had tried to equate the earlier provision of the pay revision of the year 1989 by taking a plea that at that point of time the benefit was given to all the pensioner with effect from 1.1.1986. In this respect following explanation of the Special Secretary of the Finance Department would itself unfold the rationale fixing the date of cut off date of 1.4.1997 in the Government resolution dated 22.12.1999. The relevant portion of the aforesaid affidavit of the Finance Department reads as follows:

It is stated that the statement made by the petitioner is correct in that the provisions made in the last pension revision in the year 1989 and the latest pension revision in 1997 are different in so far as the commutation of pension is concerned. When the order of revision of pension was issued in the year 1990, the intention of the Government was to pay all the actual benefits of revision of pension with effect from 1.2.1989, the cut off date of 1.1.1986 was chosen for the purpose of the calculation and consolidation of pension. Same principle was adopted for the revision of pay of working employees of the State Govt. No actual benefits were to be paid either to the serving employees or the pensioners for the period between 1.1.1986 and 1.3.1989. However, due to drafting error, in case of commutation of pension, the relevant date was wrongly mentioned as 1.1.1986 whereas it should have actually been 1.3.1989 was the intention of the Govt. There was no conscious decision of the Govt. to make any exception with regard to the payment of commutation of pension. This mistake was avoided while issuing the resolution No. 11556 dated 22.12.1999 for effecting revision of pension, the actual benefits of which were to be paid w.e.f. 1.4.1997.

7. In the light of the aforementioned pleadings the only question which needs to be answered is that when the Government after a gap of 8-10 years revises the pay/pension whether it is required to also fix a date which can please every Government servant or pensioner or can the government not fix any appointed date for extending actual financial benefits.

8. In this respect this Court is of the opinion that it always for the government to fix a particular date for enforcing the actual payment of pay or pension and therefore, such a date can always be fixed on the basis of its decision to implement the accepted recommendations of the Pay Revision Committee. As the Fitment Committee was entrusted a job to fix the pay of the employees of the State Government with effect from 1.1.1996 alike the decision of the Central Government, fixing the cutoff date of 1.1.1996 cannot be questioned. The next issue would be as to whether the date of 1.4.1997 for extending the actual financial benefits to the State Government employees can be said to be irrational ? The answer, thereof, also lies in the background of the fact that an agreement between the Government and the Employees Association was reacted evolving the cut off date of 1.4.1997 even though the said decision by way of an

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agreement was arrived at in the month of December, 1999. Had the Government taken a decision to extend financial benefits only with prospective effect i.e. 22.12.1999 a large number of employees/pensioners could have been deprived from getting benefit of pay/pension fixation wherein there was an additional beneficial provision for enhancement of limit of pension increasing it to 50% of the last salary drawn. It was for this increase in the amount of pension of the employees that when the amount of pension was increased w.e.f. 1.1.1996 only notionally, by extending the financial benefits of such increase in pension w.e.f. 1.4.1997, the government had taken a conscious decision to extend benefit of increased amount of commutation with the financial benefits only w.e.f. 1.4.1997. The moment there is a clear intention of the State Government that no arrear was to be paid for the period of 1.1.1996 to 31.3.1997, the petitioner alone can not be said to be chosen for a discriminatory treatment. Infact the increased amount of commuted value of the pension was to be paid to only those government servants who would have received payment of arrear of pension, which as noted above was payable to only class of employees retiring on or after 1.4.1997. Thus the date of payment of 1.4.1997 for the increased 40% of the commuted value of pension in the light of decision of the government for enforcement of the government resolution dated 22.12.1909 had an object to achieve namely by adopting same yardstick for all the government servant in the matter of making actual payment of financial benefit either in the matter of pay or pension or gratuity or commuted value from one and same date i.e. 1.4.1997.

9. Thus whenever any Government decision has to be taken for payment of financial benefit, the same has to be fixed from a particular date and therefore such cut off date in all cases cannot be said to be irrational merely because the same would deprive a particular class of employee. This aspect of the matter in respect of a cut off date of pay scale itself has been considered by the Apex Court in large number of cases and reference in this connection can be made to the judgment of the Apex Court in the case of K.L. Rathee Vs. Union of India and others, when in Nakara''s case (supra) was considered and distinguished in the following words:

...Nakara case does not lay down that the same amount of pension must be paid to all persons retiring from Government service irrespective of the date of retirement.

10. Yet again the Apex Court considering the same issue as with regard to cut off date in the matter of payment of benefits arising out of pay fixation in the case of State of Punjab and Others Vs. Amar Nath Goyal and Others, , had held that

cut off date 1.4.1995 for grant of benefit of increased quantum of death cum retirement gratuity was not arbitrary, irrational and violative of Article 14 of the Constitution of India.

11. Law in this context, in fact so as far the employees and the pensioners of the Government of Bihar are concerned, seems to have been finally settled in the

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case of State of Bihar and Others Vs. Bihar Pensioners Samaj, , wherein the Apex Court considering the earlier Pay Revision Committee report and the cut off date had held that fixing of a cut off date for granting of financial benefit is well within the powers of the Government as long as the reasons therefore are not arbitrary and are based on some rational consideration. Financial constraints in fact was held by the Apex Court in the aforementioned judgment to be a valid ground for introducing a cut off date while introducing the pension scheme on revised basis and the Apex Court in that context had held that:

Thus, refusal to make payment of arrears from 1.1.1986 to 28.2.1989 on the ground of financial burden cannot be held to be an arbitrary ground or irrational consideration, Hence, the argument based on Article 14 of the Constitution must fail.

12. In that view of the matter, this Court would only adopt the reasonings of the Additional Secretary in the supplementary counter affidavit to hold that the cut off date 1.4.1997 for the purpose of payment of enhanced commutated value of pension does not suffer from any arbitrariness.

13. The petitioner admittedly had already been paid his entire retirement benefits including commutated value of pension and since his date of retirement is 1.2.1997, he cannot get the financial benefit of enhanced amount of commutation as per the decision in Government resolution dated 22.12.1999.

14. That being so, this Court would find no merit in this application and the same is accordingly dismissed. There would be however no order as to costs.

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