(2006) 01 PAT CK 0097

In the Patna High Court

Case No : CWJC No. 13889 of 2003

Baleshwar Ojha Ors. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Citation : (2006) 1 PLJR 506

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Anil Singh and A.K. Keshri, Ganesh Pd. Singh, Jayanandan Singh, for the Appellant; P.K. Sahi, Arvind Ujjwal, Rajesh Kr. Verma and Shashi Shekhar Pd. Sinha, for the Respondent

Judgement

Barin Ghosh, J.—The retirement benefit rules appended as Appendices A to the Statute for the grant of retirement benefits of the Bihar/ Ranchi/Bhagalpur/ Magadh/LN.Mithila/ K.S.D. Sanskrit University Provides at Clause 23.3 as follows:-- "23.3. The rates and the amounts of gratuity provided in this section shall be changed to the rates applicable to the employees of the State Government whenever there is any change in the latter rates."

Admittedly, with effect from 1st April, 1997 the rates and amounts of gratuity applicable to the employees of the State Government stood changed for better. Despite such change and despite there being a mandate in the Statute that the employees of the said Universities shall also be entitled to such change, the same was not accorded. Later on, the Government came up with a Circular and therein provided that the employees of the said Universities shall be entitled to such enhanced gratuity on and from 22nd June, 2005. This has resulted in these bunch of writ petitions. The petitioners herein are all retired employees of the said Universities.

2. Their contention is simple and that is where by a legislative mandate a benefit has been prescribed and by virtue of such prescription such benefit has already accrue, by an executive mandate the same cannot be curbed having regard to

the fact that an executive fiat cannot overturn a beneficial legislative direction.

3. In view of such contention by an order dated 21st December, 2005 I wanted to know from the State Government as to the reason for seeking to interfere with a field already covered by the legislature by an executive fiat and, accordingly, directed the Finance Secretary to inform me the reason why the State Government is purporting to contend that the employees of the said Universities shall be entitled to enhanced gratuity with effect from 22nd June, 2005 when it has allowed the same to its own employee with effect from 1st April, 1997 and when by a Statute, which came into existence prior to 1st April, 1997, the legislature expressly held out and promised to the employees of the said Universities that whenever Rules for payment of gratuity will be changed the same will be made available to the University employees.

4. The Finance Secretary has filed an affidavit and in paragraph 4 thereof has stated that the Finance Department is yet to get proposal with the calculation of the financial implications from the Human Resources Development Department with reference to pre-dating of gratuity with effect from 1st April, 1997 and revising the pension with effect from 1st January, 1996 and, therefore, the Finance Department or the Finance Secretary has nothing to answer at this stage.

5. The question is not what is the financial implication of pre-dating the benefits of gratuity. The question is; Can a promised benefit be postponed contrary to the promise made in the Statute? It appears that the Finance Secretary, while filing the above affidavit, did not even bother to apply his mind at ail.

6. In law, I have no other option; but to hold that once by the Statute it has been held out that the employees of the said Universities shall be entitled to gratuity at the same rate as applicable to the State Government employee whenever there is a change, by reason of the Statute itself the employees of the said Universities became entitled to enhanced gratuity with effect from 1st April, 1997 and, accordingly, it shall be deemed that by the Government Order dated 22nd June, 2005 the Government has communicated to the effect that the employees of the said Universities shall be entitled to enhanced gratuity in terms of the Statute with effect from the date the gratuity payable to the employees of the State Government stood changed i.e. with effect from 1st April, 1997.

7. The above pronouncement is based on the theory that a benefit given by the legislature cannot be curbed by the executive. Even assuming the statute itself was an executive action and not an action of the legislature, even then there will be no change, inasmuch as before the employees of the State were given enhanced gratuity, the statute was not altered and as such in accordance with the law made by the executive the employees became entitled to the enhanced gratuity. With the above declaration, the writ petitions are disposed of and the appropriate authorities of the said Universities are directed to release the gratuities on the basis of the Statute. It is made clear that apart from the question of payability of gratuity, I have not decided any other matter in respect

whereof grievances have been made by the petitioners in these writ petitions and, accordingly, it shall be open for the petitioners to approach the Universities to sort out those grievances. It is made clear that the differential amount of the gratuity payable in terms of the above declaration shall be paid by the Universities following the same system it follows for payment of gratuity in the normal course.