(2001) 07 PAT CK 0040

In the Patna High Court

Case No : C.W.J.C. No. 4191 of 2001

Baruchi Jha — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Citation : (2001) 4 PLJR 503

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Durganand Jha, for the Appellant; S.K. Sharma, A.G. and A.K. Chaudhary, for State, for the Respondent

Judgement

Radha Mohan Prasad, J.—Heard learned Counsel for the parties in detail.

2. In this writ petition, the Petitioner has assailed the validity of the order passed by the Director, Secondary Education, Bihar, Patna (Respondent No. 2) contained in Memo No. 4 (Legal) dated 4.1.2000 (Annexure-1) whereby and where under his claim for grant of extension of two years of service on the basis of his claim of being freedom fighter has been rejected and further it has been held that on his retirement on 31.7.1977 he will be entitled for the benefit under the Triple Benefit Scheme. Accordingly, Respondent No. 2 has directed for payment of the dues of the Petitioner under the said Scheme.

3. According to the case of the Petitioner, his case is not covered by the Triple Benefit Scheme as he never exercised option under Clause 10 of the said Scheme, a photo copy of which has been annexed as Annexure 8. In support of this learned Counsel has also placed reliance on the letter dated 13th December, 1982 of the District Education Officer, Bhagalpur, contained in Annexure 4.

4. in the counter affidavit the Respondents have reiterated that the case of the Petitioner is covered under the Triple Benefit Scheme introduced in the year 1964 and not under the Pension Rules.

5. Earlier vide order dated 26.6.2001 learned Counsel for the parties were given opportunity to substantiate their stand with reference to any Rule/Government Instruction. learned Counsel for the Petitioner has not been able to show that under what provision the Petitioner will be entitled for the benefit under the Bihar Pension Rules and not under the Triple Benefit Scheme.

6. On 3.7.2001 a supplementary counter affidavit was filed on behalf of Respondent No. 2 in which it is stated that the Petitioner on attaining the age of 62 years retired from service on 31.7.1977 as the Headmaster of High School, Barari, Bhagalpur. At the time of his retirement, the School in question was a non-government recognised secondary school and at that time the pensioner benefits to the teaching and non-teaching staff were made available under the ''Triple Benefit Scheme'' vide Notification No. 3431 dated 4.9.1964. This scheme was made effective from 1st April, 1962, benefitting the employees of non-government elementary and secondary schools of the State. The Stale Government, after due consideration, decided to allow pensionary benefits including family pension and gratuity to the employees of the non government secondary schools likewise the pensionary benefits applicable in the cases of other Government employees, vide Government Order No. 4018 dated 29.11.1978. By this Government order, the following decisions were taken by the Government:

1. The date of retirement of the teaching and non-teaching staffs of the non-govt. secondary school shall be 58 years instead of 62 years.

2. They shall be allowed the benefit of General Provident Fund, instead of Contributory Provident Fund.

3. The benefits of Provident Fund, Pension (including family pension) and gratuity likewise those applicable in the case of the Government employees shall be allowed to the employees of non-government secondary schools who shall retire on or after 1.4.1978.

4. For the purpose of accepting the aforesaid new scheme, the teaching/non-teaching employees shall have to furnish their options upto 31.12.1978, and

5. The teaching and non-teaching staff those who want to be under the triple benefit scheme, can serve in the schools upto 62 years of age.

In paragraph 6 it is stated that the said benefit was allowed to those who were in service on or after 1.4.1978 and the Petitioner on attaining the age of 62 years had superannuated on 31.7.1977, Le. much before the aforesaid scheme came into effect. It is thus contended that the question of giving option .by the Petitioner for getting the benefit under the new pension scheme or to remain under the Triple Benefit Scheme did not arise as at the time of his retirement, i.e. on 31.7.1977 only the Triple Benefit Scheme was in force for the employees of the non-government secondary schools of the State.

7. As regards grant of extension of his service on the basis of his being freedom

fighter it is stated that for the said purpose the Government vide Resolution No. 519 dated 13.2.1982, 734 dated 1.3.1982 and 2220 dated 17.6.1982 was pleased to decide that the Government servants shall be allowed the benefits of extension of service for two years, if they are working on 20.1.1982. The Petitioner was not in service on 20.1.1982 as he had already retired on 31.7.1977. Thus, the claim of the Petitioner for extension of his service is also not tenable.

8. learned Counsel for the Petitioner has failed to show that in view of the fact that the Petitioner had already retired on 31.7.1977 he would be entitled for any benefit for extension of two years of service under the said Government resolution. Moreover, despite opportunity granted learned Counsel for the Petitioner has failed to show any provision under which the case of the Petitioner can be held to be covered by the provisions relating to grant of pension under the general scheme and not under the Triple Benefit Scheme.

9. Under such circumstances, this Court does not find any infirmity in the impugned order. However, learned Counsel for the Petitioner has submitted that the Petitioner has been arbitrarily deprived of up-to-date statutory interest on G.P.F. and the interest on delayed payment of other retiral dues.

10. According to the learned Counsel for the Petitioner, the Petitioner superannuated on 31.7.1990, i.e. after about 13 years. Yet it is not clear that the Petitioner has been paid up-to-date statutory interest. In absence of proper pleading it has rightly been suggested by the learned Counsel for the parties that the Petitioner may be given liberty to move the appropriate authority for payment of up-to-date statutory interest on G.P.F., if he has not been paid the same.

11. Accordingly, this Court directs that the Petitioner may approach the appropriate authority for payment of up-to-date statutory interest on G.P.F., if not already paid. If such an application is filed the concerned authority shall dispose it of by a reasoned order within two months of the receipt of the application. In so far as the claim relating to interest on delayed payment on rest of the retiral dues, the Petitioner will be at liberty to move the appropriate authority in terms of the Government Circular No. 3155 dated 7.11.1981 which if file within two weeks, the concerned authority shall consider the same and dispose it of within six weeks of the receipt of the application by a reasoned order and any amount found payable by way of interest on delayed payment on retiral dues must also be paid within the said time.

12. The writ application is accordingly disposed of.