

(2002) 02 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5891 of 2001

Bharti Prasad Thakur

APPELLANT

Vs

Sidhu Kanhu University, Dumka and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 53

Citation : (2002) 02 JH CK 0038

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A. Sahay, V.N. Shahdeo and R.K. Singh, for the Appellant; M.S. Anwar, Rajesh Kumar, T.K. Mishra, Md. Hatim, B.B. Sinha and A. Allam and Nehala Shamim, JC to State of Bihar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the counsel for the petitioner and three sets of lawyers appearing on behalf of the respondents.

2. The matter relates to payment of retirement benefits including pension. The respondents are contesting the matter as if pension is a charity or bounty or gratuitous payment. The concept of pension is now well-known and has been clarified by the Supreme Court time and again. It is not a charity or bounty nor is it a gratuitous payment solely dependent on the whim or sweet will of the employer as it is earned for rendering long service and is often described as deferred portion of compensation for past services. It is, in fact, in the nature of social security plan to provide for the december of life of a superannuated employee. Such social security plans are consistent with the social economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution.

3. The petitioner was appointed as a lecturer in 1955 in Godda college. After serving for about 38 years the petitioner retired on 7.2.93 as University Professor

from the said college. After retirement the petitioner was getting pension but in August, 2001 pension of the petitioner was stopped without assigning any reason. Petitioner's case is that Godda college was under Sidhu Kanhu University, Dumka from where the petitioner retired and, therefore, he is entitled to get pension from Sidhu Kanhu University and the State of Jharkhand.

4. In the counter affidavit filed by respondent Nos. 1 and 2, namely, Sidhu Kanhu University and its Vice Chancellor, it is stated that Sidhu Kanhu University was established in the year, 1992 and Godda college is under Sidhu Kanhu University. However, pension of the petitioner has been paid by respondent No. 5, Tilka Manjhi Bhagalpur University till July, 2001 i.e. even after creation of the State of Jharkhand. It is, therefore, stated that pension is payable by Tilka Manjhi Bhagalpur University and the State of Bihar.

5. In the counter affidavit filed by the State of Bihar it is stated that teaching and non-teaching staff of Sidhu Kanhu University will be entitled to post retirement benefits from Sidhu Kanhu University who superannuated after establishment of Sidhu Kanhu University. The petitioner retired on 7.2.1993 from Godda college which was under Sidhu Kanhu University which now falls within the territory of Jharkhand State, it is further stated that the petitioner is not entitled to any post retirement benefit from his parent University i.e. Tilka Manjhi Bhagalpur University as he superannuated from service after creation of Sidhu Kanhu University.

6. The State of Jharkhand filed counter affidavit in this case only after this Court passed order directing the Secretary, Higher Education, Govt. of Jharkhand to file explanation as to why counter affidavit could not be filed despite specific direction given by this Court. In the counter affidavit filed by the Secretary, Higher Education, Govt. of Jharkhand it is stated that pension of the petitioner is payable by Tilka Manjhi Bhagalpur University which is under the jurisdiction of Govt. of Bihar and for that the Government of Bihar has been approached vide letter No. 76 dated 30.2.2002 with a request to continue payment of pension to the petitioner.

7. From the pleadings of the parties the admitted facts which emerge are that Godda college was previously under Tilka Manjhi Bhagalpur University. In 1992 Sidhu Kanhu University was established at Dumka and all the colleges including Godda college came under Sidhu Kanhu University. The petitioner retired on 7.2.1993 from Godda college which was then under Sidhu Kanhu University. However, the petitioner was paid pension from the parent University Le. Tilka Manjhi Bhagalpur University because Sidhu Kanhu University was then simply established. Both the Universities were within the jurisdiction of State of Bihar. After bifurcation of the State of Bihar and creation of the State of Jharkhand Sidhu Kanhu University came within the State of Jharkhand.

8. Section 53 is the relevant provision in the Bihar Re-organisation Act, 2000 which deals with the liability of the state of Bihar and the State of Jharkhand in

respect of payment of retirement benefits. Section 53 reads as under:--

"53. Pension.--The liability of the existing State of Bihar in respect of pensions and other retirement benefits shall pass to, or be apportioned between the successor States of Bihar and Jharkhand in accordance with the provisions contained in the Eighth Schedule to this Act."

Clauses 1, 2 and 3 of the Eighth Schedule of the said Act read as under:--

"1. Subject to the adjustments mentioned in paragraph 3, each of the successor State shall in respect of pension and other retirement benefits sanctioned before the appointed date, pay from their respective treasuries.

2. Subject to the said adjustment, the liability in respect of pensions and other retirement benefits of officers serving in connection with the affairs of the existing State of Bihar who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions and other retirement benefits are outstanding immediately before that day, shall be the liability of the State of Bihar.

3. Subject to the said adjustment, sanctions of such pension and other retirement benefits by the competent authority may be given in those cases, in which their office falls in the territory of Jharkhand State."

9. From the reading of the aforesaid section and clauses it is manifest that the State of Bihar and the State of Jharkhand shall take decision in respect of apportionment and adjustment of liability but it is clear that pension of the retired employee may be given by the State of Jharkhand in case the office from which the officer retired, falls in the territory of the State of Jharkhand.

10. However, I am not deciding the issue with regard to the liability of the respective State of Bihar and State of Jharkhand and the matter is left open. But the fact remains that the petitioner retired from Godda college which came under Sidhu Kanhu University at the time when he retired. Both the college and the University fall within the territory of the State of Jharkhand. The petitioner has been residing in the State of Jharkhand. Taking into consideration all these facts I am of the opinion that the petitioner must get pension from Sidhu Kanhu University and the State of Jharkhand. The State of Jharkhand will provide sufficient funds to Sidhu Khanhu University and shall take all necessary steps for allotment of funds in order to pay pension to the petitioner.

11. This writ application is, therefore, allowed and both Sidhu Kanhu University and the State of Jharkhand are directed to make payment of arrears of pension which has not been paid from August, 2001 within one month from today and also continue payment of pension to the petitioner. It goes without saying that it shall be open to the State of Bihar and the State of Jharkhand to determine the liability while deciding the division of assets and liabilities.