(2005) 03 PAT CK 0062

In the Patna High Court

Case No : CWJC No. 12249 of 2002

Bhola Jha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 2 PLJR 124

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Anil Kumar Jha, for the Appellant; R.K. Dutta and Gopal Krishna, for the Respondent

Judgement

Mridula Mishra, J.—This writ petition has been filed by the petitioner, claiming restoration of commuted portion of his pension on completion of 10 years on the ground that at the time of his retirement Government resolution No. 646 dated 8.3.1983 was applicable and not the Government resolution No. 1851F dated 19.4.1990 and has prayed for quashing order dated 4.7.2002 issued by the Joint Secretary, Finance Department, Bihar, whereby representation filed by the petitioner on remand by the Hon''ble High Court in C.W.J.C, No. 2727 of 2002, has been rejected and held that the restoration of pension would be done after 15 years with effect from 28.5.1990. Further prayer of the petitioner is for a direction to refund the amount deducted after August, 2000 alongwith interest @ 12% p.a. Petitioner retired from the post of Assistant Teacher on 31.3.1988 from K. High School, Kalikapur, Madhubani. He applied for commutation of pension in the month of April, 1989. Finance Department sanctioned for commutation of 1/3rd of his pension as per Resolution No. 646 dated 8.3.1983 and as per resolution the restoration was to be done in 10 years. The period of 10 years for the restoration of commutation of pension came to an end in August, 2000 but still the deduction from pension continued. The petitioner made a written protest before the Treasury Officer, Madhubani, against the continuation of deduction from his pension. The Treasury Officer directed the petitioner to move before the

Finance Department or the Accountant General. The petitioner filed a representation before the Finance Department for restoration of commuted pension with effect from August, 2000 which was rejected by order dated 19.10.2001 stating that the restoration of commuted pension shall be made after 15 years from September, 1990. This order was challenged by filing C.W.J.C, No. 2727 of 2002. The writ application was disposed of and remanded back to the Joint Secretary, Department of Finance to consider the matter in the light of observation made by the Hon''ble Judge. Thereafter, again the petitioner represented his case which has been rejected by the impugned order. The order has been challenged by the petitioner stating that going against the observation made by Hon''ble High Court, his representation has been rejected. Further it has been stated that the order impugned is violative of resolution No. 646 dated 8.3.1983.

2. Counter-affidavit has been filed by the State wherein it has been stated in compliance of direction/observation of this Court, representation submitted by the petitioner has been considered and disposed of. The State Government examined Pension Rules and Government circular regarding commutation of pension and restoration of commuted portion of pension in the light of observation made by the High Court and has rejected the representation vide Finance Department order No. 2927 dated 4.7.2002. It has been submitted by the Learned Counsel for the State that there is provision for commutation of pension in the Pension Rules but there is no provision for restoration of commuted portion of pension. Rule 259 of Bihar Pension Rules prohibits restoration of commuted portion of pension. It was in the year 1983 that the facility of restoration of commuted portion of pension was given vide Resolution No. 646 dated 8.3.1983. This Resolution provided that commutation and restoration of the same are not intrinsically linked, the two, though related, are independent transactions. They are linked only to the extent that there cannot be any commutation without restoration.

3. Regarding the date of applicability of the circular of restoration, it was submitted that the resolution of 1983 made the facility of restoration effective from 1.10.1982. It provided that in all the cases of commutation that completed 10 years on or before that date, the commuted portion of the pension shall be restored with effect from that date. The resolution did not limit the application to cases whether pension was commuted after the cut-off date. This shows that commutation and restoration are independent transactions, the restoration will be governed by the Rules/ circulars operating at the time the restoration becomes due and not by the circular effective at the time the benefit of commutation is taken. If the facility of restoration was granted to cases of commutation done after the cut-off date i.e. 1.10.1982, the facility granted in 1983 would have become effective from 1992. By resolution No. 1851 dated 19.4.1990, the period of 10 years prescribed for restoration by resolution dated 8.3.1983 was extended to 15 years. Only with two exceptions:

(i) Cases in which restoration of commuted portion of pension has already been effected on completion of ten years period under the provisions of the previous Resolution of 1983.

(ii) Cases in which restoration of pension is due to be effected on completion of ten years period under the provisions of the said resolution of 1983.

4. Learned Counsel for the State submits that the petitioner''s case is not covered under any of the exceptions and, as such, in his case as per resolution No. 1851 dated 19.4.1990 the period of restoration will extend to 115 years. There is no illegality in the impugned order.

5. The interpretation of resolution as made in the counter-affidavit as well as submitted by the Learned Counsel appearing for the State do not seem to be sound. From a plain reading of the resolution and the exceptions, as mentioned above, it is clear that the period of 15 years is not applicable in those cases where 10 years period of commutation is complete before the issuance of the resolution dated 19.4.1990 or cases in which restoration of pension is due to be effected on completion of ten years period under the provision of the said resolution 1983. The case of the petitioner is fully covered under the second exceptions i.e. commutation of sanction was applied by the petitioner in the month of April, 1989. The sanction was made on 1.2.1990 and as such, it was a case in which restoration of pension is due to be effected on completion of 10 years period under the provisions of the said resolutions 1983. Learned Counsel for the State has submitted that the period of 15 years is not applicable only in cases where 10 years period of commutation is complete before resolution dated 19.4.1990 but in all other cases in which the commutation is not complete before 19.4.1990 the period of 15 years will be applicable. This submission is against the statement made in para-12 of the counter-affidavit wherein it has been stated that the period of 15 years is not applicable only in case of 10 years period of completion before the issue of resolution i.e. 19.4.1990, to be more explicit only those pensioners who got their pensions commuted on or before 19.4.1990 have been exempted from the operation of 15 years Rule. The fact is that the petitioner''s case is covered under this exception as he got his pension commuted on or before 19.4.1990. Petitioner should have been exempted from the operation of 15 years Rule. The Joint Secretary, Finance, has made a wrong interpretation of the exception provided in resolution No. 1851 dated 19.4.1990 and held that the petitioner is not covered by the exception and 15 years Rule will be applicable in his case. The order impugned dated 4.7.2002 contained in Memo No. 2927 is quashed. Respondent No. 3, the Treasury Officer, Muzaffarpur, is directed to refund the amount which has been deducted from the pension of the petitioner from September, 2000 onwards. Respondents are directed to start making full payment of pension to the petitioner henceforth. This application is accordingly disposed of with the aforesaid observation/ direction.

