
(1985) 07 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2645 of 1982

Bhubneshwar Dhari Singh

APPELLANT

Vs

The State of Bihar and another

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Constitution of India, 1950 — Article 221

Citation : (1986) PLJR 1

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.B. Sanyal, J

Bench : Division Bench

Advocate : Basudeva Pd. and Narendra Pd, for the Appellant; J.N. Pandey . (G.P. 2) and B.N. Mishra, (J.C. to G.P. 2), for the Respondent

Final Decision : Allowed

Judgement

S.S. Sandhawalia, C.J.—Whether an unconditional re-employment necessarily implies an identity of emoluments with the former employment is the surviving significant question in this writ petition. After a distinguished tenure of nearly one decade, the petitioner retired from the Bench of the High Courts of Patna on the 31st of October, 1977. Admittedly on the date of his retirement, he was drawing Rs. 3,500/-as salary, Rs. 437.50 as house rent allowance and Rs. 300/-as car allowance. On the 1st of August, 1978 (vide notification, annexure 1) the petitioner was unconditionally re-employed as the Presiding Officer of the Industrial Tribunal, Patna, for one year with effect from the date of assuming charge. Later, the petitioner's re-employment-was continued by another similar notification, and he continued to serve in the said post till the 31st of October, 1980. Inevitably, the petitioner, soon after allowance at the same rate which the petitioner was enjoying prior to his retirement but was given pay slip only for the salary minus the pension equivalent gratuity. The petitioner represented to the Chief Minister of the respondent State of Bihar highlighting therein that Shri Durga Prasad Sinha and Shri Jitendra Narain, former Judges of the High Court, on re-employment, had been allowed to draw the amount of house rent and car

allowance in similar circumstances. However, this representation was rejected (vide annexure 3 dated the 3rd of January 1980) without assigning any meaningful reasons. The petitioner thereafter represented afresh but no reply was vouchsafed.

2. By another representation dated the 25th November, 1981 (vide annexure B) the petitioner also claimed cash equivalent of 49 days' leave salary in respect of earned leave due to his credit on the date of his retirement but equally no response thereto was made by the respondent either. Aggrieved thereby, the present writ petition was filed on 12th of July, 1982.

3. The respondent State of Bihar has been somewhat half-hearted and negligent in the defence of this writ petition. Despite repeated opportunities given, no counter affidavit was filed on its behalf. At the close of the hearing on the 9th of April, 1985—a last ditch prayer was made for allowing the counter affidavit to be filed, which was permitted. Thereafter the present counter affidavit has been placed on record on 8th of May, 1985. Therein the factual position averred on behalf of the petitioner is not controverted and the stand taken is that according to the Department of Finance in the past no retired Judge of the High Court serving in the State of Bihar on reemployment as Presiding Officer of Labour Tribunal has been allowed house rent and car allowance, and it is stated that the facility given to a High Court Judge has got no bearing on the present case. Reliance has been placed on rule 16(b) of the Bihar Pension Rules, and it is, inter alia, averred that the payment of house rent allowance, car allowance and cash equivalent to earned leave to the petitioner would have repercussion on the salary and allowances of all Presiding Officers on re-employment. It is admitted that Mr. Justice D.P. Sinha and Mr. Justice Jitendra Narain on re-employment were allowed these benefits but it is claimed that their terms of re-employment were settled through negotiation. Reference is also made to the Finance Department Circular no. PC-2-9-8/81-2020 dated 21st of August, 1982, whereby it has been decided that a Government servant on re-employment will not be entitled to cash equivalent in lieu of leave earned during the period of his re-employment, and on that basis the petitioner is sought to be denied the same relief.

4. To clear the decks for determining the main point of controversy, one may first advert to the aspect which is no longer in serious dispute. With regard to the relief for the encashment of earned leave, the matter is now substantially and fully covered by precedent. It is well settled that the terms and conditions of a High Court Judge's office are determined by Article 221 and the High Court Judges (Conditions of Service) Act, 1954. The provisions of the said Act classify the kind of leave admissible to a Judge and provide for the maintenance of leave account, the aggregate amount of leave which may be granted and the commutation of leave on half allowance, etc. Under the said Act, the High Court Judges Rules, 1956 have been promulgated and the relevant part of rule 2 thereof reads as under :

"The conditions of services of a Judge of a High Court for which no express provision has been made in the High Court Judges (Conditions of Service) Act, 1954, shall be, and shall from the commencement of the Constitution be deemed to have been determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated

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By virtue of the said sic the All India Services (Leave) Rules, 1955 would equally become applicable to High Court Judges and the relevant part of rule 20-B of the said Rules provides as under:

"20-B. Payment of cash equivalent of leave salary :--(1) The Government shall suo motu sanction to a member of the service who retires from the service under sub-rule (1) of R. 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 having attained the age of 58 years on or after the 30th Sept., 1977 the cash equivalent of leave salary in respect of the period of earned "leave at his credit on the date of his retirement, subject to a maximum of 180 days

(2) The cash equivalent of leave salary payable to a member of the Service under sub-rule (1) above shall also include dearness allowance admissible to him on the leave salary at the rates in force on the date of retirement, and it shall be paid in one lump sum, as a one-time settlement.

(3) The city compensatory allowance and the house rent allowance shall not be included in calculating the cash equivalent of leave salary under this rule.

(4) From the cash equivalent so worked out no deduction shall be made on account of pension and pensionary equivalent of other retirement benefits."

By virtue of the aforesaid provisions, a High Court Judge retiring after the 30th of September, 1977 would be mutatis mutandis entitled to the encashment of his earned leave as provided in the aforesaid rule. It is common ground here that the petitioner retired on the 31st of October, 1977 and is thus plainly entitled to the said benefit. This issue first directly arose in the Punjab and Haryana High Court in Gurnam Singh v. Union of India and another (1982 Lah. I.C. 1101 and was decided in the petitioner's favour. The Union of India had challenged the said judgment by way of SLP but the same was repelled and the judgment of the High Court was unreservedly affirmed in Union of India v. Gornam Singh (AIR 1982 SO 1265). The aforesaid judgment squarely covers the case and the relief of encashment of earned leave is hereby allowed.

5. Now the remaining relief claimed on behalf the writ petitioner is rested on the ground that whilst holding the office of a High Court Judge at Patna, he was admittedly drawing a house rent allowance of Rs. 437.50 and a conveyance or a car allowance of Rs. 300/-. Herein the basic reliance is placed on the notification (annexure 1) whereby the petitioner was unconditionally re-employed.

6. Inevitably herein the issue turns on the true import of the notification (annexure 1). When translated, the same is in the terms following:

"Annexure 1

Government of Bihar.

Labour and Employment Department

Notification

Dated Patna the 31st August, 1978.

No. 1/E3-1307/78 L & E-1899 : On expiration of the term of employment of Shri Justice Syed Anwar Ahmad, Shri Justice Bhuneshwar Dhari Singh, retired Judge of High Court, Patna, is re employed as the Presiding Officer. Industrial Tribunal, Patna, for the present for one year with effect from the date of assuming charge.

2. His headquarters will be in Patna.

By order of the Governor, Sd. G.V. Chatterji, Under Secretary to Government,

Memo No. 1/E 3-1307/78 L & E-1899 dated Patna 31st August, 78.

X X X

Now it is common ground before us that the Industrial Disputes Act does not provide or specify the terms of the employment for the Presiding Officer of the Industrial Tribunal Patna, nor any other statutory provision governing the emoluments of this office could be brought to our notice. Consequently, the language of annexure 1 necessarily provides the clue to the terms. Herein the re-employment of the petitioner is unconditional without any specification of the terms and emoluments.

Undoubtedly, the words "re-employed" is not a term of art. However, as it stands, it means plainly enough an employment afresh subsequent to the superannuation. Annexure 1 expressly mentions the fact that the petitioner who is a retired Judge of the Patna High Court is being re-employed. In that context, it would necessarily mean that he is being re-employed on the same terms and conditions as may be of his previous employment as a Judge of the High Court at Patna. Significantly" no other terms or conditions of employment are specified or mentioned in annexure 1. Learned counsel for the petitioner, therefore, was right in his submission that re employment automatically means identical terms of employment and particularly so where no qualification has been made. That being so, it was not disputed on behalf of the respondents that the petitioner prior to his re-employment was in fact drawing home rent allowance and conveyance allowance in addition to his salary in his previous or preceding employment. Admittedly there has been no subsequent agreement between the parties or any statutory order to override annexure 1. Therefore, it appears to me that the petitioner is entitled to succeed on a plain construction of the word "re-employed" without any condition in annexure 1.

7. On behalf of the respondents it was then sought be urged that as a matter of precedent no previous incumbent of the office of the Presiding Officer of Industrial Tribunal had earlier drawn house rent and car allowance. As already noticed, the matter here has to turn primarily on the provision of annexure 1 and, therefore, any comparison with regard to the terms of employment of former Presiding Officers of Industrial or labour Tribunals is somewhat irrelevant. What, however, is even of the greatest significance in the fact that a house rent allowance and a conveyance allowance were made admissible for High Court Judges only by virtue of the High Court Judges (Conditions of Service) Amendment, Act, 1976. It would thus be manifest that prior to the said Act hardly any question of a retired High Court Judge drawing a house rent and car allowance would arise and by an equivalent precedent. In line with the aforesaid submission, it was sought to be pointed out that the immediate predecessor of the petitioner in the office of the Presiding Officer of the Industrial Tribunal, Mr. Justice Syed Anwar Ahmad., was also not drawing such house rent and conveyance allowance. This fact again cannot even remotely militate against the petitioner's stand. It is first not clear whether Mr. Justice Syed Anwar Ahmad had earlier himself drawn any house rent allowance or conveyance allowance whilst holding the office of a High Court Judge, which emoluments, as already pointed out had become admissible only after the amending Act of 1976- This apart the more fact that such a claim, even if permissible had not been raised by Mr. Justice S. Anwar Ahmad, can in no way operate as an estoppel against the petitioner. Nothing has been placed on this record with regard to the precise terms of appointment either in favour of Mr. Justice S. Anwar Ahmad or any other previous incumbent of the office. The respondents' stand on this aspect must inevitably be rejected.

8. On behalf of the respondents, it again stands admitted that Mr. Justice Jitendra Narain and Mr. Justice D.P. Sinha were allowed to draw house rent and car allowances. This is sought to be explained that this was in special circumstances and the terms of reemployment in both the cases were of extraordinary nature because the task was to be performed within a specified period and they were allowed the benefits after negotiation. One is not quite impressed by the suggested reasons for distinguishing the case of the learned Judges from that of the petitioner. However, I prefer not to rest it on this ground because" the petitioner, as already noticed, must succeed on the ground of his unconditional re-employment in identical terms with his previous employment.

9. Lastly, the respondents had sought to repol the petitioner's claim by virtue of rule 161(b) of the Bihar Pension Rules. The relevant provision is in the terms following;

"161(b) A government servant on reemployment should draw the initial pay of the post unless Government sanction advance increments under rule 83 of the Bihar Service Code, provided always that the sum total of pay plus pension does not exceed "the substantive pay last drawn by him before discharge. Where the

sum total exceeds the last substantive pay only so much of the pension may be allowed to be drawn as not to make the total of pension plus the initial pay of the post exceed the substantive pay last drawn."

Now, a plain reading thereof would indicate that all that this provision lays down is that the total emoluments of the re-employed person would not exceed those of his earlier employment. It is nobody's case that the petitioner is in any way claiming more than what he was actually receiving as a High Court Judge. His sole claim is for a parity of emoluments with those of his previous employment which he was admittedly enjoying earlier. Rule 161(b), therefore, does not in any way intervene as a bar to the petitioner's claim. We are, otherwise, sceptical whether this rule would be directly applicable to the case of a retired High Court Judge. But it is wholly unnecessary in the present context to examine the matter or pronounce upon the same. In fairness to the learned counsel for the respondents, we notice that ultimately he had conceded that in the light of the claim made by the petitioner, rule 161(b) would be hardly attracted to the situation.

10. To conclude, the answer to the question posed at the very outset is rendered so the affirmative, and it is held that the unconditional re-employment necessarily implies an identity of emoluments with the former re-employment. In the light of the above the petitioner's claim in this context also must succeed. This writ petition is allowed with costs and annexures 2 and 3 are quashed. The respondents are directed to pay to the petitioner house rent allowance at the rate of Rs. 437-50 per month and car allowance at the rate of Rs. 300/- per month during the period of his appointment as Presiding Officer of the Industrial Tribunal, Bihar, Patna. They are further directed to pay to the petitioner cash equivalent for the period of his earned leave of forty-nine days.

S.B. Sanyal, J.

I agree.