

(2001) 08 PAT CK 0105
In the Patna High Court
Case No : L.P.A. No. 678 of 2001

Chairman, Bihar State Electricity Board	APPELLANT
Vs	
Dhruva Kumar Srivastava	RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Bihar Pension Rules, 1950 — Rule 101, 106, 250, 253

Citation : (2001) 4 PLJR 33

Hon'ble Judges : P.N. Yadav, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and Mohit Kumar Shah, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

1. The Appellant-Bihar State Electricity Board (for short "the Board") is aggrieved by order dated 30.5.2001 passed by a learned Single Judge in C.W.J.C. No. 4346 of 2001 (reported in 2001(3) PLJR 357), directing it to consider the case of the writ Petitioner-Respondent for condonation of deficiency for the qualifying 20 years of service and fix his pensionary dues accordingly and pay the remaining amount including of the sanctioned amount of the commuted pension and also allow second commutation of pension within the period specified in the order, failing which, its Financial Controller shall not draw his salary and allowances. The learned Single Judge also awarded a cost of Rs. 1000/- to be paid by the Board to the writ Petitioner-Respondent.

2. Firstly, the facts, which are not in dispute, are stated. The writ Petitioner-Respondent was an employee of the Appellant-Board and in 1987 he was working as an Executive Engineer with the Appellant. On 16.10.1987, he applied for either voluntary retirement or resignation with pension. The Appellant-Board accepted the resignation vide office order dated 25.5.1988, a copy of which has been annexed as Annexure "B" to the supplementary counter affidavit filed in the writ application.

Regulation 75 of the Bihar State Electricity Board Service Regulations, 1976 (for short "Regulations") provides for terminal benefits including the payment of proportionate pension if the employee concerned has requisite period of service. The writ Petitioner-Respondent was entitled for proportionate pension in terms of the aforesaid Regulations and as such his proportionate pension was fixed on 17.11.1988 and he was informed vide P.P.O. No. 572 of the said date. Being aggrieved by and dissatisfied with the fixation of his proportionate pension, the writ Petitioner-Respondent filed a writ application being C.W.J.C.No. 3661 of 1989 against the Board for the payment of terminal benefit. On 18.9.1989, the said writ application was disposed of with a direction to examine the grievance of the Respondent regarding payment of terminal benefit for work in shift duty etc. and to commute the one-third of his pension if permissible. On 21.7.1989, the Appellant-Board directed the writ Petitioner- Respondent to appear before the Medical Board for health check-up regarding commutation of 1/3rd of his pension along with his application in pension form Nos. 7 and 9 in accordance with the provisions as contained in Rule 250 of the Bihar Pension Rules and the instructions issued by the State Government therein, which have been adopted by the Board. The Appellant-Board intimated several times to the writ Petitioner-Respondent to appear before the Medical Board and file an application in the prescribed pension forms, Respondent did not do the same, on the other hand, on 26.7.1991 he requested that the shortage of four months" period in twenty years of length of service be condoned and he did not want commutation of pension but full and final pension. Thus, he withdrew his request for commutation of pension. A copy of the said latter has been annexed as Annexure "A" to the counter-affidavit filed in the writ application. Thereafter, the matter with respect to condonation of shortage was considered and was rejected on 17.8.1991 on the ground that as the period of deficiency was three months and 19 days, the condonation was not permissible under the Regulations. A copy of the said letter dated 17.8.91 has been annexed as Annexure "K" to the counter-affidavit.

3. Thereafter, it appears that the writ Petitioner-Respondent was again requested to appear for commutation of pension and the Board vide its letters written in 1992, 1993 and 1995, asked him to appear before the Medical Board and complete other formalities, copies of which have been annexed with the counter-affidavit filed in the writ application, but the Petitioner-Respondent did not appear before the Medical Board. The matter was placed before the Appellant-Board. Though the commutation of pension, according to the Board, was not permissible but purely on humanitarian ground and taking a lenient view the Board by order dated 30.8.1999 sanctioned Rs. 63,334.80 ps. only being commuted value of Rs. 438/- i.e. 1/3rd of pension of Rs. 1315/-, a copy of which has been annexed as Annexure 2 to the writ application.

4. The grievance of the writ-Petitioner-Respondent is that his resignation was accepted in 1988 and he applied immediately after his retirement but the Board delayed in making payment of the commuted pension and paid it after 11 years

and as such he is entitled to get pension on the commuted amount. He is also entitled to the second commutation of pension after expiry of 10 years in terms of the provisions of the Bihar Pension Rules, read with circulars and instructions issued by the State Government from time to time. There is shortage of only three months and nineteen days in qualifying 20 years of service and as such the same should have been condoned and he should be paid full pension.

5. The stand of the Appellant-Board is that commutation of pension is not permissible under the provisions of the Bihar Pension Rules, which have been adopted by the Board by virtue of the reason that the commutation of pension is applicable only in the case of retirement on superannuation and not in the case of resignation. Thus, it appears that though commutation of pension was not to be given to the writ Petitioner-Respondent but the Board, taking a lenient view of the matter, has, as an exceptional case, allowed the commutation of pension. Further stand of the Appellant-Board is that it can condone the shortage of only three months and as the shortage was of more than three months i.e. three months and 19 days, the same was not permissible as per the Regulations and, therefore, the said prayer was rejected in 1991 and communicated to the Petitioner -Respondent and since he did not challenge the same, the said order has become final and the matter cannot be reopened at this belated stage. Lastly, it was the stand of the Appellant-Board that the Petitioner-Respondent is guilty of vices of suppression very suggestion falsi for the reason that earlier he had filed a writ application with the said prayer in the year 1989, but he suppressed the said fact in the writ application and falsely stated that he has not moved in the matter earlier. He has also suppressed the factum of filing of the application withdrawing the prayer for commutation as well as the rejection of condonation of shortage by the Appellant-Board in 1991.

6. The learned Single Judge, by the impugned order, issued the directions as mentioned above.

7. Before advertng to the submissions advanced on behalf of the parties at the Bar, it is relevant to state, in brief, the relevant provisions having a bearing on the question. It is an admitted position that the Bihar Pension Rules and the instructions as well as amendments issued by the State Government from time to time, have been adopted by the Appellant-Board. The Board has also framed Its Regulations i.e. Bihar State Electricity Board Service Regulations, 1976, as mentioned above. Chapter VIII of the said Regulations deals with the termination of service and terminal benefits. Regulation 75 contains a provision with regard to terminal benefits and it provides that when a permanent employee or a temporary employee resigns or leaves the service of the Board voluntarily after due notice, where required,-or his services are terminated by the Board or any competent authority except in the circumstances mentioned in sub Regulation 73(1)(a)(vii) and (viii), he shall be eligible for payment of proportionate pension if he has at least ten years of qualifying service for the purpose of pension under the Pension Rules or any orders of the Board as well as other benefits. He is also

entitled to proportionate amount of other terminal benefit as admissible. Rule 101 of the Bihar Pension Rules (for short "the Rules") provides, inter-alia, that the resignation of the public service will entail forfeiture of past service. Rule 106 provides that the Government has power to condone a deficiency of three months in the qualifying service of an employee and condonation of deficiencies beyond three months will require the orders of the Provincial Government. The Government Circular dated 17.9.1988 provides that thirty three years of service is required for grant of full pension and gratuity and in case of deficiency only three months" period will be condoned. Chapter XII of the Rules contains a provision with regard to commutation of pensions. The Government Circular dated 14.3.1978 contains a detailed procedure for commutation of pension on retirement or superannuation. It provides that a Government servant, who applies for commutation of pension within one year of his date of retirement on superannuation, shall not be subjected to medical examination as provided under Rule 253 of the Rules. The requirement of not appearing before the Medical Board if commutation of pension is filed within one year will not apply to the person retiring otherwise than on superannuation. In other words, in case of retirement other than on superannuation, the requirement of appearing before the Medical Board and filing an application in Form 7 is must as prescribed in Rule 250 of the Rules. Under the provisions of the Rules, commuted pension is restored to the pensioner on completion of ten years.

8. Learned Counsel appearing for the Appellant-Board submitted that in terms of the provisions contained in Rule 101 of the Rules, on resignation the Respondent will forfeit his past service and as such the Petitioner-Respondent was not entitled to even the payment of pension. He also submitted that there is no provision of commutation of pension in case of an employee of the Board who resigns from the post. He further submitted that so far as the question of condonation of Shortage of three months and nineteen days in qualifying service of 20 years is concerned, the same is not permissible. Such prayer of condonation of shortage has already been rejected in the year 1991 and the same cannot be reagitated after such a long time, specially when the writ Petitioner-Respondent has not challenged the aforesaid order. Lastly, he submitted that the Petitioner-Respondent has suppressed many material facts, including the filing of the earlier writ application as well as the order passed against him and on this ground alone the writ application should not have been allowed by the learned Single Judge.

9. The Petitioner-Respondent appeared in person and supported the order of the learned Single Judge. He further submitted that he has been harassed by the Appellant-Board after his resignation. He further submitted that the Board arbitrarily refused his prayer for condonation of the deficiency, whereas, in other cases it has been done for a longer period and as such the direction has been rightly issued by the learned Single Judge to consider the same. He also submitted that he is entitled to the second commutation of pension for the reason that the delay of more than 10 years in fixing the first commutation of

pension was on the part of the Board.

10. So far as the first point raised on behalf of the Appellant-Board is concerned, it is to be stated that no doubt under Rule 101 of the Rules, the resignation entails forfeiture of past service and the Petitioner-Respondent having resigned from service is not entitled to pensionary benefit, but that Rule cannot be given effect to for the reason that the Board has framed its own Regulations and according to Regulation 75, in case of resignation if an employee has a qualifying service of ten years, he is entitled to the proportionate pension. Thus, the provision of Rule 101 of the Rules will be treated to have been excluded by the application of the provision of the aforesaid Regulations and the Petitioner-Respondent was entitled to proportionate pension and the Board has granted the same and as such at this stage the Board cannot take a plea that he is not entitled to even proportionate pension.

11. So far as the question of commutation of pension is concerned, the same is provided only in case of retirement on superannuation and no provision has been brought to our notice that the commutation of pension is also applicable in case of resignation. Under the Regulations also, there is no such provision. As stated above, the Petitioner-Respondent applied for the same. He came to this Court and a direction was issued to consider his claim if permissible and, thereafter, the Petitioner-Respondent withdrew his request for commutation of pension. However, again he reiterated the said prayer and the Board taking a lenient view asked him to appear before the Medical Board and file an application in Forms 7 and 9 times without number as detailed in the counter-affidavit, but he did not comply with the requirements and as such there cannot be said to be any fault on the part of the Board as Rule 250 of the Rules provides for medical examination as well as the applying in Forms 7 and 9. So far as the circular, which has been referred to by the learned Single Judge, dispensing with the medical examination if an application for commutation of pension is filed within one year of retirement on superannuation, is concerned, the same is not applicable in case of retirement other than on superannuation. Thus, the said instruction is not applicable in the case of the Petitioner-Respondent. So, on factual aspect of the matter, it cannot be said that there was any laches on the part of the Board and as such the observation made by the learned Single Judge in the impugned order about the delay and laches on the part of the Board, is against the material on record.

12. So far as the legal point regarding commutation of pension is concerned, under the Rules, as stated above, the resignation entails forfeiture of the past service and as such there is no question of there being any provision regarding commutation of pension in case of resignation. It was not brought to the notice of the court by the Petitioner-Respondent that there is a provision of commutation of pension in case of resignation of an employee of the Board. Regulations framed by the Board also do not contain any provision for commutation of pension in case of an employee resigning from service. Thus,

there is no provision of commutation of pension in case of an employee resigning from service and the stand of the Board in this regard is borne out by the legal provisions.

13. The Board has clearly stated in the resolution granting commutation of pension to the Petitioner-Respondent that it is being done by taking a lenient view of the matter though not permissible under the Rules and the Regulations and the same should not be treated as a precedent. Thus, though the Petitioner-Respondent was not entitled to commutation of pension but as the Board has given the same to him, the order of granting commutation of pension is not interfered with.

14. Admittedly, the period of qualifying service is 20 years. There is deficiency of three months nineteen days. The provisions of the Rules and the amendments, circulars/instructions issued thereunder clearly provide that the deficiency of only three months is to be condoned. No authority in the Board has been empowered to condone the deficiency of more than three months. The Petitioner-Respondent requested for condonation of the deficiency in the year 1991 and the same was rejected in the year 1991 and communicated to him. He did not challenge the aforesaid order for about ten years and as such the said order has attained finality. In our view, in such a situation, directing the Appellant Board to reconsider the matter, which has been rejected ten years back, is not permissible in law and equitable jurisdiction of this Court cannot be applied to unsettle the matter specially when the writ Petitioner-Respondent's conduct in approaching this Court is not above-board. As stated above, he moved this Court in 1989 and, thereafter, he withdrew his request for commutation of pension. Again he reiterated the matter. His prayer for condonation of deficiency has been rejected earlier. All these facts were suppressed and not stated in the writ application and were brought on record by the counter-affidavit filed by the Appellant-Board. As the writ Petitioner-Respondent has appeared in person, we have not taken into consideration the serious laches on his part and have considered the matter on merit. We find that none of the submissions raised on behalf of the writ Petitioner-Respondent is worth consideration and no ground has been made out for issuance of a direction to the Appellant-Board to consider the claim of the writ Petitioner-Respondent.

15. For the reasons aforementioned, this appeal is allowed and the impugned order passed by the learned Single Judge is set aside.