(2010) 04 PAT CK 0140

In the Patna High Court

Case No : CWJC No. 4513 of 2007

Dhirendra Kumar APPELLANT

Vs

Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0140

Judgement

Jyoti Saran, J.—Heard Mr. Shivaji Pandey learned Senior counsel for the petitioner and Mr. Dharmeshwar Mishra representing the Board and its authorities.

2. The only issue that comes up for consideration in this proceedings is whether the petitioner has any vested claim to the order passed by the Financial Controller contained in memo No. 2318 dated 26.9.2001 according commutation of pension to the tune of Rs. 1,89,293/- to the petitioner subject to the decision of the Board regarding the mode and time of payment.

3. Learned Counsel for the petitioner submits that the writ petitioner had superannuated on 31.12.2000 and had been provided with the post retiral benefit pursuant to the direction of this Court passed on 9.5.2001 (Annexure-1), except the payment of the revised commutation of pension amount. He submits that the said claim of the petitioner was allowed by the respondent Board who have issued the sanction order placed at Annexure-2 dated 26.9.2001 but with the stipulation that the mode and time of payment would be decided later.

4. Learned Counsel submits that pursuant to a decision taken by the respondent Board and its authorities contained in letter dated 17.11.2003 (Annexure-B) the Board decided to suspend the said facility of commutation in the backdrop of financial constraints facing the Board consequent upon the reorganization of the State of Bihar under the provisions of the Bihar Reorganization Act, 2000. The letter issued by the Secretary of the Board dated 17.11.2003 (Annexure-B) to the concerned authorities, contained following decisions:

(a) The recovery of commuted portion of pension shall not commence until payment of commuted value to the pensioners.

(b) In case where deductions have already been started without making the payment of commuted value of pension, the same shall be stopped forthwith,

(c) If any pensioner opts for cancellation of sanction as well as of payment authority regarding the commuted value of pension, where the value of commuted pension is yet to be paid, the concerned authority shall cancel the same and refund the amount of deductions already made.

5. Following the decision contained in memo No. 2828 dated 17.11.2003, another letter was issued at the instance of the Secretary of the Board dated 3.1.2004 communicating a decision that any deduction made from the monthly pension before payment of the commuted value of pension, shall be refunded to the pensioner concerned without loss of time.

6. It was in this background that the order sanctioning commutation of pension as contained in Annexure-2 was not given effect to, leading to filing of another writ petition bearing C.W.J.C. No. 8215 of 2001 raising identical issue. A Division Bench of this Court taking notice of an earlier decision reported in The Bihar State Electricity Board and Others Vs. Ramjee Prasad Singh, and the submission of the learned Counsel for the petitioner that the said decision was pending consideration before the Supreme Court, disposed of the writ petition with a direction that the order passed would be subject to the decision of the apex court.

7. Mr. Shivaji Pandey, learned Senior counsel representing the petitioner, with reference to a Supreme Court judgment reported in Tamil Nadu Electricity Board and Another Vs. Status Spinning Mills Ltd. and Another, , submits that a policy decision can not be given a retrospective operation. He submits that once a decision has been taken to provide the commuted value of pension to the petitioner, the same can not be curtailed by a subsequent decision taken on 17.11.2003 and which was taken in the backdrop of the poor financial condition of the Board. He next submits that the situation has undergone a change and as of today the Board is enjoying a sound financial condition and is fully capable of making payment of the commuted value in the light of the order dated 26.9.2001.

8. Mr. Dharmeshwar Mishra, appearing for the Board controverting the argument advanced on behalf of the petitioner, submits that it was completely incorrect on the part of the petitioner to submit that the financial constraints had disappeared enabling the Board to make payment of the commutation value of pension. He, with reference to the provisions present on Chapter 12 of the Bihar Pension Rules, submits that the budgetary provision is the main consideration for grant of the facility of commutation and even today the Board was not in a sound financial condition to provide such benefits, the order dated 26.9.2001 allowing commutation to the petitioner, can not be given effect to.

9. Mr. Mishra, further submits that though pension is a right admissible to a retiring employee but commutation is a concession and is conditional upon the financial status of the establishment. It was submitted that policy was not retrospective rather the decision was taken much earlier.

10. He next submitted that a perusal of the order placed at Annexure-2 demonstrates that the same was conditional upon a decision to be taken regarding the mode and time of payment and thus the order does not create any right in favour of the petitioner.

11. Learned Counsel for the Board relied upon a decision reported in Uma Shankar Prasad Srivastava Vs. State of Bihar and Others, That was a case arising out of a contempt case. The grievance raised in the petition was regarding non-payment of commuted value of pension by the Electricity Board. The Division Bench, taking note of the policy decision dated 17.11.2003 as noted hereinabove in this order, was pleased to hold that non payment of the commuted portion of pension to the petitioner did not amount to deliberate disobedience of the order as the deducted amount has already been paid to the petitioner. The contempt petition was disposed of. Reference in this regard is also made to a bench decision of this Court reported in Mohan Prasad Asthana Vs. The Bihar State Electricity Board and Others, A learned Single Judge of this Court taking note of the policy decision of the Board in suspending the facility of commutation, was pleased to hold that the decision to suspend the same was bona-fide and was taken to tide over the financial crisis facing the Board. It was further held that the commuted value of pension is not an integral part of post retiral benefits and the amount deducted having been refunded, nothing survived in the writ petition and thus the writ petition was dismissed.

12. Mr. Mishra, relying upon the said decision(s) submitted that the petitioner had failed to make out any case for grant of indulgence by this Court.

13. Having given anxious consideration to the submissions advanced, I do not find any reason to disagree with opinion expressed by the learned Judge and which view also finds support in he order passed in the case of Umesh Prasad (Supra). Whether or not to provide the commuted value of pension is an absolute discretion of the Board in the backdrop of the financial constraints facing it. In fact the decision of the Board granting commuted value of pension to the petitioner as contained in Annexure-2, is not absolute but contains a rider and is conditional upon a decision being taken by the Board in this regard. The decision taken is present in the policy decision contained in Annexure-B. Thus the claim, if any created under Annexure-2, would be governed by the policy decision as expressed in the letter dated 17.11.2003 (Annexure-B).

14. The writ petition is disposed of.