

(2022) 02 PAT CK 0034

In the Patna High Court

Case No : Letters Patent Appeal No. 1322 Of 2018 In Civil Writ Jurisdiction Case
No. 11609 Of 2014

District Manager, Bihar State Food and Civil Supplies
Corporation Ltd.

APPELLANT

Vs

Anuradha Devi

RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 19(1)(f), 31(1), 39A, 300A
Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2022) 02 PAT CK 0034

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Shailendra Kumar Singh

Final Decision : Disposed Of

Judgement

We are faced with the following issues:-

(i) What should be the role of the State as a model employer?

(ii) Is not the State's relationship with its employee that of a trust, with a belief of a fair and just treatment in the process of disbursement of retiral dues and benefits?

(iii) Is not the State obliged to give prior information to the employee/ his legal heir(s) of deducting/retaining/withdrawing certain amount of money as pension?

(iv) Whether the right of an employee to receive pension in terms and under the Rules, is a constitutional right?

(v) Whether such a right can be curtailed without following due process of law?

(vi) Whether the retiral dues and benefits of the deceased employee can be

withheld/deducted without initiation of disciplinary proceedings?

2. The present Letters Patent Appeal, under Clause 10 of Appendix E of the Letters Patent of the Rules of the High Court at Patna, 1916, is filed by

the appellant, namely, the District Manager, Bihar State Food & Civil Supplies Corporation Ltd. Begusarai, assailing the judgment and order dated

25.06.2018 passed by a learned Single Judge of this Court in CWJC No.11609 of 2014 titled as Anuradha Devi Versus The State of Bihar & Ors.

FACTS

3. Certain facts are not in dispute. Husband of the writ petitioner, namely, late Ashok Kumar Singh, was a Village Level Worker from 14.05.2002. He

was promoted as Block Agriculture Officer and posted at Begusarai Sadar Block on 03.09.2010. There, disciplinary proceedings were initiated against

him in which he came out clean with no charge having proven against him. However, while posted with the present appellant (Bihar State Food and

Civil Supplies Corporation Ltd.) on 11.04.2013, the Block Development Officer, Sahebpur Kamal, asked him to make good the shortfall of the wheat

stored in the godown of which he was in charge. Save and except mere issuance of such notice, no further action was initiated against him. Neither

he was suspended nor any departmental proceedings ever contemplated or initiated. Unfortunately, on 11.09.2013, the said employee expired.

Immediately thereafter, his wife, the present writ petitioner, filed an application seeking disbursement of all benefits, including pension, etc. However,

vide order dated 13.12.2013, the writ petitioner was asked to make good the payment of the shortfall of 167 quintal wheat before issuing no dues

certificate. It has come on record that Ashok Kumar Singh was an employee of the State Government and was posted with the Bihar State Food and

Civil Supplies Corporation Limited and died while serving there. It has also come on record that the State Government transferred the said amount to

the Corporation after deducting from the dues payable to the employee a sum of Rs.2,39,812/-, being the cost of 167 quintals of wheat.

4. As legal heir of her late husband, Writ petitioner, filed a writ petition seeking quashing of order dated 13.12.2013 (Annexure-6). In terms thereof,

she has been asked to deposit the amount equivalent to the cost of 167 quintals of wheat allegedly found short from her husband's custody, enabling

issuance of no dues certificate required for disbursement of her husband's retiral

dues.

State as a Model Employer

5. State's role as a model employer is now fully established and well defined. The fundamental principles can be culled out as under:

(a) It is a promoter of economic justice. Model employer is the one having social conscience. [Som Prakash Rekhi v. Union of India, (1981) 1 SCC

449]

(b) It is expected to always exhibit fairness in action. [Gurmail Singh and others v. State of Punjab and others, (1991) 1 SCC 189]

(c) It must conduct itself with high probity. [Balram Gupta v. Union of India and Another, 1987 Supp (1) SCC 228]

(d) Its action must be fair; consistent; ensuring rule of law and more specifically meet the requirement of Articles 14 and 16 of the Constitution of

India. [State of Haryana v. Piara Singh, (1992) 4 SCC 118]

(e) It must not create a situation so as to put the hopes of the employee in despair. Its action must not be deceitful; treacherous; insensitive; betraying

the trust created of its employees. [Bhupendra Nath Hazarika and another v. State of Assam and others, (2013) 2 SCC 516]

(f) Trust, which an employee reposes upon the employer, is not to be betrayed, for not only it leads to an unsavoury feeling amongst employees not

having been treated in a dignified and fair manner, but also it not being a concept of good governance. [State of Jharkhand and another v. Harihar

Yadav and others, (2014) 2 SCC 114]

Pension:- Its Nature And Employees Right

6. Pension, as is well established, is the deferred portion of the compensation for rendering long years of service. It is a hard-earned benefit, accruing

to an employee in the nature of property. [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210; Veena Pandey versus Union of India

& Others, 2021 SCC Online SC 1078]

7. Emphasizingly, the Hon'ble Supreme Court has held that pensionary provisions must be given liberal construction more so as a social welfare

measure. It is not a bounty to be dispersed contrary to the rules, but very basis for grant of such pension is to facilitate a retired government employee,

live with dignity, in the winter of his life. This fundamental principle must be kept

in mind while taking action, depriving benefits which ought not to be done, unreasonably, more so, on technicalities. [V. Sukumaran v. State of Kerala, (2020) 8 SCC 106; State of W.B. v. Haresh C. Banerjee and others, (2006) 7 SCC 651]

8. It appears that the Respondent herein-Government/Authority, who is a chronic and an incorrigible litigant, not having learnt what was said by a

Constitution Bench of the Honâ??ble Apex Court way back in the year 1971, in Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 is

repeatedly breaching all fundamental principles qua release of pensionary benefits, resulting into, not only depriving the employee of its constitutional right but also clogging the courts with unwarranted litigation.

9. In the said decision, the Court emphasized the importance of timely release of pension. Also reiterated the principles for grant of pension to a public

servant, it being a â??propertyâ?, with no interdiction, save and except by an authority of law. For any deprivation thereof, would tantamount to

breach of Article 31(1) of the Constitution of India. Such a right cannot be curtailed by way of an executive fiat. The power to curtail, has to be with

the purpose of upholding the rule of law. Deprivation of a right to pension can be only by and an authority under law. Mere denial or cancellation of

pension would not cease to be a right to property, for the character of pension as a â??propertyâ? cannot possibly undergo mutation, more so at the

whims of a particular person or authority. Further, it reiterated the principles laid down by an earlier Constitution Bench of Honâ??ble the Supreme

Court in State of Madhya Pradesh v. Ranojirao Shinde [AIR 1968 SC 1053] to the effect that right to receive a sum of money is a property within the

meaning of the expression â??propertyâ? stipulated under Articles 19(1) (f) and 31(1) of the Constitution of India.

10. We may only extract, for benefit of both of the employer and the employee, as to how another Constitution Bench of the Honâ??ble Supreme

Court elucidated the principles behind the policy for grant of pension in D.S. Nakara v. Union of India, (1983) 1 SCC 305.

â??19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some

public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental

questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a

right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in

Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] wherein this Court

authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules

and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon

anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for

the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the

rules. This view was reaffirmed in State of Punjab v. Iqbal Singh. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-

contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this

class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons

of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till

death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide

security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but

with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he

rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of

providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see

Retirement Systems for Public Employees by Bleakney, p. 33).

(Emphasis supplied)

11. It can very well be argued that in view of the Constitution (Forty-fourth Amendment) Act, 1978, whereby Article 31(1) and Article 19(1) (f) stood

repealed, the dictum laid down in Ranojirao Shinde (supra); D.S. Nakara (supra); and Deokinandan Prasad (supra) is not relevant for pension cannot

be claimed to be a fundamental right as a property. Well, the answer to that lies in State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC

210, wherein it stands affirmed that such a right would still continue to be a constitutional right as provided under Article 300-A of the Constitution.

Right to receive pension is a right to property. The relevant portion thereof is extracted as under:-

8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful

and unblemished service.

15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal

of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property

no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was

treated as right to property.

12. Applying the aforesaid principles, we find the State and its instrumentalities to have breached all the aforesaid fundamental principles.

13. The learned Single Judge, by referring to and relying upon a decision of the coordinate Bench of this Court in LPA No.1777 of 2016 titled as

Sudha Devi vs. The State of Bihar; decided on 18.07.2017 as also a decision of the Full Bench of this Court in Arvind Kumar Singh v. State of Bihar,

2018 (2) PLJR 933, has held the action of the State to be illegal more so, in view of (a) non-initiation of departmental proceedings about the

incident in question; and (b) withholding of pensionary benefits in violation of rule 43(b) of the Bihar Pension Rules.

14. We do not see any infirmity in the impugned judgment. The pensionary

benefits could not have been withheld for the reasons assigned by the learned Single Judge with which we agree. We may also add that before deduction of any amount, principles of natural justice stood violated. The State, without even calling upon the writ petitioner to explain her stand or the position in law, straightway deducted the amount and paid it to the Corporation. In the absence of any dictum of law, the State Government could not have deducted the amount, as on the date of the death, no departmental proceedings stood initiated against the employee. They were not even in contemplation. It has not come on record that the employee alone was responsible for managing the affairs of the Stores and, as such, fully accountable for the loss. If any, the possibility of the role of others in pilferage is not ruled out.

15. That apart and in any event, pension could not have been stopped in the absence of any Rule specifically empowering and enabling the Employer to do so.

16. Though the notice dated 11.04.2013 states that failure to respond may entail initiation of proceedings, as is evident from the record, it has not seen the light of the day.

Litigation Policy of the State

17. We notice that State has formulated a Litigation Policy with the avowed object of not only reducing litigation, saving avoidable cost on unproductive litigation, reducing avoidable load on judiciary with respect to Government induced litigation. This is in tune with the mandate of Article 39-A of the Constitution of India, obligating the State to promote equal justice and provide free legal aid. In fact, by virtue of the clauses of the State Litigation Policy, the State is under an obligation to take steps to reduce litigation, wherever possible. Now, if the employees are not paid their dues within time, obviously, they are left with no remedy but to rush to the Courts.

18. Of late, litigation pertaining to employees of the State has increased more so on account of illegal actions. The action assailed is of mis-governance or avoidable omissions on the part of the Government. Why should the State force an employee/legal heir to litigate in a case where emoluments, which are undisputed, are not disbursed in time. An employee/legal heir has a constitutional right to receive the same within time, so also State is under

a constitutional obligation and duty to disburse it within time.

19. In the light of the aforesaid discussion, we dispose of the appeal in the following manner:-

(a) The present Appeal stands dismissed upholding the the judgment and order dated 25.06.2018 passed by a learned Single Judge of this Court in

CWJC No.11609 of 2014 titled as Anuradha Devi Versus The State of Bihar & Ors.

(b) The appellant shall positively pay the entire amount in terms of the impugned judgment to the writ petitioner, namely Anuradha Devi, within a

period of three weeks from today, failing which she shall be entitled to interest @ 12% per annum. Appellant shall ensure the same, else the amount

of interest shall be recovered from his salary. Affidavit of compliance shall be filed within two months from today.

(c) Joint Registrar (List) shall ensure supply copy of this order to all concerned. For compliance, matter be placed before the Court on 05.05.2022.

(d) The Chief Secretary to the Government of Bihar, shall ensure providing a mechanism, enabling the employees to vent out their grievances of non-

disbursement of due and admissible wages/salaries/emoluments. One such mechanism being of setting up a "Web Portal" at the level of the

Principal Secretary/ Secretary of the concerned Department(s), where the employees can lodge their grievances/complaints. Such grievances/

complaints shall be processed and adequately responded to within a period of reasonable period. This would facilitate speedy redressal of genuine

grievances and prevent unnecessary litigation, clogging the wheels of administration of justice. Such endeavour shall only be in the spirit of Litigation

Policy, framed by the State Government. We see great advantage in the use of information and technology. Not only it would result into effective and

efficient redressal of grievances, if any, but also improve efficiency in the affairs of governance of the State, further instilling confidence and trust

amongst the employees.

(e) Non disbursement of monetary benefits, except in the event of the dictum of law would entail consequences of recovery of the amount of interest

from the delinquent officer incharge for such disbursement.

20. Interlocutory Application, if any, shall stand disposed of.