(2005) 11 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1881 of 2002

Dr. Harihar Das — APPELLANT

Vs

Government of India and Others — RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Citation : (2006) 1 JCR 241

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : P.K. Sinha, Pandey Neeraj Rai and Mahua Sinha, for the Appellant; Jai Prakash Gupta and Pawan Kumar Saha for Respondents 1 and 2 and Anoop Kumar Mehta, for Respondents 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This writ petition has been preferred by the petitioner against the order, bearing reference No. CIL-C5A (VI)/50708/G/362, dated 8th November, 2001, whereby and whereunder, the respondent Chief General Manager (Personnel), Coal India Limited, Kolkata (hereinafter to be referred as ''CIL'') has rejected the representation of the petitioner for payment of pension and pensionery benefits since 1st January, 1992 and thereby refused to modify the earlier order dated 8th January, 1993, whereby, pensionery benefits of the petitioner was freezed.

2. The petitioner had, in fact, earlier moved before Ranchi Bench of Patna High Court in C.W.J.C. No. 2469 of 1997 (R) for payment of pension, including dearness relief on pension as per Central Dearness Scheme. A Bench of this Court by its Judgment dated 28th September, 2001 directed the respondents to take a final decision in respect to the claim of the petitioner and to pass reasoned order, whereinafter, the impugned order has been passed.

3. As the question, raised in the present writ petition, has already been decided by a Division Bench of this Court in an appeal being L.P.A. No. 228 of 2004

Association of Retired Employees of Coal Association v. Central Coalfields Limited and others, allowed vide judgment dated 19th August, 2005 it is not necessary to discuss all the facts and law, except the relevant one, as mentioned hereunder :

The petitioner was initially appointed by the Government of India vide order dated 2nd June, 1955, issued under the signature of Chief Mining Engineer, State Collieries, Ministry of Production, Government of India, to the post of Assistant Surgeon Grade-I. He was ordered to report for duty to the Manager, Swang Colliery, Gomia Station within the then district of Hazaribagh (now Bokaro). The petitioner joined the services of Government of India on 11th June, 1955. The Union of India formed one National Coal Development Corporation (hereinafter to be referred as the ''NCDC'') in the year, 1956 and the ownership and management of the Collieries, including the colliery where the petitioner was posted, were transferred of the NCDC. An order was issued vide Memo No. C6-14(43)63/20, dated 16th August, 1965 by the Government of India, offering the petitioner to arrive at an agreement to join NCDC with effect from 1st October, 1956 with same and similar conditions of service, as such, tenure, remuneration, seniority, pensionery benefits and other conditions of service, as if he was continuing in the services of Union of India. Within the period prescribed, the petitioner exercised his option by letter dated 16th September, 1965 to join NCDC with same and similar conditions of service, including remuneration, seniority, pensionery benefits etc. The period to submit such option was extended up to 31st October, 1965 by letter dated 21st September, 1965, whereby, it was also clarified that future revision of pay, liberalization of service conditions etc, as may be made by the Government of India in respect of its employees, would also be extended to such Government of India employees, like petitioner, who opts for and joins NCDC. Similar circular was issued by NCDC on 26th November, 1965, followed by letter dated 19th February, 1972, whereby, NCDC informed all of its departments about taking over the services of Government of India employees and about their being governed by Liberalization Pension Rules and Family Pension Scheme. It was also clarified that amendments, clarifications and liberalization in respect to pension and family pension scheme would also apply to such employees, whoever has been taken over in the services of the NCDC from the services of the Government of India.

Subsequently, one office memorandum was issued by the NCDC on 10th May, 1974 whereby it was informed that those employees, who opted for NCDC, may revert back to pensionery benefits scheme. Another office order No. 228 was issued by the NCDC on 12th September, 1974, allowing replacement scale of pay to NCDC officers. The said NCDC was subsequently reconstituted as Coal Mines Authority Limited (hereinafter to be referred as ''CMAL''), a Government of India Enterprises. The replaced scale of pay was also offered to those employees, who, by transfer, were taken over in the services of the NCDC and the petitioner alongwith others opted for revised scale of pay on 29th December, 1976. In the meantime, all the coal units were taken over and placed under the coal India

Limited (hereinafter to be referred as the ''GIL''), The Government of India from its Ministry of Finance issued one Officer memorandum on 25th May, 1979, introducing slab system in liberalization of pension formula and made it applicable to the Government Servants since 31st March, 1979. The CIL by its memorandum dated 20th June, 1979 clarified that the Government of India''s memorandum dated 25th May, 1979 apples only to Ext. NCDC employees, absorbed in CIL, who are entitled to retrial benefits as per Pension Rules. Subsequently, an office order was issued on 13th March, 1986 by CIL informing that in view of non-merger of dearness allowance during various Pay Revisions and the pension being calculated on basic pay, full pension shall be payable notwithstanding applicability of reduced rate in case of merger of dearness allowance with pay.

Government of India by its office memorandum dated 14th April, 1987 informed its employees about revision of pension in view of recommendation of the 4th Central Pay Commission. The recommendation of 4th Central Pay Commission was accorded to the petitioner and some others with effect from 1st January, 1986 vide order dated 16th April, 1987. Subsequently, the CIL vide Memorandum dated 15/20th July, 1987 modified its rules, regulating pension and family pension to persons, retired on or after 1st January, 1986. The petitioner having superannuated as Additional Chief Medical Officer of CIL on 31st August, 1988, his pension was sanctioned alongwith dearness relief and additional relief on 2nd May, 1988, which he received till December, 1991. On 8th April, 1992 although the dearness relief was sanctioned with effect from 1st January, 1992, total benefits, as were allowed to the Government of India employees, were not given. By order dated 28th July, 1997 followed by order dated 17th December, 1998, consolidated pension having been paid, the petitioner, at that stage, had to move before Ranchi Bench of Patna High Court in C.W.J.C. No. 2469 of 1997 (R), as referred to above.

4. By the impugned order No. 362, dated 8th November, 2001 while the respondents have rejected the claim of the petitioner, they have given reference to certain orders, passed by Ranchi Bench of Patna High Court and Kolkata High Court with regard to Pensioners Association. It has been mentioned that the pensioners, who opted for Industrial Scale of Pay were not granted dearness relief, as applicable to the pensioners, who retired under Central Pay Commission scale of pay and thereby, following the principle land down by the Ranchi Bench of Patna High Court and Kolkata High Court, though the petitioner was not a party to those cases, his representation was also rejected.

5. It may be mentioned that "Association of Retired Employees of Coal Association" earlier moved before this Court in W.P. (S) 5082 of 2001 as dearness allowance was not added in pension and the claim of the members of Association was rejected, giving reference to a decision of Ranchi, Bench of Patna High Court and Kolkata High Court. The said writ petition was dismissed by the learned single Judge vide judgment dated 23rd February, 2004. The prayer for

commanding the respondents to fix pension of the retired employees, similarly situated like the petitioner, on the basis of the recommendation made by the 5th Central Pay Commission, with effect from 1st January, 1996 and also to pay the revised pension and arrears of pension from the said date was also rejected. As referred to above, the appeal being L.P.A. No. 228 of 2004, preferred by the "Association of Retried Employees of Coal Association" was allowed by a Division Bench of this Court on 19th August, 2005, setting aside the order passed by the learned single Judge and having noticed the decision of Patna High Court and other High Court, the following observations were made and directions were issued :

17. On careful consideration of the submissions made on behalf of the respective parties, the question which emerges for decision is whether the learned single Judge was right in his approach in holding that the present writ application was barred by the decision in the earlier writ application decided by the Patna High Court. The other ancillary question which also emerges is whether on account of the option exercised by the members of the appellant Association for the Wage Board scales of pay, they would stand barred from receiving the benefits of increased dearness relief as recommended by the Wage Board in future.

18. There can be no denial of the fact that when the members of the appellant Association were accepted as the employees of the NCDC it the categorically understood that they would retain all the benefits of service as available to Central Government employees, except that they would not be treated as Government Servants. The position was altered, to some extent, with the formation of the Wage Board and the recommendations by the Wage Board of the scales of pay different from that enjoyed by the Central Government. The members of the petitioner Association amongst others were given the option of retaining the scale of pay of the Central Government or to go over to the Wage Board scales of pay with the stipulation that they would not be entitled to any liberalization of service conditions made by the Central Government for its employees who would be entitled for future benefits. In respect of the scales of pay, dearness allowance and other amenities and service conditions they would be governed by the recommendations of any future Wage Board as might to accepted by the Government of India and the NCDC.

19. A promise was thus made to the members of the appellant Association that in respect, of opting for the Wage Board scales of pay, they would in future be entitled to such recommendations regarding the increase in the dearness relief as may be recommended by the Wage Board.

20. In our view, this aspect of the matter appears to have been overlooked by the learned single Judge, who proceeded on the basis that the question had been concluded by the judgment of the Patna High Court both before the learned single Judge and in appeal.

21. Consequently, in our view, the members of the appellant Association were

entitled to any increase in the dearness relief as might have been recommended by the Wage Board after the year 1991 and the respondents were not justified in withholding such benefits from the members of the appellant Association. Therefore, the appeal must succeed. The judgment and order of the learned single Judge is set aside with a direction upon the respondents to fix up pension payable to the members of the appellant Association on the basis of the recommendations made by the Wage Board after 1991 and to pay to them revised pension and arrears on such basis.

6. Counsel for the parties, including the respondents, accepted that the case of the petitioner is squarely covered by the aforesaid judgment dated 19th August, 2005 passed in L.P.A. No. 228 of 2004. This Court also finds that the petitioner is similarly situated to those, who retired in the year, 1988 and claimed for benefit of dearness relief from 1st January, 1992.

7. For the reasons aforesaid, following the decision in the case of Association of Retired Employees of Coal Association, (supra), and there being no other option, the impugned order No. 362, dated 8th November, 2001 is set aside and the writ petition is hereby allowed with a direction on the respondents to provide the petitioner the benefits, in terms with the order, passed by the Division Bench of this Court in the case of Association of Retired Employees of Coal Association (supra), within a period of four months from the date of receipt/production of a copy of this judgment, falling which they will be liable to pay interest at the rate of 5% per annum on the admitted arrears with effect from the date of filing of the writ petitioner (19th March, 2002) and a cost of Rs. 10.000/-.