(2007) 05 PAT CK 0097

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 295 of 2006

Dr. Raghunandan Prasad Sinha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Citation : (2007) 2 BLJR 2720 : (2007) 114 FLR 828

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Petitioner is a retired employee of the State Government as he superannuated with effect from 1.3.1991 while serving as Assistant Project Officer, Animal Husbandry Department at Biharsharif in the district of Nalanda, he has filed this writ application for a direction to the State respondents, particularly the Provident Fund Officer, Nalanda, Biharsharif, Respondent No. 7 to pay his Provident Fund dues with up-to- date interest till the date of payment as other retrial does not paid to him much prior to filing of the writ petition.

2. From the counter affidavit filed on behalf of Respondent No. 2 duly affirmed by Leave Reserve Officer of the Animal Husbandry Department it appears that final withdrawal of the G.P.F. deposits of Dr. Raghunandan Prasad Sinha was sanctioned under letter No. 4738 dated 12.10.2004 as petitioner himself was responsible for delay in submitting application for withdrawal of the Provident Fund amount.

3. From the counter affidavit filed on behalf of Respondent Nos. 6 and 7, duly affirmed by the District Provident Fund Officer, Nalanda, Biharsharif, it, however, appears that the credit and debit entries in the Provident Fund account of the petitioner for the years 1971-72, 1973-74, 1977-78 to 1981-82 were missing and steps were being taken to up-date those entries and once the entries are updated, authority-slip authorizing payment for those years shall be issued. On the basis of the available entries authority-slip bearing No. 606 dated 16.1.2006 authorizing payment of Rs. 55040/-, as contained in Annexure-A to the said

counter affidavit stood already issued. By filing supplementary counter affidavit, Deputy Director, Animal Husbandry Department placed on record letter bearing No. 3677 dated 5th September, 2006, Annexure-"C", whereunder statement of contribution deductions made by the petitioner during the year 1979-80 up to April, 1983 was communicated to the District provident Fund Officer Nalanda, Biharsharif. Having received the statements under letter dated 5th September, 2006, Annexure-C as also other information/ records about the other deposits/ contributions made by the petitioner in his Provident Fund account. The Provident Fund Office issued further authorization for payment of a arrears of Rs. 1,52,140/- adding interest up to August, 2006 together with calculation-chart which payment as also the calculation shown in the chart was again disputed by the petitioner by filing reply to the supplementary counter affidavit blacking on record the details of the deposits made by him in his G.P.F. account together with interest earned thereon. The District Provident Fund Officer, Nalanda, Biharsharif thereafter filed Interlocutory Application No. 1337 of 2007 on 28th February, 2007 praying inter alia to recall the interim order dated 22.5.2006 passed in the instant case, whereunder, this Court directed the Provident Fund Officer, Nalanda, Biharsharif to pay up-to-date interest till the date of payment as according to the District Provident Fund Officer withdrawal application was filed much after the date of retirement i.e. on 19.7.2003 and in the circumstances, as per the Circular of the State Government dated 6.5.1988 up-to-date interest was not payable for the period after passage of six months of the date of retirement until the filing of the withdrawal application. In this connection, the District Provident Fund Officer relied on the interim order dated 8.9.2004 passed in Letters Patent Appeal No. 1316 of 2002.

4. Petitioner filed reply to the Interlocutory Application enclosing therewith the letter of the office of the Accountant General dated 23.5.1991, Annexure-3, addressed to him, so as to establish the fact that steps were taken by him within six months of his retirement for payment of his Provident Fund dues and in that regard he was directed by the Office of the Accountant General under the aforesaid letter dated 23.5.1991. Annexure-3 to submit his Provident Fund Account Number so as to enable the Office of the Accountant General to furnish the details of the deposits made by him.

5. During hearing of this petition counsel for the petitioner submitted that arrears of Provident Fund dues be paid to the petitioner with up-to-date interest as he had taken steps for such payment within six months of his retirement, which is evident from the letter of the Accountant General dated 23.5.1991, Annexure-3 of the Office of the Accountant General. In support of such contention, he relied on the judgment of the Division Bench of this Court in the case of State of Bihar and Ors. v. Kedar Nath Jha and Ors. reported in 2006(3) P.L.J.R. 473, whereunder the direction of the Single Judge of this Court to pay up-to-date interest even in those cases in which no withdrawal application for withdrawal of the Provident Fund amount has been filed within a period of six months from the date retirement has been approved.

6. Counsel for the State, on the other hand, relied on another Division Bench Judgment of this Court dated 15.3.2007 passed in Letters Patent Appeal No. 802 of 2006 in the case of Mohan Lal Singh v. The State of Bihar and Ors. perusal where of indicates that considering the different provisions of the Bihar Pension Rules, the Division Bench of this Court held that Circular letter dated 13.7.1967 making it obligatory on the head of the Department to finalize the payment of retrial dues to a retiree even without receipt of formal application from him is contrary to the provisions contained in Chapter-10 of the Bihar Pension Rules and having held so, dismissed the Letters Patent Appeal assailing the order of the Single Judge, whereunder payment of interest for delayed payment of three and half years between 30.9.1997, the date of retirement until the date of payment i.e. 11.4.2001, was refused on the ground that the pension payment was effected within two months of the filing of the requisite from including photographs on 15.2.2001.

7. Having heard counsel for the parties, I am of the view that there is apparent conflict in the two Division Bench decisions of this Court rendered in the case of State of Bihar and Ors. v. Kedar Nath Jha and Ors. (Supra) and the case of Mohan Lal Singh v. The State of Bihar and Ors. but as the subsequent judgment in the case of Mohan Lal Singh has not taken notice of the earlier Division Bench Judgment in the case of State of Bihar and Ors. v. Kedar Nath Jha and Ors. as also the provisions of the resolution of the State Government issued by the Finance Department bearing No. 304 dated 31.7.1980, whereunder the State Government amended relevant provisions of the Bihar Pension Rules, Treasury Code and Bihar Service Code vide Clause (21) of the resolution and simplified the procedure which is required to be gone into for finalizing the pension/gratuity of the service-holder mandating that the entire exercise to finalize the pension and gratuity including issue of payment order must be completed one month prior to the actual date of retirement of the service-holder vide Clause (2)(Gha) having not been considered in the subsequent judgment of the Division Bench, I am not inclined to rely on the subsequent judgment which in my considered opinion appears to be per incuriam of the relevant provisions amending the pension Rules as also the earlier Division Bench judgment of this Court. In this connection, I place reliance over the following passage from Halsbury laws of England, 4th Edition Volume 26 which was quoted with approval in the case of Babu Parasu Kaikadi v. Babu reported in AIR 2004 SC 754:

A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decisions, in which case it must follow that decision: or when the decision is given in ignorance of the terms of a statute or rule having statutory force.

8. Further reliance in this connection is placed on the Full Bench Judgment of this Court in the case of Rakesh Sharma Vs. State of Bihar and Others, and on the

Single Bench judgment in the case of Sachchidanand Shukla v. Sudha Sinha and Ors. reported in 1998 (1) PLJR 126.

9. Besides from the pleadings made in the writ petition, counter affidavit, supplementary counter affidavit as also the annexures appended thereto it appears that the petitioner superannuated as early as on 1.3.1991 and before his superannuation he was on deputation in the District Rural Development Authority, Nalanda for the period between 1.2.1984 till 23.2.1991 and after his superannuation his other retrial dues including pension and gratuity were finalized and paid before the filing of the writ petition but G.P.F. dues could not be cleared as the relevant entries indicating deposits in the Provident Fund account of the petitioner were not complete which is even admitted in the counter affidavit and steps were taken to update those entries only after petitioner filed the writ petition.

10. In the circumstances, I am not inclined to accept the submission raised for the first time by filing Interlocutory Application No. 1337 of 2007 on 28.2.2007 that the petitioner applied far final withdrawal of his G.P.F. amount or 19.7.2003 as it is evident from the letter of the office of the Accountant General, Bihar dated 23.5.1991, Annexure-3 itself that the petitioner was in correspondence with the office of the Accountant General for transfer of his balance of the Provident Fund deposits maintained to the office of Accountant General even prior to 23.5.1991, in the circumstances it does not stand to reason as to why should he wait until 19.7.2003 to apply for release of Provident Fund dues when his other retiral dues were paid earlier and if that was the case then the State authorities should have made such statement in the counter affidavit itself but no such statement was ever made until they filed the Interlocutory Application on 28.2.2007. In the circumstances, I am of the view that petitioner did apply for payment of his Provident Fund dues when he applied for payment of other retiral dues but as the Provident Fund amount has been paid after updating the entries in the account as has been stated in the counter affidavit and supplementary affidavit by the State authorities themselves. I direct that he be paid up-to-date interest until the date of payment on his Provident Fund deposits. Necessary compliance of this order be made within a period of three months of its receipt/ production before the Provident Fund Officer concerned.

11. This writ application is, accordingly, disposed of.

