(2003) 09 PAT CK 0066

In the Patna High Court

Case No : C.W.J.C. No. 1678 of 2003

Dr. (Smt.) Shahida Hasan APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0066

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, Petitioner, who joined the service as Medical Officer under Health Department, Government of Bihar on 15.7.1981 and ultimately resigned from the said service which was accepted by the State Government with effect from 21.1.1995, is aggrieved on account of nonpayment of the amount of gratuity, full pension, G.P.F., group insurance, leave encashment and arrears of salary.

2. A counter affidavit has been filed on behalf of the Commissioner-cum-Secretary, Health Department, Government of Bihar, Patna (Respondent No. 2), in which it is stated that f the claim of pension and gratuity etc. are not admissible and decision in this regard has been communicated to the Petitioner vide letter No. 937(2) dated 30.4.2003, a photostat copy whereof has been annexed as Annexure-A to the counter affidavit. The validity of the said order (Annexure-A) has been challenged in the supplementary affidavit filed by the Petitioner in this writ petition. As regards the amount of group insurance, it is stated that draft of Rs. 38,659/- has been handed over to the learned Counsel for the Petitioner on 13.5.2003. With respect to the arrears of salary it is stated that as per the report of the Civil Surgeon, Patna based on his office records, the Petitioner has already been paid her due salary for the period she was on duty.

3. Learned Counsel appearing for the Petitioner submitted that the Petitioner served under the Respondents for 13 years 6 months and 6 days, and, as such, she is entitled for pension and other post retiral benefits under the provisions of Clause 18 of appendix 6 contained in Part II of the Bihar Pension Rules, 1950,

hereinafter referred to as ''the Rules'', which prescribes 10 years of minimum service as qualifying service for payment of pensionary benefits. On the other hand, learned Counsel for the State submitted that Rule 101(a) of the Rules clearly provides that resignation of public service entails forfeiture of past service, which consequently amounts to forfeiture of retirement benefit except as provided in Rule 135 of the Rules, under which Government servants mentioned in Rule 5 are entitled, on their resignation being accepted, to a retiring pension after completing qualifying service of not less than 25 years. Learned Counsel for the Petitioner controverting the aforesaid stand of the learned State Counsel placed reliance upon the decision of this Court in the case of Tapan Kumar Chatterjee Vs. The State of Bihar and Others, in which a learned single judge of this Court while interpreting similar provision in Article 12(1) of the Statutes relating to general condition of service of the University employee also consider the scope of Rule 101(a) and (b) of the Rules.

4. It would be appropriate at this stage to quote Rule 101(a) of the Rules.

101(a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a described examination entails forfeiture of past service.

I failed to appreciate as to how Rule 101(a) can deprive a pensioner of his G.P.F. in case of resignation of the public service Rule 101(a) provides only for forfeiture of past service on account of which one may not be entitled for pension, gratuity and leave encashment, but the said provision has got nothing to do with G.P.F. The amount of contribution deducted from the salary and deposited in his G.P.F. account under the Rules is part of salary paid for the work taken and forfeiture of past service under Rule 101(a) cannot have any bearing over such account. In my opinion, a Government servant on his retirement/ resignation/dismissal/removal cannot be denied of his G.P.F. amount, and, accordingly, this Court directs the Respondent No. 2 to issue sanction order within a week, whereupon the concerned District Provident Fund Officer shall issue authority for the same with up-to-date statutory interest within a week.

5. The other question for determination in this case is whether on acceptance of resignation a Government servant is entitled to retiring pension under Clause 18 of appendix 6 contained in Part II of the Rules, if fulfils the qualifying service of 10 years mentioned thereon or the resignation will entail forfeiture of past service under Rule 101(a) except after completing the qualifying service of not less than 25 years blunder Rule 135.

6. It would be appropriate at this stage to refer to other provisions regarding grant of retiral benefits in case of acceptance or resignation. Under Rule 101(a) referred to above resignation of the public service or dismissal or removal from it for misconduct insolvency, inefficiency not due, to age, or failure to pass a prescribed examination entails forfeiture of past service and Sub-rule (b) of Rule 101 provides that resignation of an appointment-with the approval of the

appointing authority to take up another appointment, service in which counts, is not a resignation of the public service. Learned Single Judge of this Court in the case of Tapan Kumar Chatterjee v. The State of Bihar and Ors. (supra) while interpreting similar provision contained in Article 12(1) of the Statutes relating to general condition of service of the University employees also noticed Rule 101(a) and (b) of the Rules, and held that provision of Article 12(1) of the Statutes relating to ''general condition of service'' is same and similar to Rule 101(a) of Bihar Pension Rules, 1950. However, under Sub-rule (b) of the Rule 101 of the Bihar Pension Rules certain distinction has been made in the matter of resignation simplicitor for further appointment. Further, the Court held" If the argument advanced by the counsel for the University is accepted then it is to be interpreted that in all cases of resignation the past service of an employee will forfeit, clubbing them with the same class of employees dismissed or removed from service for misconduct or other reason. Such interpretation will amount to make the two unequals as equal, as an employee resigned, by way of resignation simplicitor for one or other purpose like employment in other organization or to take rest in life (like voluntary retirement) will be placed at par with the employees dismissed or removed from service because of stigma.

I, therefore, hold that the resignation from service as mentioned under Article 12(1) of the University Statute relating to General Condition of Service, equivalent to Rule 101(a) of the Bihar Pension Rules entails forfeiture of past service only in such cases where resignation is given for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination, as laid down under the provision aforesaid. The aforesaid rule is not applicable in the case of resignation simplicitor, though may be applicable in a case where on receipt of allegation or charge sheet and other criteria mentioned under the rule, a person submits resignation."

However, in the said case His Lordship was mainly concerned with Article 12(1) of the Statute and did not consider other provisions of Bihar Pension Rules like Rule 135 read with Rule 5 and Clause 18 of appendix 6 contained in Part II of the Rules.

7. Rule 135 provides that the Government servants mentioned in Rule 5 are entitled, on their resignation being accepted, to a retiring pension after completing qualifying service of not less than 25 years. Rule 5 provides that provisions of Rules 86, 135, 146 and 147 apply only to Government servants (other than military officers) appointed substantively to services or posts specified in the schedule who joined their posts after 29th August, 1919 or were in service on 29th August, 1919 but have definitely elected in writing with the permission of Government to come under them. The schedule to Rule 5 incorporates various services of different departments including Medical Department and Public Health Department and not all kinds of Officers/ employees of such Department. Medical Department only covers Civil Surgeons, Civil Assistant Surgeons, Professors of the Medical Colleges and Chemical

Examiners and Public Health Department covers Bihar Public Health Services.

8. Thus, it is apparent that Rule 101(a) is contradictory to the provisions contained in Rule 135, which makes Government servants mentioned in Rule 5 are entitled, on their resignation being accepted, to retiring pension after completing qualifying service of not less than 25 years, whereas, if the submission of the learned Counsel for the State is accepted then Rule 101(a) entails forfeiture of past service in case of resignation of the public service. Pension able service is defined under Rule 29, which means service which qualifies the Government servant performing it to receive a pension from general revenue. Clause 18 of appendix 6 contained in Part II of the Rules provides 10 years as qualifying service for grant of pension for both i.e. permanent and temporary Government servant. Section II of the Rules deals with cases in which claims are inadmissible, which does not include resignation. Section III of the Rules deals with the cases of misconduct, insolvency or inefficiency and also cases of compulsory retirement as a penalty. Section IV of the Rules deals with the claims of widows or heirs and Section V provides for certain limitations, where Government servant Cannot earn two pensions in the same post at the same time, or by the same continuous service and the Government servants may not simultaneously count service in respect of the same post. Rule 56 provides that the service of every Government servant qualifies from the date on which he takes charge of the post to which he is first appointed, unless it be otherwise provided by special rule or contrac and Rule 57 provides that for a Government servant in inferior service qualifying service shall not begin until the Government servant concerned attained the age of 16 years. Section II of Chapter IV, Which deals with the conditions of qualification in general the service of a Government servant does not qualify for pension unless it conforms to the following three conditions, namely, (1) the service must be under Government (2) The employment must be substantive and permanent, which later on by Rule 6 of Liberalised Pension Rules (appendix 5 and 6) included temporary service also and (3) The service must be paid by the Government. It is not disputed that the service of the Petitioner was under Government and paid by the Government. Under such circumstances, there cannot be any dispute that after rendering over 13 years of service the Petitioner acquired qualifying service for grant of pension under Clause 18 of appendix 6. Now the only hurdle is either Rule 101(a) or Rule 135 of the Rules. As per the decision of this Court in the case of Tapan Kumar Chatterjee v. The State of Bihar (supra) Rule 101(a) entails forfeiture of past service only in such cases where resignation is given for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination and the said rule is not applicable in the case of resignation simplicitor, though may be applicable in a case where on receipt of allegation or charge sheet and other criteria mentioned under the Rule a person submits resignation.

9. In the present case, there is no allegation that the Petitioner resigned from service because of either of the above provisions. Therefore, forfeiture of past service in her case under Rule 101(a) does not arise. Now the only thing remains

is Rule 135 which prescribes 25 years as qualifying service for receipt of retiring pension in case of resignation by the Government servants mentioned in Rule 5. It may be true that Petitioner''s resignation was accepted by the Government while posted as Medical Officer in leave vacancy under Civil Surgeon, Patna vide Annexure-2. Rule 74(b)(i) of the Bihar Service Code provides that notwithstanding anything contained in the preceding sub-rule, a Government servant may after giving at least three months previous notice, in writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice. Under the existing rule a person can be appointed in the Government service at the age of thirty five years in case of general category and in case of reserved category maximum relaxation of five years is provided. Thus, under the said Sub-rule (b) a Government servant can seek voluntary retirement irrespective of completion of the qualifying service of thirty years under the said rule, meaning thereby that a Government servant belonging to reserved category can seek voluntary retirement on completion of ten years of service and will be entitled for retiring pension. Under such circumstances, it is difficult to reconcile Rule 135 of the Rules with Rule 74(b)(i) of the Bihar Service Code. Moreover, as per decision in the case of Tapan Kumar Chatterjee v. The State of Bihar and Ors. (supra) resignation entails forfeiture of past service only in the case of misconduct, insolvency and inefficiency not due to age or failure to pass a prescribed examination or on receipt of allegation or charge sheet and not in the case of resignation simplicitor.

10. It is well settled law of interpretasion that where language of a Statute leads to manifest contradiction, a construction may be put upon it, which emphasises the meaning of the words and even the strucure of the sentence. Reference in this regard may be made to the decision of the Apex Court in the case of Tirath Singh Vs. Bachittar Singh and Others, . In the said case it has also been held that the Court should read different provisions of the Act in a manner that Impart thereof is held to be superfluous or surplus.

11. In the case of Union of India and Ors. v. Braj Nandan Singh and Anr. reported in 2003(3) PLJR 409, a Division Bench of this Court while answering the question raised that on merits the Tribunal was wrong in having ordered the payment of post retirement benefits for the reasons that the incumbent (Braj Nandan Singh) while tendering his resignation was not joining public service, and that in the circumstances, this disentitled him for reliefs in the nature of post retirement benefits, held that pension is payable and it is qualified with a condition that should there be a designation it must follow with joining the public service. This aspect does not appeal to the Court either. If a person has qualified the minimum period to receive pension he is entitled to receive whatever pension is payable for the period during which he was in service. This matter should not be mixed up as continuous service which may be added, should a person be joining another service." The Division Bench also appreciated that the incumbent was bonafide in

his declaration when he tendered his resignation before standing for a public office and held that the Rules must be torn out of context to deny post retirement benefits and accordingly, dismissed the appeal preferred by Union of India.

12. In the case of AIR 1997 565 (SC) (Paragraph 90) the Apex Court held that the Officers who voluntarily resigned cannot be automatically deprived of retiral benefits.

13. I find no justification for placing the Government servants covered under Rule 5 in different category to apply the qualifying service as prescribed under Rule 135 only in their cases. There is no pleading justifying the requirement of 25 years qualifying service under Rule 135 of the Rules. A Government servant can resign, but, such resignation in absence of any specific Rule can be given effect to only on its acceptance by the Government. The Government servant cannot claim any right for acceptance of his resignation and the Government can refuse acceptance of his resignation. But having accepted the resignation denial of pension after completion of qualifying service under Clause 18 of appendix 6 will be arbitrary and violative of Articles 14 and 16(1) of the Constitution. Thus, in my opinion, in order to uphold the validity of Rule 135 by avoiding discrimination and violations Articles 14 and 16(1) of the Constitution, requirement of qualifying service in all cases would be as per the provision contained in Clause 18 of Appendix 6 and the State Government should be well advised to make suitable amendment in Rule 135.

14. In the present case in paragraph 6 of the writ petition, it is stated that the Petitioner resigned owing to some personal reasons as she found herself unable to continue with her job. Thus, I find that denial of pension and other retiral benefits to the Petitioner, who undisputedly completed the qualifying service of 10 years as prescribed under Clause 18 appendix 6 contained in part II of the Rules by forfeiting her past service is wholly arbitrary.

15. Writ application is, thus, allowed. The Respondents are directed to ensure Issuance of sanction orders with respect to pension gratuity and leave encashment on the basis of the services rendered by the Petitioner and also with respect to G.P.F. with up-to-date statutory interest within one week of the receipt/ production of a copy of this order, whereupon the Respondent authority, namely, The Accountant General and District Provident Fund Officer shall issue authority/ authorisation for payment pursuant thereto and a copy thereof shall he handed over to the learned Counsel for the Petitioner within a week thereafter, failing which the Petitioner will be at liberty to file two pages affidavit for revival and for taking appropriate action.

