

(1991) 01 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 1458 of 1990

Dr. Suryakant Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 1 BLJR 523 : (1991) 1 PLJR 330

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N. Pandey, J.—This writ petition has been filed on behalf of the petitioner who was initially appointed as Medical Officer under the District Board, Darbanga, in the year 1948 but later on he became an employee of the State Government pursuant to the notification dated 16.3.1981 (Annexure 3.) The prayer of the writ petitioner is for a direction to the State Government that the period during which the petitioner has worked with the District Board be counted for the purpose of fixation of his retirement benefits,

2. The State Government under the Bihar State Road and Hospital Provincialisation Act nationalised all the hospitals of the District Boards from time to time. The first notification to this effect was issued on 23.3.1979 whereunder 20 hospitals managed by the District Board were taken over. At the same time, all the employees of the District Board became the employees of the State Government. The second notification was issued on 31.3.1980 whereunder 70 hospitals were nationalised and the final notification was issued on 16-3-1981 (Annexure 3) nationalising the other hospitals which also included the hospital in which the petitioner was working as Medical Officer. In this notification, it was made clear that the services rendered in the District Board by the employees concerned shall not be counted for the purpose of giving retirement benefits such as pension and gratuity etc.

3. It has been submitted that the State Government, as per the term of notification, is required to send the name of the petitioner before the Public Service Commission for concurrence in order to grant him pay-scale of a Gazetted officer. The petitioner, pursuant to the notification as contained in Annexure 3, worked on the post of the Medical Officer which is a gazetted post, till 31.1.1985, the date of his retirement. Out of 38 years of service of the petitioner, only ten years of his service tenure before the District Board and four years with the Government have been taken into consideration for the purpose of fixation of pension etc. At present, the petitioner is getting pension at the rate of Rs. 231.50 per month only. It has been submitted that in the cases of Sanitary Inspectors, Compounders, Teachers, Health Inspectors, Overseers and other similarly placed employees, all appointed by the then District Board, who became the employee of the State Government, like the petitioner, they have been given all the benefits and in their cases total period of their service rendered before the District Board has been counted for fixation of seniority. But in the case of the petitioner, a different consideration has been taken. It has been submitted that the State Government while considering the case of certain employees for the purpose of pension, has taken into consideration the services rendered by them under different District Boards, and ultimately a decision was taken that for the purpose of fixation of pension, the period of their service rendered in different District Boards with effect from 1.4.1949 or with effect from the date of their actual appointment, whichever may be later, should be taken into consideration. The State Government granted similar reliefs to the Sanitary Inspectors/Compounders by order dated 14.3.1986.

4. It has been urged in the present application that when the State Government had accepted the claim of other employees of the District Board, there was no justification to take a discriminatory stand in the case of the petitioner who was initially appointed by the District Board but subsequently became an employee of the State Government. In other words, according to the petitioner, for the purpose of fixation of pension and other benefits, the services rendered in the District Board with effect from 1.4.1949 or with effect from the date of actual appointment in the District Board, whichever may be later, should be taken into account in the case of the petitioner.

5. It is relevant to note that several writ petitions were filed by erstwhile different employees of the District Board for similar reliefs and in C.W.J.C. No. 5889 of 1986 and its analogous cases, it was held as follows:

* * * * * It is well known that if persons form a class by themselves, the State Government can extend any benefit or curtail any benefit treating such persons as a class and no grievance of discrimination can be made. But if on the materials on record it is not possible to hold that the Teachers of the schools owned and managed by the then District Boards or the Sanitary Inspectors and Compounders of such District Boards form a separate class for extending the special benefit to them and to deny the same to the petitioners, then this Court

has no option but to direct the same benefit to be extended even to the petitioners.

In the same paragraph, it was further held:

In our opinion, denying the benefits which have been extended to the Teachers, Sanitary Inspectors and Compounders, to the petitioners in the matter of fixation of their pension will amount to a discrimination within the meaning of Article 14 of the Constitution. Accordingly, we direct the respondents to apply the decision taken by the State Government and communicated to different authorities by aforesaid letter dated 14.3.1986 even in cases of the petitioners. In other words, they should be treated at par with "Teachers, Sanitary Inspectors/Compounders" in the matters of payment, of pension.

It has been further urged that two other writ petitions viz. C.W.J.C. No. 6632 and 6621 of 1989 were also filed for reliefs in regard to fixation of salary and retirement benefits of the Medical Officers, like the petitioner. Both the writ petitions were heard and finally disposed of by a judgment dated 14.5.1990. In the aforesaid cases also reliance was placed upon the judgment of this Court passed in C.W.J.C. No. 6869 of 1986 as indicated above, and a direction was issued to the State Government that the petitioners in those cases, who were Medical Officers, were also entitled in law to get the same reliefs which were granted to the petitioners of C.W.J.C. No. 5869 of its analogous cases. It may be relevant to mention here that when the directions issued in the aforesaid two writ petitions viz. C.W.J.C. 6632 and 6621 of 1989 were not carried out, the petitioners of those cases, filed a contempt petition in this Court bearing M.J.C. No. 909 of 1990 wherein on 10.12.1980 an undertaking was given on behalf of the State that the grievances of the petitioners of those cases shall be met on or before the 4th of February, 1991. On the basis of the aforementioned facts, it has been submitted that as the case of the petitioner is similar to that of the petitioners in C.W.J.C. Nos. 6632 of 1989 and 6621 of 1989, therefore, his case also be considered in the light of the direction issued in that case.

6. No. counter-affidavit has been filed on behalf of the State of Bihar in the instant case. However, Mr. P.K. Shahi, learned Counsel appearing on behalf of the State, submitted that in cases of Teachers, Sanitary Inspectors and Compounders, likewise other employees of the District Board, the State Government has taken a decision but there is no such decision with respect to the Medical Officers. It has been further pointed out that as no concurrence from the Bihar Public Commission has been obtained in the case of the petitioner, therefore, there is no question of fixation of salary and other pensionary benefits of the petitioner at par with the Gazetted Officers. In this connection, he has drawn my attention to the letter of the Government dated 19.1.1988 (Annexure 6) wherein it has been stated that the services of the petitioner were taken over with effect from 1.2.1981 as non-gazetted officer and he continued as such till 31.1.1985, the date of his retirement. Therefore, there was no question of getting concurrence from the Bihar Public Service Commission in the case of

petitioner and his services rendered in District Board cannot be taken into consideration for the purpose of fixation of pensionary benefits. However, learned Counsel for the State could not point out as to how different employees appointed initially by the District Board, whose services have been taken over by the State Government, could be given a different treatment. However, the controversy as to whether the Medical Officers can be given same treatment who were erstwhile employees of the District Board, has been settled in the two writ applications which I have mentioned above. The State Government, pursuant to the said judgment, has decided to extend all benefits which has been given to the employees who had filed C.W.J.C. No. 5869 of 1986 and its analogous cases.

7. Accordingly, this writ application is allowed. The decision of the Government dated 29.1.1988 as contained in Annexure 6 is quashed. I direct that the case of the petitioner be examined in the light of the decisions of this Court in C.W.J.C. No. 5869 of 1986 disposed of on the 3rd of July, 1989 and its analogous cases as also that in C.W.J.C. No. 6632 of 1989 and 6621 of 1989, disposed of on 14.5.1990. As the petitioner has retired way back on 31.1.1985, any such decision should be taken by the Government within a period of two months from the date of production/receipt of the copy of this order. There will be no order as to costs.