
(2005) 08 PAT CK 0097
In the Patna High Court
Case No : CWJC No. 691 of 2002

Dwarika Nath Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Citation : (2005) 4 PLJR 153

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Bishwajeet Singh and Hans Nath Singh, for the Appellant; Arup Kr. Chongdar, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties. The order as contained in annexure-3, issued vide memo No. 973 dated 13.8.2001 is under challenge, whereby and whereunder necessary directions have been issued to recover the excess payment of salary made to the petitioner on account of his overstay in service.

2. It appears that the petitioner who was working as an Assistant in a block office in the district of Saran was to superannuate with effect from 30th November, 2000, but somehow or the other he overstayed in the office and superannuated with effect from 31.8.2001.

3. Learned counsel for the petitioner submitted that admittedly the petitioner worked under the respondents before 31st August, 2001 and he was paid his salary. It is further submitted that in lieu of services rendered by the petitioner even beyond his date of superannuation he was paid his salary and, therefore the same is not recoverable.

4. JC to AAG, II, on the other hand, contended that the petitioner admittedly managed to overstay in the office even beyond the date of his superannuation and, therefore, the excess payment made to him beyond the date of his

superannuation was recoverable and accordingly the authority issued the order as contained in annexure-3.

5. In the given facts and circumstances of the case, in my opinion, the Court need not go into the details as to how the petitioner managed to overstay and how he was allowed to overstay by the authorities.

6. It is an admitted position that the petitioner worked as an Assistant till August, 2001 and his salary accordingly was paid to him. The work done by the petitioner, however, cannot be said to be the work rendered by a bonded labour. The petitioner received his salary in lieu of services rendered by him. It is not the case of the respondents that an enquiry was set up against the petitioner for his overstay in the office and, therefore, the petitioner cannot be held liable alone for overstay in the office or for suppression of material fact about his date of birth.

7. This Court and also the Apex Court on many occasions have dealt with this situation and have held that in case an employee continued in services even beyond the date of his superannuation and received his salary, the same should not be recovered unless he is held guilty in a departmental enquiry. In this connection, reference may be made to the case of State of Bihar Vs. Narasimha Sundram, .

8. Considering the facts and circumstances of the case and for the reasons aforementioned this writ application is allowed and the order impugned as contained in annexure-3 dated 13.8.2001 is set aside. However, it is held that the petitioner would not be entitled for the retiral dues beyond the date of his superannuation, i.e., with effect from 30th November, 2000.