

(2011) 07 PAT CK 0255
In the Patna High Court
Case No : CWJC No. 7618 of 2007

Gopal Prasad

APPELLANT

Vs

The Vice-Chancellor, J.P. University, Saran at Chapra and
Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Citation : (2012) 1 PLJR 279

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Shashi Shekhar Tiwary, for the Appellant; Shivendra Kishore and Rajendra Kumar Giri, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Sri Shashi Shekhar Tiwary, learned counsel for the petitioner, Sri Shivendra Kishore, learned counsel appearing on behalf of respondent nos. 1 & 2/ J.P. University, Saran at Chapra and Sri Rajendra Kumar Giri, learned counsel appearing on behalf of respondent no. 5/ B.R.A. Bihar University, Muzaffarpur. The present writ petition was initially filed in the year 2007 with a prayer to direct the respondents to make payment of his retiral dues.

2. In the writ petition a counter affidavit was filed on behalf of respondent no. 1 wherein it was indicated that difference of pension amount for the period September, 1999 to July, 2005 was paid to the petitioner, gratuity was determined at Rs. 81,791/- out of which Rs. 40,953/- was adjusted towards excess payment earlier received and balance amount of Rs. 40,838/- was paid to the petitioner through cheque dated 7.3.2008. Similarly leave encashment amount in lieu of 107 days was found admissible to the tune of Rs. 17,680/- out of which Rs. 15,280/- was adjusted towards excess payment earlier received by the petitioner and balance amount to the tune of Rs. 2,400/- was paid to the petitioner vide cheque dated 7.3.2008.

3. It is not in dispute that amount of group insurance as well as P.F. with up to date interest was paid to the petitioner in the year 2002 itself. During the pendency of the writ petition an Interlocutory Application was filed by the petitioner on 20.12.2010 vide I.A. No. 10530 of 2010 whereby a prayer was made to direct the respondents to refund the amount of Rs. 1,11,003/- which was recovered from post retiral dues of the petitioner. The petitioner has also brought on record as Annexure-1 to the Interlocutory Application a letter issued under the Right to Information Act issued by the Public Information Officer of the J.P. University, which makes it clear that recovery order for Rs. 1,11,003/- was passed by the authority concerned after filing of the writ petition. The said amount was recovered on the plea that petitioner had worked for more than one year ten months and one day after the date of his retirement and as such the pay which was received by the petitioner for that period was recovered from the retiral dues of the petitioner.

4. The respondent nos. 1 & 2 has also filed a counter affidavit to the Interlocutory Application besides filing an affidavit to the main writ petition earlier.

5. Short fact of the case is that the petitioner was appointed on Class-IV post in the Rajendra College, Chapra which was at the relevant time under the B.R.A. Bihar University. However, subsequently it came under the control of the J.P. University, Saran, Chapra. He was appointed on 31.8.1955 and after completing the age of 62 years he retired from the service as Class-IV employee with effect from 30.6.2001.

6. Learned counsel for the petitioner has drawn my attention to Annexure-1 to the writ petition which makes it clear that by the order of the Registrar of the University he was allowed to retire with effect from 30.6.2001.

7. Learned counsel for the petitioner submits that even after retirement entire retiral dues of the petitioner was not paid and accordingly the petitioner was constrained to approach this court for a direction to the respondents to clear his all the retiral dues. However, before filing of the writ petition in the year 2002 itself amount of group insurance and G.P.F. was received by the petitioner which has been accepted in the counter affidavit also.

8. Learned counsel for the petitioner submits that without affording any opportunity and in violation of the principle of natural justice the authority concerned has come out with a case through its counter affidavit that the salary received by the petitioner for one year ten months was recovered as said service was treated as unauthorised by the University.

9. Accordingly, a prayer has been made to direct the respondents to refund the recovered amount i.e. amount of Rs. 1,11,003/- with admissible statutory interest.

10. Learned counsel for the petitioner has also relied on a Single Bench judgment

of this court reported in 2004(4) PLJR 508 (Abdul Hakim vs. State of Bihar & Ors.) and submits that it was not a case of either of suppression of fact or misrepresentation by the petitioner and as such in view of the law laid down by this court, after retirement the University was not competent to recover any amount that too without affording any opportunity of hearing.

11. Sri Shivendra Kishore, learned counsel for respondent nos. 1 & 2 at the very outset has submitted that taking into account the date of birth of the petitioner i.e. 6.6.1939, if the date of retirement as claimed by the petitioner is accepted as 30.6.2001 the entry of the petitioner in the service was at the age of 16 years and odd and as such his initial appointment was itself not valid. He further submits that from the date of entry in the service of the petitioner till the date of claimed retirement on 30.6.2001 he had functioned for about 45 years whereas as per statutory provision in the University Act an employee was to retire after completion of 44 years of service or on attaining the age of 62 years. He submits that in view of the facts and circumstances it cannot be disputed that initial entry of the petitioner in the service was not valid.

12. Sri Shivendra Kishore has heavily relied on a Full Bench judgment of this court reported in 2006(1) PLJR 410 (Ragjawa Narayan Mishra vs. The Chief Executive Officer, Bihar Rajya Khadi Gramoudyog Board & Ors.). He has referred certain paragraphs of the judgment of the Full Bench to elaborate his argument that since the entry of the petitioner in the service was itself not valid he was not entitled to continue in service beyond completion of 44 years.

13. Sri Shivendra Kishore, learned counsel for J.P. University has referred to Annexure-A to the counter affidavit which was filed on 28th June, 2011 on behalf of respondent nos. 1 & 2 and submits that as per the Government instruction after completion of 44 years of service an employee of the University was required to retire. He submits that as per statute 2(30) of the University Act all orders applicable to the employees of Government of Bihar is to be applied mutatis mutandis to the employees of the University and as such in view of Annexure-A to the counter affidavit the petitioner was to retire after completion of 44 years of service and taking into account the service rendered by the petitioner i.e. 44 years he was to retire with effect from 31.8.1999 and as such period spent by the petitioner in the University service after 31.8.1999 till the date when he actually retired i.e. 30.6.2001 shall be treated as unauthorised and whatever amount/emoluments were paid to the petitioner was liable to be recovered and same has rightly been recovered by the University authority. Even vide Annexure-B a Committee was constituted and the Committee vide Annexure-C to the counter affidavit has approved the recovery made from the retiral dues of the petitioner and as such the writ petition is fit to be rejected.

14. Besides hearing learned counsel for the parties I have also perused the materials available on record.

15. So far Ragjawa Narayan Mishra's (supra) case is concerned on which heavy

reliance was placed by Sri Shivendra Kishore the court is of the opinion that issue involved in the said case was not similar to the issue involved in the present case. In the said case the petitioner was informed about his date of retirement and said order was in question.

16. In the present case it is not in dispute that petitioner continued in service till the month of June 2001 by virtue of the order issued by the competent authority. Further in the present case after about more than seven years of retirement of the petitioner the University authority has come out with a plea that since petitioner" had continued for one year & ten months in service beyond the date of retirement the pay/salary paid to the petitioner shall be liable to be recovered. The said stand of the University was taken only after filing of the writ petition by the petitioner which was filed in the year 2007 whereas he retired on 30.6.2001. Moreover, fact remains that before passing order for recovery from the retiral dues no opportunity was afforded to the. petitioner which was in clear cut violation of the principle of natural justice. Moreover, it was not a case in which the University has come out with a case that petitioner had made false representation or he had suppressed any fact, rather on the contrary there is an order on record i.e. Annexure-1 to the writ petition whereby the competent authority had passed an order allowing the petitioner to retire with effect from 30.6.2001 and he continued in service till 30.6.2001. The court is in agreement with the submission of learned counsel for the petitioner that in such a situation no order for recovery was required to be passed which is contrary to the Single Bench judgment of this court reported in 2004(4) PLJR 508 (Abdul Hakim vs. State of Bihar & Ors.).

17. So far as plea of Sri Shivendra Kishore, learned counsel for the University that University had acted upon Annexure-A to the counter affidavit is concerned, after going through the material on record the court is of the opinion that the instruction which was issued by the Government of Bihar vide Memo No. 1961 dated 12th November, 1999 (Annexure-A to the counter affidavit) was not at all earlier considered or acted upon. Moreover, Annexure-A itself makes it clear that in case an employee completes 44 years of service three month prior notice was required to be given and only thereafter an employee was to retire from the service. On the record there is nothing to indicate as to whether any step was taken by the University authority to intimate the petitioner or give notice as per Annexure-A to the counter affidavit. Accordingly, the submission of learned counsel for the University has got no significance in the light of Annexure-A to the counter affidavit.

18. In view of the facts and circum stances particularly the fact that it was not a case of suppression of fact or misrepresentation by the petitioner, the competent authority had allowed the petitioner to retire with effect from 30.6.2001, vide Annexure-1 and no opportunity was given to the petitioner to explain regarding pro posed recovery, the court is of the opinion that recovery made by the University was wholly unauthorised and illegal.

19. Accordingly, the writ petition stands allowed with a direction to the University authority i.e. respondent nos. 1 & 2 to refund the deducted amount of Rs, 1,11,003/- with interest at the rate which is applicable on the saving bank account to the petitioner. The interest is to be counted from the date of deduction till the date of payment on the amount of Rs. 1,11,003/-. The respondent nos. 1 & 2 is directed to calculate the interest amount on the deducted amount and refund the deducted amount with interest to the petitioner within a period of two months from the date of receipt/production of a copy of this order. The writ petition stands allowed.