

(2016) 12 PAT CK 0038

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.17810 of 2016

Hareram Mukhiya

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Bihar Service Code, 1952 — Rule 73
Constitution of India, 1950 — Article 226

Citation : (2017) 1 BLJud 63 : (2017) 1 PLJR 192

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Satyendra Kumar Jha, Advocate, for the Accountant General; Mr. Rajendra Narayan, Sr. Advocate and Mr. Kaushal Kr. Singh with Mr. Niraj Kumar, Advocates, for the Respondent Nos. 2 and 3; Mr. Abhinav Shrivastava, Advocate, for the Petitioners; Mr. Himan

Final Decision : Allowed

Judgement

Mr. Ajay Kumar Tripathi, J.(Oral) - By virtue of Annexure- 7, dated 18.10.2016, petitioner was directed to deposit and refund a sum of Rs.7,39,000/-, by 27.10.2016. Petitioner wants quashing of this order as also yet another order, which has been passed subsequently on 27.10.2016, which is Annexure-8, annexed with I.A. No.9019 of 2016. The said I.A. is allowed. By virtue of Annexure-8, dated 27.10.2016, the earlier notification no.1967, dated 31.8.2014 and notification no.1966, dated 31.8.2015 has been modified or amended, which has the effect of restricting the period of extension of service of the petitioner from one year to three months.

2. The facts are that the petitioner was working as a Deputy Secretary in the Bihar Legislative Assembly. Due to paucity of hands, he was also made to officiate as a Joint Secretary and in absence of a Secretary in the Assembly, he was also made to officiate as the Secretary. Petitioner was to reach his age of superannuation on 31.8.2014. However, on a decision taken by the Speaker of

the Assembly, on a proposal initiated, in which the petitioner had a role to play, as is the allegation made by the respondents, extension of service of one year was granted. The relevant notifications in this regard are Annexure-1, dated 27.8.2014, Annexure-2, dated 31.8.2014 as well as Annexure-4, dated 31.8.2015 by virtue of which the petitioner was directed to superannuate after completion of one year. All these notifications are governmental notifications issued by the Bihar Legislative Assembly and these notifications are in public domain. Petitioner has derived benefit of pay and privileges going with said office and after he superannuates, on the basis of a so-called audit objection raised by the Accountant General (Audit) for the State of Bihar, Annexure- 7 came to be issued followed by Annexure-8.

3. Post superannuation of the petitioner, a controversy was raised that in terms of Rule 73 and the different government clarifications issued from time to time, a government employee is not required to be given extension of service for a year. The maximum period for which his services can be extended should not exceed three months, therefore, the money or salary drawn by the petitioner for rest of the nine months was an illegal withdrawal from the public exchequer and the same should be recovered from the petitioner.

4. Petitioner moved the High Court by filing the present writ application. Since the Court was not willing to grant any kind of interim order at the admission stage without completion of pleadings and hearing the other side, the petitioner decided to deposit the money but without prejudice.

5. Submission of the counsel for the petitioner is that the notifications, which have been issued from time to time, were outcome or culmination of conscious decision taken by various authorities, including the Speaker of the Legislative Assembly, with due knowledge of the Chief Minister of the State. There is nothing emerging from the records to show that any of the notifications issued and annexed with the writ application are an act of fraud or manipulation committed by the petitioner. However, the counsel for the petitioner does not seriously contest the insinuation that he may have facilitated things to move at a particular speed because his superannuation was looming on 31.8.2014.

6. Petitioner worked for a year, he was paid his salary and other emoluments and based on the notification for his extension of service for a period of one year, even his pay slip was issued by the Finance (PCFC) Department. A copy of the said pay slip is Annexure- 3, which clearly indicates that the petitioner would be entitled to the salary for the extended period of one year.

7. The first submission on behalf of the petitioner is that a unilateral decision has been taken by the respondent authorities without giving an opportunity of hearing, therefore, the decision suffers from vice of violation of principles of natural justice. The other objection is that the respondent authorities without really answering to the audit objection, by replying to the relevant paragraph of objection, decided to take the easy way out and make the petitioner victim by

ordering recovery of his salary even though he had worked for one full year to the satisfaction of one and all. If work has been taken from the petitioner then the petitioner cannot be expected to work as a begar, which is prohibited under Article 23 of the Constitution of India. Therefore, what he has earned by way of salary, he is entitled to retain it. The respondents cannot recover it after his superannuation.

8. The other aspect of the matter is that the decisions have been taken from the lowest to the highest but what is required to be seen is the essence of the final decision, which emerges from the notifications. Whatever is sought to be pointed out as infirmity and manipulation by the learned senior counsel representing the Bihar Legislative Assembly is of no avail because deliberations in the file are only a process of arriving at a final decision. The final opinion is reflected from the notification issued by the authorities and the contents thereof. If these notifications are authentic and since they have run through their period of operation the same cannot be undone now, retrospectively, as is sought to be done through Annexure-8.

9. Learned senior counsel representing the Bihar Legislative Assembly has vociferously defended the decision taken in Annexures 7 and 8. He is very persistent with the expression that the petitioner was a clever person. He has managed to speed up the file and even managed to get the relevant notifications issued at a speed, which is not generally seen in the State of Bihar. Therefore, the petitioner cannot be permitted to derive benefit to his own advantage in this manner. Such submissions are required to be dismissed since the notifications are issued by the competent authorities and not the petitioner.

10. The other question of law, which has been urged at the Bar, is that Rule 73 and the noting of the State of Bihar thereafter clearly indicates that no person can be given extension of service for a year after superannuation. The maximum extension he can earn because of exigency and in public interest is for a period of three months. The petitioner has been given the benefit for one year. Therefore, it violates Rule 73 of Bihar Service Code and the natural corollary is recovery because that is supported by the Audit objection of the Accountant General.

11. What is being referred to by the learned senior counsel for the Assembly are certain government decisions in relation to Rule 73. So far as Rule 73 is concerned it reads simply and nothing of the kind is reflected as to the stand of the respondents with regard to the extension. Rule 73 is reproduced herein below for ready reference :

"73. The date of compulsory retirement of a Government servant is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement with the sanction of the State Government on public grounds, which must be recorded in writing."

Reading of the above does not impose any kind of bar as to the time frame for

which a person can be retained in service after retirement. However, it seems that certain government decisions or administrative notifications have been annexed, which follows Rule 73 and 1967 memo is talked about which restricts extension for a period of three months.

12. The Court is amazed to note that the extension of one year given to the petitioner was given after due scrutiny and notings or objections given by certain authorities but it was finally approved at the level of the Speaker. Since the Speaker is the head of the Assembly, it is expected that he is supposed to know the law. The petitioner is not supposed to delve into the issue whether the decision so taken at the highest level by the authorities is supported by law or not. After the Government had given and even the Department of Finance issued pay slip to the petitioner for the period of his extension in terms of Annexure- 4 then it is evident that it has been done in furtherance to Annexure- 1, 2 and 3. Therefore, it is too late in the day to now go back and ask after superannuation of the petitioner that his extension for a year is bad in law and the extension for a maximum period of only three months can be granted and the State Government is willing to pay only for that period and not for the balance nine months..

13. While trying to meet the above submissions on behalf of learned senior counsel for the Assembly, counsel for the petitioner draws the attention to Rule 75 as well of the Bihar Service Code. His submission is that Rule 73 and Rule 75 has to be read in some kind of conjunction, otherwise both read independently have no meaning and if Rule 73 is strictly interpreted then Rule 75 becomes redundant. Rule 75 does talk in terms of extension for a period of a year.

14. The Court is not willing to go into all these nitty-gritty of arguments after the exercise of extension of service of the petitioner for a year is well past over. The Court must confine itself to the issue whether any notification for grant of extension of service of the petitioner for one year period was issued by the competent authority or whether there was any effort on the part of the respondent authorities to either annul, withdraw or cancel the said notification while the petitioner was on extension for a period of one year. It is easy to get wise after the event, but a good government and decision makers should be wise while the process of decision making is on. In retrospect petitioner cannot be picked up for victimization by trying to withdraw the benefit of his salary even though he has worked for the period under the respondents and that too right under the nose of the powers that be.

15. If this be so then the Court is not convinced with the so-called persuasive argument of learned senior counsel that the things were manipulated by the petitioner. If the petitioner manipulated the system, he knew very well how to do it. He was facilitated by one and all, therefore, the petitioner cannot be blamed for drawing salary for the period of his work.

16. Both Annexure-7, dated 18.10.2016 and Annexure-8, dated 27.10.2016 are

quashed. Writ application is allowed. The respondent authorities are directed to refund the deposit made by the petitioner against Annexure-7 within a period of four weeks.