

(2010) 05 PAT CK 0045
In the Patna High Court

Indrajeet Upadhyay

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0045

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. Satyendra Narayan Singh, learned Counsel appearing for the petitioner, Mr. J.P. Karn, learned Additional Advocate General No. 9 for the State and Mr. L.P. K. Rajgrihar for the Accountant General.

2. I.A. No. 521 of 2008 has been filed for amendment of the prayer made in the writ petition by incorporating the relief mentioned in paragraph-1 of the interlocutory application, whereby the petitioner has sought to challenge the orders as contained in Annexures-9, 11, 12, 13 and 15 cancelling the promotion(s) granted to the petitioner with retrospective effect followed by reversion to a lower scale and again followed by orders of recovery of the excess salary, so drawn by the petitioner. The petitioner has also questioned the authorization issued by the Accountant General on the basis of the aforementioned orders.

3. The interlocutory application is allowed in terms of the prayer made therein.

4. Brief fact of the matter is that the petitioner was appointed as a Concrete Inspector on 31.1.1967 in the Work Charge Establishment of the Department of Water Resources, Government of Bihar in the scale of Rs. 140-360/-. Vide letter No. 423 dated 18.3.1967 the post of Concrete Inspector was re-designed as Supervisor Grade-III in the pay scale of Rs. 150-200/- with effect from 31.1.1967. The petitioner was thereafter appointed as Supervisor Grade-II in the pay-scale of Rs. 160-400/- with effect from 13.3.1969 vide office order bearing memo No. 1092 dated 7.4.1976 issued under the signature of the Superintending Engineer, Sone Barrage Circle, Indrapuri (Annexure-1). The

petitioner was brought into the regular establishment of the Water Resources Department with effect from 1.4.1977 under the orders of the Department of Irrigation bearing No. 2595 dated 22.12.1980 communicated by the Executive Engineer vide letter No. 184 dated 4.3.1982. The petitioner was appointed as Supervisor Grade-I in the scale of Rs. 415-745/- under the order of the Chief Engineer, Irrigation Department, Indrapuri at Camp, Dehri contained in letter dated 30.9.1980. The petitioner was granted his first time bound promotion in the scale of Rs. 1600-2780 with effect from 30.9.1990 as communicated by the Superintending Engineer, Integrated (Samagra) Planning and Monitoring Circle, Indrapuri contained in letter No. 505 dated 23.3.1991. The petitioner finally superannuated while holding the post of Supervisor Grade-I with effect from 31.1.2000. Under the pay revision implemented in the State of Bihar under the resolution No. 660 dated 8.2.1999 revising the pay-scales on a notional basis with effect from 1.1.1996 and with actual payments from 1.4.1997, the scale of Supervisor Grade-I was revised to Rs. 5,000-8,000/-. After retirement the petitioner submitted his pension papers for payment of his post retiral and other dues in the light of the pay revision aforementioned.

5. The petitioner was sanctioned provisional pension vide letter No. 1390 dated 2.8.2000 (Annexure-3) to the extent of 90 % and similarly gratuity was also sanctioned to the said extent. It is submitted that even the unutilized leave was sanctioned at the scale admissible to Supervisor Grade-II i.e. Rs. 4,000-6000/- though the petitioner was entitled for fixation of his post retiral benefits as admissible to a Supervisor Grade-I on the scale of Rs. 5,000-8,000/-.

6. It is in these circumstances that the writ petitioner came before this Court seeking, inter alia, a direction for fixation of his final pension in the scale admissible to Supervisor Grade-I being the scale from which the petitioner superannuated. A further direction was sought regarding release of the full amount of gratuity, commutation of pension, unutilized leave salary together with interest.

7. It is admitted position that the petitioner was paid part payment of provisional gratuity and provisional pension. He was also paid the leave encashment amount and the group insurance amount but he was given only part payment of the G.P.F. amount.

8. The petitioner has brought the impugned orders on the record of the proceedings by way of rejoinder to the counter affidavit of the respondent Nos. 1 to 5. Annexure-9 is an order dated 9.9.2003 whereby the pay-scale of the petitioner has been re-fixed after his retirement at a scale of Rs. 4500-7000/- in place of Rs. 5000-8000/-. Annexure-11 is an order bearing memo No. 174 dated 15.01.2000, communicated vide letter No. 196 dated 24.2.2000, whereby the promotion of the petitioner granted vide memo No. 2005 dated 30.09.1980 (Annexure-10) to the post of Supervisor Grade-I was cancelled. Vide order passed on 9.9.2003 (Annexure-12) it was further ordered that the excess salary drawn by the petitioner would be recovered. Even the time bound promotion

granted to the petitioner with effect from 30.9.1990 was cancelled after 13 years, vide order dated 10.9.2003 as contained in Annexure-13 and the respondents directed for recovery upon re-fixation of his scale.

9. Learned Counsel submits that by reason of the impugned orders a sum of Rs. 1,91,646/- has been recovered from the retiral benefits of the petitioner. Following the developments aforesaid, an authorization was issued by the Accountant General authorizing the pension and gratuity of the petitioner at the lower scale.

10. Learned Counsel for the petitioner submits that the entire action has been taken by the authorities behind his back and that no show cause notice much less any regular proceeding was ever initiated by the respondent authorities. He submits that the orders recalling the promotions are in gross violation of the principles of natural justice. He submits that though the order as contained in Annexure-11 canceling the promotion to the Supervisor Grade-I after a lapse of almost 20 years is dated 15.1.2000 i.e. before the superannuation of the petitioner on 31.1.2000 but the same was issued on 24.2.2000 i.e. much after his superannuation. He submits that the action of the authorities and the order issued are without sanction of law and in the teeth of the judicial pronouncement besides being violative of the principles of natural justice. He submits that the petitioner having superannuated w.e.f. 31.1.2000, the respondent authorities could not have passed orders effecting his in service benefits relating to promotions and the consequential benefits flowing there from. He also submits that no order withdrawing his benefits could have been passed with retrospective effect. It is submitted that in any view of the matter the petitioner having superannuated before the orders could be issued, the only recourse available to the respondents was by drawing a regular proceeding under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as the Rule) and in no other manner. He thus submits that the respondents having failed to do so they are precluded from taking action in exercise of power and the order(s) impugned being the consequence of such arbitrary exercise of executive power, is unsustainable and are to be set aside. He further submits that in any view of the matter it was patently illegal on the part of the authorities for having recovered the amounts in question from the pension and pensionary entitlements of the petitioner and that also without drawing any proceedings as required under the rules.

11. The petitioner thus while assailing the legality of the order(s) impugned, also prays for restoration of his promotion(s) and his pay-scales and for re-fixation and re-calculation of his post retiral and other dues and payments thereof on the basis of the last salary drawn. He further submits that in absence of allegation or finding of any fraud or misrepresentation on the part of the petitioner in drawing the promotion(s) and the consequential benefits, the recovery is without sanction of law and the petitioner is entitled for refund of the amount recovered by the authorities.

12. Learned Counsel for the petitioner in support of his contentions relies upon

the following decisions:

I. 1992 BBCJ 265 (DB) (Bindeshwari Mishra and Ors. v. The Bihar State Road Transport Corporation and Ors.);

II. Koshi Project Workers' Association and Others Vs. The State of Bihar and Others,

III. 2006 (1) PLJR 323 (DB) (Most. Roopkali Kunwar v. State of Bihar and Ors.);

IV. 2010 (1) PLJR (Satyanarain Lal v. The Bihar State Electricity Board and Ors.).

13. Learned Counsel for the State has opposed the prayer made in the writ petition and has supported the impugned action taken by the authorities. With reference to the recommendation of the 4th Pay-Revision Committee which came into force with effect from 1.1.1981 and provided for time bound promotions, it is submitted that only two time bound promotions were permitted to an employee in his career. It is submitted that an employee became entitled to the first time bound promotion on completion of 10 years of service and the second on completion of 25 years but there had to be a difference of three years between the two promotions. It is stated that as the petitioner was admittedly appointed in Grade-III and was also granted promotion to Grade-II, hence the time bound promotions got exhausted and the petitioner was not entitled to any benefit to time bound promotions granted to him on 30.9.1990. Learned Counsel thus submits that there is no infirmity in the action of the authorities and they have only corrected the error which had inadvertently occurred in the orders granting benefits to the petitioner. He submits that the recovery was of the excess salary drawn by the petitioner to which he was not found entitled. Learned Counsel submits that the judicial pronouncement have also supported action of the authorities in undertaking measures for recovery of such amounts drawn by an employee while holding a post to which he was not legally entitled. It is thus contended that as the petitioner was found not to be entitled for promotion to the Supervisor Grade-I or for the time bound promotion, hence the post held by him cannot be termed lawful and thus the recovery undertaken by the Department was fully in accordance with law and supported by judicial pronouncement.

14. I have the rival contentions of the parties and perused the materials on record. Admittedly the entire exercise has been carried out by the authorities behind the back of the petitioner as there is nothing on record of the proceedings to demonstrate that any notice or opportunity of hearing was provided to the petitioner before the issuance of the impugned orders. It is also not the case of the respondents that any such proceedings was ever undertaken either under the Civil Services (Classification, Control and Appeal), Rules or under the Bihar Pension Rules. Though the order cancelling promotion of the petitioner to Supervisor Grade-I was passed while the petitioner was in service but the same was issued only after the superannuation of the petitioner on 31.1.2000. Thus no regular departmental proceedings was every initiated by the authorities during

service career of the petitioner for withdrawing the benefits to him nor any such proceedings has been initiated by the authorities since after his retirement. The respondent authorities have proceeded to undo a position dating back more than 20 years and the same has been done in complete violation of the rules as also in gross violation of natural justice.

15. Once the petitioner has superannuated, there is a cessation of a master and servant relationship and no action can be taken by the respondents under the Civil Services (C.C.A.) Rules. The respondents even though empowered to rectify any error after following the due process of law but the orders so passed would operate prospectively. They are neither equipped nor vested with any such powers enabling them to issue orders having a retrospective operation. Reference in this regard is made to case reported in R. Jeevaratnam Vs. The State of Madras, In addition thereto the failure on the part of the respondents to draw any kind of proceedings either under the Classification rules during the service of the petitioner or under the Bihar Pension Rules, 1950, after his superannuation, has rendered the entire action illegal and the order(s) passed unsustainable in law.

16. Having regard to the circumstances as noticed hereinabove, the action of the authorities is per se illegal and arbitrary and the orders impugned, issued in consequence thereof being manifestation of such actions, are unsustainable in law and thus are set aside. The petitioner is restored to his position on which he superannuated on 31.1.2000 holding the post of Supervisor Grade-I and the authorities are directed to recalculate, re-fix and process his papers sanctioning pension and other pensionary entitlements as also other dues on the basis of the last salary drawn by the petitioner on the date of his superannuation and make payment thereof together with arrears after seeking fresh authorization from the Accountant General who is also under an obligation to grant the same without causing any unwarranted delay.

17. The writ petition stands allowed but in the circumstances there shall be no order as to costs.