(2005) 08 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3526 of 2005

Justice Choudhary S.N. Mishra		APPELLANT
	Vs	
State of Jharkhand and Others		RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Bihar Consumer Protection Rules, 1987 — Rule 11, 6
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 10(3), 13(1), 13(4), 14(3), 15
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 17A

Citation : (2005) 4 JCR 25

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Sinha and P.N. Rai, for the Appellant; A.K. Sinha, A.G., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The only question which falls for consideration is whether the petitioner is entitled to the same privilege and perquisites which he was enjoying as a sitting Judge of the High Court particularly in the matter of reimbursement of medical bills.

2. The petitioner retried as a Judge of the Jharkhand High Court. After retirement the petitioner was appointed as the President, Jharkhand State Consumer Disputes Redressal Commission, pursuant to the notification dated 13.6.2001. In the first week of March, 2004, the petitioner became sick and got admitted in the Ranchi Nursing Home and thereafter he went to Kottakal (Kerala) for treatment which continued up to 28.6.2004. Serious cases of cervical disorder, arthoritis and bone related problems were treated at Kottakal (Kerala). The petitioner also underwent cervical surgery in All India Institute of Medical Science, New Delhi. Earlier a bill of Rs. 17,202.19 was submitted to the concerned Government Department, i.e. Department of Food, Civil Supply and Commerce, Government of Jharkhand, for reimbursement, but it was returned with a reply that there is

no provision in the Consumer Protection Rules, 1987 for entertaining the medical bills. Again medical bills along with detailed vouchers showing the expenditure to the tune of Rs. 2,48,663.70 incurred both at Kottakal (Kerala) and All India Institute of Medical Science, New Delhi, duly countersigned by the hospital authorities, were sent to the respondent-Health Department, but the Department sent the bills to the Personal Department on the ground that such matters are being dealt with by the said Department. The Personal Department, in their turn, sent back the bills to the Secretary, Food Department, on the ground that said Department is the appropriate authority. The Food, Supply and Commerce Department rejected the reimbursement of medical bills. The petitioner''s case is that he while being a Judge of the High Court was entitled to reimbursement of his medical expenditures besides other perquisites.

3. Respondent No. 2 Secretary, Department of Health and Family Planning, Government of Jharkhand, Ranchi filed affidavit wherein it is stated that petitioner should claim reimbursement of his medical bills according to Jharkhand High Court Judges'' (Medical Facilities) Reimbursement, Rules, 2004. It is contended that instead of the State of Jharkhand, the Registrar General of Jharkhand High Court is the competent authority to look into the matter and reimburse the medical bills of the petitioner.

4. Annexure 1 is the notification dated 13.6.2001 by which the petitioner was appointed as the President, State Consumer Disputes Redressal Commission, Jharkhand. There is nothing in the notification relating to the conditions of service. It was virtually a re-employment unconditionally.

5. Section 16 of the Consumer Protection Act, 1986 lays down the provision for composition of State Commission and Section 20 lays down the provisions relating to the composition of National Commission.

6. The Act provides that each State Commission shall consist of a person who is or has been a Judge of a High Court, appointed by the State Government, as President of the State Commission. There shall be other members of the Commission. Similarly, u/s 20, a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government as President of the National Commission.

7. Section 30 of the Act empowers the Central Government and the State Government to make rules for carrying out the provisions contained in the Act. Section 30 reads as under :-

Section 30(1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (b) of the Sub-section (2) of Section 4, Sub-section (2) of Section 5, clause (vi) of Sub-section (4) of Section 13, Section 19, Sub-section (2) of Section 20 and Section 22 of this Act.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in Sub-section (3) of Section 10, clause (c) of Sub-section

(1) of Section 13, Sub-section (3) of Section 14, Section 15 and Sub-section (2) of Section 16.

8. In exercise of power under Sub-section (1) of Section 30, the Central Government made rules called Consumer Protection Rules, 1987. Rule 11 is worth to be quoted herein below :-

11. Salaries, honorarium and other allowance of the President and Members of the National Commission.-(1) The President of the National Commission shall be entitled to salary, allowances and other perquisites as are available to a sitting Judge of the Supreme Court and other members, if sitting on whole-time basis, shall receive a consolidated honorarium of ten thousand rupees per month or if sitting on part-time basis, a consolidated honorarium of five hundred rupees per day of sitting.

(2) The President and the members shall be entitled to travelling and daily allowances on official tours at the same rates as are admissible to Group ''A'' Officers of the Central Government.

(2A) The President and the members of the National Commission shall be entitled to conveyance allowance of one hundred fifty rupees per day of its sitting or a sum of one thousand and five hundred rupees per month, as may be opted by them.

(3) The honorarium or the salary, as the case may be, and other allowances shall be defrayed out of the Consolidated Fund of India.

9. Rule 6 of the Bihar Consumer Protection Rules, 1987 provides that the President of the State Commission shall receive the salary of a Judge of the High Court if appointed on the whole-time basis or, a consolidated honorarium of Rs. 200/-per day for the sitting if appointed on parttime basis.

10. The only stand of the respondent is that petitioner should claim reimbursement of his medical bills according to the Jharkhand High Court Judges'' (Medical Facilities) Reimbursement Rules, 2004. It may be noted here that the aforesaid Rules, 2004 came into force with effect from 1st September, 2004 and therefore, question of reimbursement of bills in question through High Court does not arise. As noticed above, by virtue of notification dated 13.6.2001 petitioner was appointed as President, State Consumer Disputes Redressal Commission, Jharkhand and there is nothing in the notification regarding condition of services. It is virtually a re-employment unconditionally.

11. In the case of Bhubneshwar Dhari Singh v. State of Bihar and Anr. 1986 PLJR 1, a Division Bench of the Patna High Court considered a question whether an unconditional re-employment necessarily implies an identity of emoluments with the former employment. In that case Bhubneshwar Dhari Singh, petitioner, retired as a Patna High Court Judge and after his retirement, he was unconditionally re-appointed as a President, Industrial Tribunal, Patna. The dispute arose with regard to the payment of allowances and other perquisites.

Answering the question in affirmative, the Division Bench held that unconditional reemployment necessarily implies an identity of emolument with the former re-employment.

12. In the case of Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, , the petitioner, a sitting Judge of the Patna High Court, became the Chairman of the Andhra Pradesh Administrative Tribunal at Hyderabad. After attaining the age of 62 years, he ceased to been a Judge of the High Court, but continued to be the Chairman of the said Tribunal. However, on the ground of health he resigned. The dispute arose with regard to payment of gratuity. The Supreme Court observed :-

4. At the hearing Mr. Sen appearing for the respondents has not been able to lay his hands on any statutory provision which would authorize such a deduction as pointed out earlier. The gratuity is payable u/s 17-A of the High Court Judges (Conditions of Service) Act, 1954, as amended by the Act No. 35 of 1976. It is conceded by Mr. Sen that in case the petitioner was not re-employed after 1-2-80, when he retired as a Judge, no recovery was to be made from his pension. The petitioner continued to be Chairman of the Tribunal till he retired on the basis of re-employment and re-employment was covered by the terms indicated in Annexure B which we have extracted above. It is conceded by Mr. Sen that the re-employment was contractual and the terms of the contract indicated that the petitioner was entitled to a salary not exceeding Rs. 3,500/-. The petitioner has not claimed anything beyond Rs. 3,500/- including the pension and according to him after deducting the pension of Rs. 1,067/- per month he is entitled to the balance sum of Rs. 2.433/- and out of that the sum of Rs. 170/- as pension equivalent of gratuity is not deductible every month. Mr. Sen drew inspiration for the action taken in recovering Rs. 170/- per month by laying his hands on the provisions contained in Clause 9(l)(c) of Part D of Schedule II of the Constitution. That provision relates to the Judges of the Supreme Court and the particular provision indicates that if a Judge of the Supreme Court has been a Judge of the High Court previously and before appointment as a Judge of the Supreme Court if he had received a retirement gratuity in respect of previous service, his salary has to be reduced by the pension equivalent of gratuity. This is absolutely on the basis that the retirement has come to an end when the Judge of the High Court has become a Judge of the Supreme Court. The provision therein or the principle underlying the provision can have not application to a case of this type where the Judge has retired and he undertakes a different service on the contractual basis.

5. We are satisfied that there is absolutely no justification for directing recovery of the pension equivalent of gratuity at the rate of Rs. 170/- per month. In fact, this amount appears to have been arbitrarily fixed. If the Judge had to be subjected to such a deduction, the entire gratuity was to be taken into account and it could not be confined to the sum paid to him as gratuity after deduction or adjustment. There could be a case whether the entire gratuity had been adjusted

against existing dues to be recovered and, therefore, nothing was paid in cash at the time of retirement. In such a case there would be no scope to demand any adjustment by way of pension equivalent of gratuity accepting the manner in which it has been done here. The method adopted will have the effect of serving the Judge if the amount of gratuity to which he is lawfully and legitimately entitled.

13. In the case of Sunil Kumar Choudhari v. State of Bihar and Ors. 1989 PLJR 603, the petitioner who was a retired Judge of the High Court and re-appointed as Chairman, Bihar State Administrative Tribunal, had moved the High Court under Articles 226 and 227 of the Constitution of India for payment of car allowance and house rent allowance, etc. and also for direction to the State Government to extend leave travel concession facility to him and restraining them from deducting from his salary pay equivalent to gratuity. The Division Bench of the High Court observed :-

10. A sum of Rs. 582.87 per month has been deducted from the salary of the petitioner. Learned Standing Counsel had difficulty in supporting this part of the stipulation in Annexure 2. Learned Standing Counsel did make an effort to support it, but he had no answer in the face of the decision of the Supreme Court in the case of Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, in which it was laid down authoritatively that such deduction is not permissible when a High Court Judge superannuates and is employed as Chairman of any Tribunal. In my view, this stipulation was clearly erroneous, may illegal. In my view, the stipulation in Annexure 2 in regard to P.E.G. was clearly illegal. There was no justification for such a stipulation and for deducting Rs. 582.87 per month from the salary of the petitioner. That stipulation in Annexure 2 is thus struck down as it does not have the sanction of any law. I regret the attitude of the State Government in directing that condition in regard to P.E.G. even after the authoritative pronouncement of the Supreme Court. The pronouncement of the Supreme Court is the law of the land. The attitude of the State Government and that of Mr. S. Mazumdar, Additional Secretary Department of Personnel and Administrative Reforms verges on contempt of the Supreme Court. I, therefore, hereby declare that there was no occasion for deducting Rs. 582.87 per month from the salary of the petitioner and I, therefore, direct that the State Government will refund all sums deducted from the salary of the petitioner at the rate of Rs. 582.87 per month towards P.E.G. with interest. The State Government will refrain from making any further deduction of P.E.G. from the salary of the petitioner.

14. Section 3(f) of the Jharkhand High Court Judges'' (Medical Facilities) Reimbursement, Rules, 2004 defines the word "Judge" which means Judge of the Jharkhand High Court and includes its Chief Justice. It also includes Judge who has retired from the Patna High Court on or before the Fourteenth day of November, Year Two Thousand and who is residing in the State of Jharkhand. Admittedly, petitioner was a sitting Judge of the Jharkhand High Court and

retired from this Court in 2001. It was only after his retirement from this Court, he was re-appointed as the President, State Consumer Disputes Redressal Commission, Jharkhand without stipulating any fresh condition of service. In my opinion, therefore, so long as the petitioner continued to be the President of the State Commission, he shall be entitled to get reimbursement of his medical bills from the State Government. The day when petitioner ceases to be the President of the State Commission, he shall be entitled to get all the medical facilities as the retired Judge of this Court under the provisions of the above referred Rules of 2004. Curiously enough, respondents in their counter affidavit have not denied or disputed the entitlement of the petitioner to get reimbursement of his medical bills. The only stand taken by the respondents is that the medical expenses are to be reimbursed by the Jharkhand High Court under the said Rules. The attitude of the officers of the State Government in treating the High Court Judges in this manner cannot and shall not be appreciated.

15. In the facts of the case, I allow this writ application and issue direction to the concerned respondent to immediately and forthwith reimburse the entire medical expenses incurred by the petitioner and release the amount latest by 31st August, 2005.