

(2003) 04 PAT CK 0068
In the Patna High Court
Case No : C.W.J.C. No. 1642 of 2003

Justice Devendra Prasad Singh Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Citation : (2003) 2 BLJR 880 : (2003) 2 PLJR 476

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Harendra Prasad Singh, ASCCG, Vinod Kumar Kanth, Pushkar Narain Shahi, Ram Vinay Sharma and Ritesh Kumar No. 1, for the Appellant; K.P. Yadav, SC 5, for the Respondent

Final Decision : Allowed

Judgement

Narayan, Roy, J.—Heard Counsel for the parties.

2. The writ petitioner, retired High Court Judge, and, at present, functioning as President of the Bihar State Consumer Disputes Redressal Commission, Patna (hereinafter to be referred to as "Commission") has approached this Court for issuance of direction upon the respondents to maintain parity in payment of salary, clearness allowance, house rent allowance, sumptuary, allowance and other perquisites like LTC, medical facility, etc. to him, as is paid to a sitting Judge of a High Court and as was being paid to the petitioner as Judge of Patna High Court minus pension from the date of his appointment as President of the Commission.

3. The petitioner retired as Judge of Patna High Court on 28-3-2002 and thereafter he was appointed as a President of the Commission vide notification, as contained in memo No. 1738 date 18-4-2002, issued under the signature of respondent No. 4. At the time of his retirement, the petitioner was receiving substantive pay of Rs. 26,000 plus dearness allowance thereon, house rent allowance of Rs. 10,000, sumptuary allowance of Rs. 2000 and special pay of Rs.

180, which would be evident from his pay slip, issued by the Accountant General, Bihar, as contained in Annexure-2. However, after his appointment as President of the Commission a pay slip of reduced amount of allowance was issued to him, as contained in Annexure-3, whereby and whereunder his house rent allowance has been reduced to Rs. 3900 as against Rs. 10,000 and sumptuary allowance of Rs. 2000 has not been mentioned in the pay slip.

4. Mr. Vinod Kumar Kanth, learned Counsel appearing on behalf of the petitioner, submitted that the petitioner since is a retired High Court Judge, he is entitled to get his pay and other allowances, which were being paid to him as a Judge of Patna High Court minus the amount of pension from the date of his appointment as President of the Commission, but, on the contrary, a reduced pay slip in allowances has been issued by the Accountant General contrary to the terms and conditions of his appointment as President of the Commission, as contained in Annexure-1. Mr. Kanth points out from annexure, the notification, issued by the State Government appointing the petitioner as President of the Commission specifically mentioning therein that the petitioner will get his salary and allowances as were last paid to him at the time of his retirement as a High Court Judge minus the amount of pension, and, therefore, the pay slip reducing his allowances is highly unreasonable, arbitrary and discriminatory. Learned Counsel appearing on behalf of the petitioner has also drawn my attention to the pay slips issued to some of the retired High Court Judges functioning as Chairman, Bihar State Law Commission, and Chairman of Siwan Pratapur Inquiry Commission, as contained in Annexures-4 and 5, showing that Justice Om Prakash and Justice Vidyanand, similarly situated to the petitioner, are getting the allowances in full, as were being paid to them before their retirement as High Court Judges. Learned Counsel, therefore, submitted that at the face of the pay slips, issued to Justice Om Prakash and Justice Vidyanand, as referred to above, the pay slip, as contained in Annexure-3, issued in the name of the petitioner is discriminatory, arbitrary and not sustainable in law.

5. Besides these submissions, Mr. Kanth, learned Counsel, states that in the similarly situated circumstance, a Bench of this Court in C.W.J.C. No. 5040 of 1989 (Prem Shankar Sahay v. The State of Bihar and Anr.) held that the petitioner being a retired High Court Judge would be entitled to get all the admissible allowances besides salary and dearness allowance, as were being paid to him as a High Court Judge. The decision rendered by this Court in Prem Shankar Sahay (supra) has brought on record as Annexure-7.

6. Two sets of counter-affidavits have been filed-one on behalf of the State of Bihar and the other on behalf of the Accountant General, Bihar and Jharkhand, respondent Nos. 5 and 6.

7. In the counter-affidavit filed on behalf of the State, it is stated that the petitioner has been appointed as President of the Commission under the Bihar State Consumer Protection Rules 1987 (hereinafter to be referred to as "Rules") and there is no provision of allowances except T.A. and other allowances, as

prayed for by the petitioner, were never asked for by his predecessor, and, therefore, on demand being made by the petitioner opinion of the Government of India and National Commission has been called for, which is awaited.

8. In the counter-affidavit filed on behalf of respondent Nos. 5 and 6, it is stated that the salary and other allowances of the petitioner would be governed under the provisions of Section 16(2) of the Consumer Protection Act, 1986 (hereinafter, to be referred to as "Act") and he would be entitled to pay and allowances equivalent to the same, which were paid to his predecessor, Justice Shri Aditya Narayan Chaturvedi and Justice Shri Bimalendu Narain Sinha.

9. Learned Counsel appearing on behalf of the Accountant General with reference to his counter-affidavit submitted that pay slip has been issued to the petitioner as per the pay chart prepared by the State of Bihar, whereas learned Counsel appearing on behalf of the State of Bihar submitted that necessary payment of allowance is being paid to the petitioner as per the Rules.

10. Annexure-1 is the notification appointing the petitioner as President of the Commission. It is manifest from Annexure-1 that the petitioner was made entitled to get his salary and allowances last drawn by him as a High Court Judge minus the amount of pension payable to him. By necessary implication, it means that the allowances, which were being paid to the petitioner as a High Court Judge would not be reduced and he would be entitled to get all admissible allowances, as were paid to him as a High Court Judge.

11. From Annexures-4 and 5, the pay slips, issued to Justice Om Prakash and Justice Vidyanand, retired High Court Judges of Patna High Court, who are holding the posts of Chairmen of the Bihar State Law Commission and Siwan Pratapur Inquiry Commission, respectively, it would appear that all admissible allowances are being paid to them, which were being paid to them as High Court Judges. The petitioner appears to be similarly situated to Justice Om Prakash and Justice Vidyanand, and, therefore, he should be treated equally with them as two equals cannot be treated unequally and in this view of the matter, the pay slip, issued to the petitioner reducing his allowances must be held to be unreasonable, and discriminatory.

12. From Annexure-7, the order passed by a Bench of this Court, in case of Prem Shankar Sahay (*supra*), it appears that this Court had held that the writ petitioner would be entitled to get all the admissible allowances besides salary and dearness allowance, as were being paid to him as a High Court Judge.

13. Noticing the facts, as enumerated above, I am of the view that a retired High Court Judge, if appointed to head of a Commission or as a member of a Commission would be entitled to all admissible allowances payable to a High Court Judge besides his salary and dearness allowance and a pay slip would be required to be issued in consonance with the last pay slip, issued to a High Court Judge. I am further of the view that the petitioner, who is a retired Judge of the High Court, was required to be treated at par with two other Judges of this

Court, namely, Justice Om Prakash and Justice Vidyanand, who are holding the posts of Chairmen of different Commissions, referred to above, and merely because the predecessor of the petitioner had not claimed of the admissible allowances payable to them as High Court Judges, it will not operate as estoppel for payment of admissible allowances and other perquisites to the petitioner, as were being paid to him as a High Court Judge. The law is now well settled that where a retired High Court Judge is employed without setting out conditions of employment, the Judge would be entitled to same emoluments (salary, dearness allowance etc.), as was being paid to him at the time of his retirement.

14. In this connection, reference may be made to the cases of Mr. S.D. Singh, J. (1986 PLJR, 1), U.C. Sharma, J. 1988 PLJR, 168 and Mr. S.K. Choudhuri 1989 (1) BLJR 414. Since the law on the question has been set at rest, as referred to above, the State Government was not expected to discriminate the case of the petitioner arbitrarily and unreasonably.

15. A similar question had fallen for consideration before a Bench of the High Court of Himachal Pradesh in case of Justice P.N. Nag v. State of Himachal Pradesh (2003) 1 CLDR 7 (HP) wherein Justice P.N. Nag was discriminated in payment of the admissible allowances payable to a High Court and a Bench of the Himachal Pradesh High Court held that the discrimination/classification made in case of the petitioner was neither reasonable nor rational and such action was in violation of Article 14 of the Constitution. It further held that where once the State decided to grant benefit of revised scale to some of the Judges, who were re-employed, then there could be no rationale to deny such benefits to similarly placed re-employed Judge.

16. In the case at hand, the petitioner under the notification of appointment, as contained in Annexure-1, was made entitled to salary, allowances and other perquisites, which were available to him as a Judge of the High Court immediately before his retirement minus the amount of pension de hors the provisions of the Rules, and, therefore, he was entitled to the admissible allowances, which were paid to him just before his retirement as a High Court Judge.

17. Having heard Counsel for the parties at length and considering the rival contentions of the parties and in view of the legal propositions, noticed above, I am of the opinion that the action of the State Government in denying the admissible allowances and perquisites to the petitioner is wholly arbitrary, unreasonable and discriminatory and the same is also hit by the principles of the Promissory Estoppel.

18. In the result, this application is allowed and the respondents are directed to pay the allowances to the petitioner including house rent allowance, sumptuary allowance and other perquisites like LTC, medical re-imbursement facility etc. besides his salary and dearness allowance with effect from the date the petitioner assumed charge of the office, as were being paid to the petitioner as a

Judge of Patna High Court just before his retirement minus the amount of pension from the date of his appointment as President of the Commission. They are further directed to issue the pay slip accordingly forthwith.