(1990) 03 PAT CK 0019

In the Patna High Court

Case No : C.W.J.C. No. 7494 of 1989

Justice Vishwanath Mishra APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 38 BLJR 665 : (1991) 1 LLJ 27 : (1990) 2 PLJR 241

Hon'ble Judges : U.P. Singh, J;S.B. Sanyal, J

Bench : Division Bench

Advocate : Sadanand Jha and Harish Chandra Mishra, for the Appellant; S.N. Jha No. 1, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—It is indeed sad and sordid that another retired Judge of this Court has to knock the door of the High Court because of the failure of the State Government to abide by the law laid down by the Supreme Court in the case of another retired Judge of this Court, namely, Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, . The view of the Supreme Court and its defiance by the State has been strongly condemned as has rightly been pointed out in the case of Sunil Kumar Choudhari v. State of Bihar 1989 PLJR 603, stating that it "verges on contempt of the Supreme Court"

2. The petitioner on his retirement as a Judge of the High Court, Patna, was appointed Director of the Judicial Hindi Training Institute, Patna, on a salary of Rs. 3,500 less the amount of pension, and the petitioner was made entitled to all the benefits which he enjoyed as a High Court Judge. His pension was fixed at Rs. 1,300 per month and the death-cum-retirement gratuity was fixed at Rs. 30000. Instead of deducting the pension thus fixed, namely Rs. 1,300 per month, the Accountant General fixed a sum of Rs. 273.22 per month as pension equivalent of gratuity, also to be deducted from the salary payable to the Judge. In short, a sum of Rs. 1573.22 was deducted every month from the salary fixed,

i.e. Rs. 3,500 throughout the petitioner''s tenure as Director of the Institute. The petitioner was paid his salary up to 30th November, 1985 by deducting from the salary the admissible pension and a sum of Rs. 273.22 as pension equivalent of gratuity.

3. The deduction of pension equivalent of gratuity is assailed in this writ petition by the petitioner. There is also a demand for salary for the period 1st December, 1985 to 12th December, 1985 on the ground that the petitioner actually handed over charge and demitted the office on the said date. For these twelve days, he also acted as Director actually and factually.

4. As tar as the deduction of pension equivalent of gratuity is concerned, there appears to be no law to do so. The only provision in the Constitution is contained in Clause 9(1)(c) of Part D of Schedule II. The said provision relates to a Supreme Court Judge who on his retirement as a High Court Judge has been elevated to the Supreme Court. In short, it envisages that if a Supreme Court Judge had received retirement gratuity in report of his service as a High Court Judge, his salary on his elevation as a Judge of the Supreme Court has to be reduced by the pension equivalent of gratuity on the principle that his retirement came to an end when he became a Judge of the Supreme Court. This provision, however, does not apply when a Judge on his retirement undertakes a different service on contractual basis. See the decisions in the cases of Shiveshwar Prasad Sinha and Sunil Kumar Choudauri (supra). In the State of Gujarat, as it transpires from the judgment in the case of Aniruddha A. Dave Vs. State of Gujarat and Another, retired High Court Judges of the Gujarat High Court who accepted similar assignments on their retirement, were also put to unnecessary hardship, harassment and expenses. In that case, the contract of service provided that the salary receivable per month by the Hon''ble Judge on his appointment would be less by pension admissible to him and also minus pension equivalent of gratuity. It was held that the deduction of pension equivalent of gratuity is wholly unauthorised and should be refunded with interest. In was also observed that two other retired Judges of the said High Court who, on retirement, accepted similar assignments and from whose salary pension equivalent of gratuity had been deducted, would also be refunded to them so that they may not have to approach a Court of law for the same relief.

5. We are in complete agreement with the decision referred to above. It is unfortunate that even though the law in relation to the dispute has been settled as far back as 1985, the State Government did not abide by the judgment of the Supreme Court and allowed the matter to drag for five years. We, therefore, direct the State Government to refund the entire amount deducted by way of pension equivalent of gratuity. The petitioner shall be entitled to simple interest at the rate of 12 per cent from 16th September, 1985, the day when the Supreme Court judgment was pronounced in the case of Shiveshwar Prasad Sinha (supra) till the amount is actually paid to the petitioner, but not later than three months from the date of receipt of the writ from this Court. The interest

will be payable on the deducted sum.

6. The Court ordains that in future the State Government should refrain from deducting pension equivalent of gratuity from the salary of retired High Court Judges, who are given other assignments by the State Government.

7. As far as the payment of salary for twelve days, we are satisfied that the petitioner continued to work as Director of the Institute for the period 1st December, 1985 to 12th December, 1985. The petitioner is entitled to the said sum because he actually worked for that period. It was only on 11th December, 1985 that the petitioner received letter dated 10th December, 1985 that the Government had extended the period of his appointment till 30th November, 1985 only. Prior to 11th December, 1985, the petitioner had no information about the fact of his handing over charge. Pursuant to the said letter dated 10th December, 1985, the petitioner had handed over charge of his post in the afternoon of 12th November, 1985 after completing necessary formalities and submission of his charge report to respondent No. 4 for giving necessary information to the State Government. We, therefore, hold that the Stale Government was responsible for their action, resulting in petitioner''s continuance in service from 1st December, 1985 to 12th December, 1985 and he is, therefore, entitled to the salary for the said period. The salary of the petitioner for the said period should also be paid within three months from the date of receipt of the writ from this Curt by the respondents.

8. In the result, this writ petition is allowed with the direction and observation aforesaid with costs. Hearing fee is assessed at Rs. 1600.

9. The Registrar of this Court is directed to forward a copy of this Judgment to the Chief Secretary, Government of Bihar, so that the Chief Secretary may take necessary action in the matter. The Chief Secretary shall also issue necessary instructions to all concerned in the light of the observations made in this Judgment.

UP. Singh, J.

10. I agree.

