(1991) 01 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7170 of 1989

Kamal Narayan Choudhary APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 03-01-1991

Acts Referred:

Citation : (1991) 01 PAT CK 0030

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the Petitioner for issuance of a writ of mandamus commanding upon the Respondents to pay him the post retirement benefit with reasonable rate of interest and also award him cost for harassment and losses caused to him.

2. The Petitioner joined the State Police service as a constable on 1.5.1950 and retired, from the service as Sub Inspector of Police in 1.10.1987 on attaining his age of superannuation. Admittedly, his post retirement benefits were detained by the office of the Accountant General, Bihar. The sole ground disclosed by the Respondents in the counter affidavit for not favouring the Petitioner with the post retirement benefits is that since he had not passed Hindi Noting and Drafting Examination as required under the provisions of the Bihar Government Servants (Hindi Examination) Rules, 1968 (hereinafter referred to as the ''Rules''), therefore, he was not entitled to any increments which have been wrongly given to him by the Department concerned. On the other hand, the assertion pf the Petitioner is that the Superintendent of Police under whom the Petitioner was posted had exempted him from the said examination but according to the Respondents this exemption is of no consequence because the Superintendent of Police bad no authority to grant any such exemption.

3. In this case, it has been admitted even by the Respondents that the Superintendent of Police under whose charge the Petitioner was posted had exempted the Petitioner from appearing at the examination in question. This exemption was accorded pursuant to a Government circular (Annexure 1) which,

inter alia, provided that the Government servants, who have crossed the age of 50 years can be exempted for appearing at the Hindi Examination on compassionate ground. Subsequent to grant of this exemption all the due increments were given to the Petitioner. After successfully completing his period of service, the Petitioner superannuated on 1.10.1987. It was never pointed out to the Petitioner while he was in service that the aforesaid exemption granted to him by the Superintendent of Police was without any authority and therefore, he will not be entitled to the increments. All these being said after his superannuation when now it is not possible for him to remedy the objection by appearing at the examination. The mistake, if any, is obviously of a higher government servant granting the exemption, and not of the Petitioner. The Petitioner had rightly entertained the belief that the exemption had been granted by the competent authority. It is unjust that for the mistakes committed by the higher officers of the Government the junior officers like the Petitioner should be harassed and penalised after the retirement from service. In any view of the matter, under the facts find the circumstances of the case, it should be deemed that the Petitioner was granted necessary exemption from appearing at the examination.

4. Moreover, the Petitioner was in police service since 1950 and he discharged his duty faithfully without any blemish in his career. In this view of the matter, in all fairness the Government, who admittedly had the authority to grant exemption ought to have come out with a more reasonable approach and granted the necessary exemption. Surprisingly even after filing of the present writ application and in spite of the recommendations of all high officials in the Police Department, the Government has opted not to exempt. I have failed to appreciate the reasonableness of this approach.

5. In the case of The State of Punjab and Another Vs. Shamlal Murari and Another, , it has been held by the Supreme Court that-

We are not impressed with the State''s contention that the failure to pass the departmental test by the Government servant concerned, after having put in more than two decades of service cannot stand in the way of his enjoying the benefits of increment etc., particularly because he had been accorded exemption. Passing petty tests after a petrifying length of dull official service is an odd insistence except in important levels of work.

6. Under the facts and the circumstances of the case, I hold that the Petitioner has been illegally and arbitrarily refused the post retirement benefits. It is accordingly directed that the Petitioner should be paid all the post retirement benefits to which he is entitled pursuant to his service as if he was duly exempted by the appropriate authority from appearing and passing at the Hindi Examination in question with interest at the rate of 12% per annum. Under the facts and the circumstances of the case, I award a cost of Rs. 2,000/- to be paid to the Petitioner. Out of aforesaid cost, Rs. 1,000/- should be paid by Respondent No. 2, the Secretary, Home Department, Government of Bihar and Rs. 1,000/-

should be paid by the Accountant-General, Bihar, Respondent No. 4. All the payments should be made within two months from the date of receipt of this order. This writ application is accordingly allowed.