(1989) 10 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1022 of 1988 (R)

Kameshwar Prasad Shrivastava APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Citation : (1990) 2 PLJR 742

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

Bench : Division Bench

Advocate : P.K. Prasad, for the Appellant; Debi Prasad, Suresh Prasad and K.P. Mitra, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—The short question, which arises for consideration in this case, is as to whether the petitioner, who had earlier been an employee of the State of Bihar and whose services were later transferred to and was absorbed by respondent No. 3 is entitled to the pensionary benefit or not. Before proceeding further it may be noted that the petitioner in the original writ proceeded on the basis that he, in view of his conditions of his services, is entitled to the pensionary benefits.

2. After a counter affidavit was filed on behalf of the M/s Central Coalfields Ltd. wherein it was stated that the petitioner having been permanently absorbed in the M/s Central Coalfields Ltd., his terms and conditions of services are governed by N.C.D.C. Rules and not by other Rules whereby and where-under he is not entitled to any pensionary benefit, the petitioner filed an application for amendment of writ petition inter alia praying therein in the alternative that, if it be found that he was not entitled to the pensionary benefit, he be given the benefits of Provident Fund in accordance with the N.C.D.C. Rules.

3. By an order dated 25.8.89, the said application for amendment was allowed. The basic facts of the this case are not in dispute. The petitioner was appointed

as a Typist in the State of Bihar in its Appointment Department on 1.7.1948. On 12.9.1956 the petitioner was released by the State Government his posting on deputation as a Lower Division Clerk/ Typist in the Office of Coal Production and Development Commissioner, Ministry of Production, Government of India. On 17.9.1956 the petitioner joined the aforementioned C.P.D.C. department.

4. It is admitted that in the State of Bihar as also in some other States various Collieries and Coal Mines belonged to Union of India which were known as State Collieries.

5. On or about 1.10.56 the Central Government formed and incorporated a company in the name of National Coal Development Corporation Ltd. The right, title and interest of the aforesaid Collieries were also transferred to the aforesaid N.C.D.C. Ltd. Upon taking over of the aforesaid Collieries, the services of such staff who were either appointed by she said State Collieries or had been working on deputation from the Central Government or the State Government were also transferred to the aforementioned N.C.D.C. Ltd.

6. It is further admitted that an option was given to such employees as to whether they intend to terminate the lien with their respective parent departments and be permanently absorbed in the services of the said M/s. N.C.D.C. Ltd. or not. It appears from various correspondences, as contained in Annexures 9, 10, 11, 13, 16, 18, 20 and 22 to the writ petition that the petitioner opted for being absorbed in the service of the said M/s. N.C.D.C. Ltd.

7. According to the respondents by an order, as contained in a letter dated 27.8.63 the petitioner was permanently absorbed as an Upper Division Clerk with effect from 10.3.1960 from which date allegedly he was found eligible to be confirmed in service. This letter dated 27.8.63 is contained in Annexure 18 to the writ petition. However, from an earlier letter dated 6.7.1963, as contained in Annexure 17 to the writ application, it appears that the State of Bihar in reply to the Corporation''s letter dated 26.11.1962 stated that if the petitioner is absorbed against a permanent post in the Corporation, his lien will automatically cease.

8. From the facts aforesaid as also from the counter affidavit filed on behalf of respondents No. 3 & 4, there is no doubt that the petitioner was permanently absorbed in the service of the M/s. N.C.D.C. Ltd. with effect from 10.3.60.

9. The said respondent in the counter affidavit, however stated that in this view of the matter the services of the petitioner were governed by the terms and conditions as laid down in the N.C.D.C. Rules and in this view of the matter the petitioner is not entitled to any pension.

10. With regard to the provident fund, it is admitted that in the month of August, 1960 the petitioner was allotted a Provident fund number being C.P.F. No. D/ B/137 which is evident from Annexures 5 and 6 to the writ application. It further appears that his Provident Fund contribution for one month was deducted but

later on no such deduction was made. According to the respondents as the petitioner did not file the requisite application for becoming a member of the staff of Provident Fund, of N.C.D.C. by giving unqualified and irrevocable option by foregoing his retiral benefits and pension under Civil or Railway Rules, as the case may be, he was also not entitled to the provident fund, as no contribution towards provident fund was deducted from his salary except for one month.

11. Although many allegations and counter allegations have been made by the parties at the time of argument, the learned counsel appearing on behalf of the petitioner submitted that, even if, it be accepted that the petitioner was permanently absorbed in the service of N.C.D.C. Ltd., he will still be entitled to pension in view of the terms and conditions of the service, as contained in Annexure 29 to the writ application.

12. It has not been disputed before us by Mr. Debi Prasad the learned counsel appearing on behalf of the respondent Corporation that Annexure 29 will govern the case of the petitioner.

13. The statement made in para 35 of the writ application discloses that a circular dated 19.2.72 was issued under the signature of Chief Personnel Officer, N.C.D.C. Ltd., Ranchi indicating to all concerned that all the circulars issued by the Government of India will be applicable in respect of the employees whose services were taken over by the Company and who were earlier governed by the Civil Service Rules or Railway Rules. The said circular is annexure to the writ application.

14. Annexure 29 appended to the writ application embodies terms and conditions of service, as framed by N.C.D.C. Ltd. the said terms and conditions of service referred to the staff who were appointed or recruited in different periods. Previously the terms and conditions of services of the staff recruited on or after 1956 were to be governed by the Rules of Corporation. However, it appears that the Board of Directors of the aforesaid N.C.D.C. Ltd. adopted a resolution in to meeting held on 5.12.58 whereby an amendment was made in the rules regarding terms and conditions of service of the staff taken over by the Corporation on or after 1.10.56 Clause 3 of the said rules as amended reads as follows:

3. Staff recruited on or after 1.10.56

They will be governed by the rules of the Corporation" be substituted by--Terms & Conditions of Service

(1) Employees in service in the State Collieries other than Deulbera and Argada prior to 1.6.1944 will be governed by the Railway Rules.

The employees in service in Deulbera and Argada Collieries prior to 1.10.1944 will be governed by Railway Rules.

Amendments to the said rules on or after the date of transfer will be adopted after specific examination (by the Managing Director) in each case, where necessary. Retirement benefits, on retirement, will be paid by the Corporation. Financial adjustment in regard to their previous services, if any, under Government will be made between Government and the Corporation.

(2) Employees appointed to State Collieries other than Deulbera and Argada on or after 1.6.1944 but prior to 1.10.56 and those appointed in Deulbera and Argada on or after 1.10.1944 but prior to 1.10.56 will be governed as follows:--

(a) Those transferred from other Departments of Govt. will be governed by Civil or Railway Rules according as they were so governed prior to their transfer.

Amendments to the rules on or after the date of transfer will be adopted after specific examination (by the Managing Director) in each case, where necessary. Retirement benefits, on retirement, will be paid by the Corporation. Financial adjustment in regard to their previous services, if any under Government will be made between Government and the Corporation.

(b) Those appointed direct to the State Collieries will be governed by Civil Rules.

Amendment to the Roles on or after the date of transfer will be adopted after specific examination (by the Managing Director) in each case, where necessary. Retirement benefits on retirement, will be paid by the Corporation. Financial adjustment in regard to their previous services, if any, under Government will be made between Government and the Corporation.

(3) Employees serving in the organisation from a date on or after 1.10.56 will be governed as follows:--

(a) Those transferred to this organisation from the Railways and other Departments of Govt. will be governed by the Rly. or Civil Rules according as they were so governed immediately prior to their transfer.

Board''s decision (2) ''Provided that such of the staff falling under paras 1, 2 & 3 (a) above, who desire to subscribe to the N.C.D.C. Ltd Staff Provident Fund, may opt for the same subject to their giving an unqualified and irrevocable option in writing in favour of the N.C.D.C. Ltd. Staff Provident Fund foregoing their retirement benefits and right to subscribe to any other Provident Fund under the Civil or Railway Rules as the case may be''. "(Bds'' resolution vide item No. 13 of the Agenda passed in its meeting on 28.10.60).

Amendments to the rules on or after the date of transfer will be adopted after specific examination (by the Managing Director) in each case, where necessary. Retirement benefits, on retirement, will be paid by the Corporation. Financial adjustment in regard to their previous services, if any, under Government will be made between Government and the Corpn. (b) Those directly recruited to the service of the Corporation without any prior continuous service in the Railways or in other Departments of the Govt. will be governed by the Rules of the Corporation.

15. According to Mr. P.K. Prasad, learned counsel appearing on behalf of the petitioner Rule 3 (3) (a) aforementioned shall govern the case of the petitioner; whereas according to Mr. Devi Prasad, Rule 3 (3) (b) shall apply to the case of the petitioner.

16. There is no doubt that if petitioner''s case is governed by Rule 3 (3) (a) aforesaid, he will be entitled to the pension subject the proviso contained therein whereas, if Rule 3 (3) (b) applies, he will not be so entitled. The marginal note of Rule 3 of the terms and conditions of service aforesaid is significant which is in relation to staff recruited on or after 1.10.56.

17. The scope and object of making the said rule is evident that there were employees who used to be governed by Railway Rules and in service from on 1.6.44 or before. Similarly there were employees who were earlier in the service of the other departments of the government and were appointed by N.C.D.C. Ltd. at different points of time. Rule (3) (b) also contemplates that an employee who was transferred to the organisation from a date on or after 1.10.56 from the Railways or other departments of Government shall be governed by the terms and conditions of service applicable to him before transfer. The provision however, enabled such employees to opt in favour of N.C.D.C. Staff Provident Fund. Only when such option was exercised in accordance with the rules, his previous terms and conditions of service became in applicable to him. Thus, where the terms and conditions of service applicable to a transferred employee before transfer entitled him to receive pension upon retirement, he could forego such benefit only when he opted to receive the benefit under the Provident Fund Scheme. He was, therefore, entitled to receive either pension or Provident Fund and could not in any case be deprived of both.

18. The very fact that the terms and conditions of service deal with those who were governed by the Railway Rules or the Civil Rules as the case may be, depending upon the facts as to when they were appointed, goes to show that Annexure 29 embraces within its fold those employees whose terms and conditions of the service were governed under the rules applicable to their parent department but later on absorbed by N.C.D.C. Ltd. In other words Annexure 29 applies to all staff taken over by the Corporation, who had earlier been working under the Railways or other departments of the Government.

19. Further, as noticed hereinbefore, originally the terms and conditions of service in respect of the staff recruited on or after 1.10.56 were to be governed by the Rules of the Corporation but this rule was specifically amended by the Board at its meeting dated 5-12-58 as a result of which the words "they will be governed by the rules of the Corporation," were deleted and in its place different rules were made applicable taking into consideration the facts and circumstances in relation to each employee and categorising them in several classes.

20. Mr. Debi Parsad, the learned counsel appearing on behalf of the respondent Corporation, when questioned, submitted that in view of the letter or the

Corporation dated 27-8-63, as contained in Annexure-18 to the writ application, the petitioner will be deemed to be recruited in the service of the Corporation from 10-3-63.

21. It further appears from the said letter that prior to the same he was officiating in a higher post and was absorbed against a permanent vacant post.

22. In view of the fact that the petitioner in terms of the aforementioned letter dated 27-8-63 was permanently absorbed with effect from 10-3-60, mere cannot be any doubt that he would be deemed to be recruited after 1-10-56, being one of those employees who was transferred to N.C.D.C. Ltd., from other departments of the Govt. As such in terms of Rule 3 (3) (a) of aforesaid rule would be governed by the rules according to which he was governed prior to his transfer.

23. Rule 3 (3) (b) of Annexure 29 cannot have any application whatsoever in view of the fact that the same refers to those employees who were directly recruited to the service of the Corporation without any prior continuity in the service of Railway or other departments of the government.

24. The amendment brought by the Board by its resolution is significant and in this view of the matter there is no room for any doubt that even those persons who had been recruited to the service of the Corporation after 1-10-55 shall also be governed by such rules by which they were governed immediately prior to their transfer and as such the respective rules would be deemed to have been incorporated by reference and shall govern the case of the transferred employer.

25. Thus, in view of the terms and conditions of service framed by N.C.D.C. Ltd. (Annexure 29), the rules governing the case of the employees immediately prior to their transfer to the said company would be deemed to have been incorporated by reference in respect of such employees, as if, the same were the rules of the Corporation itself.

26. Further the very fact that the petitioner was absorbed in the service and was also promoted taking into consideration his past service in the department leaves no room for doubt that he is not an employee who was directly recruited to the service of the Corporation without any prior continuity in the service of the Railway or other department of the Corporation. He, thus, must be held to be one of those employees who was transferred to N.C.D.C. from other departments of the government.

27. In this view of the matter, in my opinion, it is absolutely clear that the petitioner is entitled to pension.

28. In terms of Annexure 29 itself, retirement benefits on retirement of the employees is to be paid by the Corporation. However financial adjustment in regard to the previous service, if any, under government, will be made between the Government and the Corporation.

29. It is now well known by reason of various decisions of the Supreme Court that right of pension is not a bounty but is a valuable right. Such a right cannot he denied to a person unless the same is excluded expressly by reason of provision of any statute or is not applicable under the terms and condition of service of an employee. Reference m this connection may be made to the case of Deokinandan Prasad Vs. The State of Bihar and Others, Bombay Municipality v. B.E.S.T. Workers'' Union, AIR 1973 S.C. 884, Somaiya Organics (India) Ltd. v. Board of Revenue, U.P., AIR 1986 S.C. 405 and State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, .

30. In this view of the matter it must be held that the petitioner is entitled to the pensionary benefits on his retirement according to the terms and conditions of his service.

31. However, the entire pensionary benefit shall now be paid by the respondent Corporation in terms of the aforesaid rules and the respondent Corporation will be entitled to make financial adjustment with the State of Bihar with regard to the pension payable to the petitioner for the period during which he was in State service. As admitted by the petitioner retired on 31-12-83, the petitioner is also entitled to compoundable interest on the amount of pension at the rate of 10% per annum. In the result, the writ application is allowed to the aforesaid extent. In view of my finding aforementioned that the petitioner is entitled to the pensionary benefits, it is not necessary to decide the alternative claim of the petitioner that he was entitled to the claim of Provident Fund.

