(2002) 12 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No. 2541 of 2002

Krishna Nandan Sahay and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:
Bihar Reorganisation Act, 2000 — Section 2, 53

Citation : (2003) 1 PLJR 223

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Nilotpal Ganguli and Sheojee Mishra, for the Appellant; Anwar Karim, for State of Bihar, Ashok Kumar Keshari, for TMB University, S.C. Jha, for SK University and Shyam Kishore Sharma, for Jharkhand State, for the Respondent

Final Decision : Allowed

Judgement

1. These two writ petitions raise common questions of law relating to legal obligation of Tilka Manjhi Bhagalpur University, Bhagalpur and the State of Bihar to ensure regular payment of pension/family pension to the Petitioners in both the writ Petitioners. All the parties including the State of Jharkhand and Sidhu Kannu University were heard in detail and with consent of parties both the writ petitions are being disposed of finally at the stage of admission itself.

2. Before noticing the relevant facts and the question of law it is useful to recapitulate that by order dated 21.11.2002 this Court permitted Petitioner Nos. 8 and 16 of CWJC No. 2541 of 2002 and Petitioners Nos. 3 and 4 of CWJC No. 2950 of 2002 to withdraw their cases for the reason that their claim for retirement benefits arose after 10.1.1992, the date when Sidhu Kannu University came into existence and on the basis of law settled by several judgments of this Court and of Jharkhand High Court, in their cases the retiral benefits have to be paid by authorities of Sidhu Kannu University with help from the State of Jharkhand. In respect of remaining Petitioners in both the cases arguments have been advanced by the parties on the understanding that their retirement claims

arose before the creation of Sidhu Kannu University.

3. The relevant facts lie within a narrow compass. Petitioners are either former employees of Tilka Manjhi Bhagalpur University situated within the State of Bihar or are family members of such retired employees. The retirements happened prior to creation of Sidhu Kannu University on 10.1.1992. As a result of creation of Sidhu Kannu University the colleges in question from where retirements took place came under Sidhu Kannu University but the Petitioners had no concern with the said University and they continued to get their pension/family pension from Tilka Manjhi Univerisity Bhagalpur till July 2001. It is relevant to note that by virtue of the Bihar Reorganisation Act, 2000 (hereinafter referred to as ''the Act'') the then existing State of Bihar was bifurcated creating a residuary State of Bihar and a Jharkhand State with effect from the appointed date, i.e. 15.11.2000. As a result Sidhu Kannu University with is headquarters at Dumka and the concerned colleges fell in the Jharkhand State and Tilka Manjhi University Bhagalpur remained in the State of Bihar.

4. The burden of pension of the Universities is to a larger extent borne by the State through grants etc. as provided under the relevant statutes of the University. Under the instructions received from the State authorities Tilka Manjhi Bhagalpur University (hereinafter referred to as TMB University) stopped the pensions/family pensions of Petitioners since August 2001 leading to these writ petitions wherein the Petitioners have prayed for a writ in the nature of mandamus commanding the Respondents authorities to pay their pension family pension regularly along with arrears since August 2001.

5. On behalf of the Petitioners it has been submitted that there is no dispute regarding entitlement of Petitioners to receive pension/family pension and the only question to be decided is which of the two Universities-TMB University or Sidhu Kanu University has a legal obligation to regularise payment of pension/ family pension to the Petitioners. Learned Counsel for the Petitioners has submitted that so far as Petitioners are concerned, since they never had any factual or legal relationship with Sidhu Kannu University and since the retirements took place prior to creation of this University, there is no legal provision to absolve the TMB Univeristy from its legal obligation to continue the payment of pension/family pension to the Petitioners. In other words, according to learned Counsel for the Petitioners, unless there be a statutory provision or a valid agreement transferring the liability of the TMB University relating to pension of the Petitioners upon the Sidhu Kannu University, the former cannot be permitted to act ''arbitrarily and stop the pension/family pension of the Petitioners.

6. On the other hand learned Counsel for the TMB University and learned Counsel for the State of Bihar have relied upon provisions of Section 53 and the Eighth Schedule of the Act to submit that by virtue of those provisions the liability of the erstwhile State of Bihar in respect of pensions and other retirement benefits shall pass to and be apportioned between the successor States of Bihar and Jharkhand

in accordance with provisions in the Eighth Schedule of the Act. According to the aforesaid Respondents, paragraph 3 of the Eighth Scheduled relieves the successor State of Bihar and its Universities from the liability of pension and other retirement benefits in respect of persons like the Petitioners because while in service they held office in colleges which fall now in the territory of Jharkhand State. A wider submission was also raised to the effect that under the scheme of the Act the assets as well as liabilities have to be apportioned between two new States which has not been done as yet and it is not practically possible for the successor State of Bihar to meet the entire pensionary liabilities alone till apportionment of liability on the basis of ratio of employees or some other permissible criterion. Such apportionment will take a long time and hence, in the meanwhile, the principles apparent from the Eighth Schedule must be permitted as guidelines for apportionment of liability in respect of pension and other retirement benefits. The State of Bihar and the TMB University also relied upon several judgments of High Court of Jharkhapd and of this Court to support their stand. No doubt, with regard to retired employees of Sidhu Kannu University there are judgments of both the High Courts, such as judgment of Jharkhand High Court dated 16.5.2002 in WP (S) No. 2046 of 2002 (Dr. Shailesh Nath and Ors. v. State of Jharkhand) and judgment dated 11.2.2002 in WP (S) No. 5891 of 2001 (Bharti Prasad Thakur v. Sidhu Kannu University) and of this Court dated 9.7.2002 in CWJC No. 16566 of 2001 (Dr. Durgeshwari Prasad Sinha v. State of Bihar and Ors.) in which without going into the question of apportionment of liability of pension, it was held that since Petitioners of those cases had continued under the Sidhu Kannu University and retired from its service, hence, the said University and the State of Jharkhand must make payment of pension including the arrears with effect from August 2001. However, those cases are easily distinguishable from the case of the present Petitioners because these Petitioners never held office either under the Sidhu Kannu University or under the State of Jharkhand. Hence, this Court finds that the precedent relied upon by learned Counsel for the TMB University and learned Counsel for the State of Bihar are of no help in the present case.

7. In order to appreciate the submissions based upon Section 53 and provisions in the Eighth Schedule of the Act it is useful to notice the relevant provisions. For easy reference, Section 53 and paragraphs 1, 2 and 3 of the Eighth Schedule are quoted hereinbelow:

53. Pensions-The liability of the existing State of Bihar in respect of pensions and other retirement benefits shall pass to, or be apportioned between, the successor States of Bihar and Jharkhand in accordance with the provisions contained in the Eighth Schedule to this Act.

The Eighth Schedule 1. Subject to the adjustments men-tioned in Paragraph 3, each of the successor State shall in respect of pension and other retirement benefits sanctioned before the appointed date, pay from their respective treasuries.

2. Subject to the said adjustment, the liability in respect of pensions and other retirement benefits of officers serving in connection with the affairs of the existing State of Bihar who retire or proceed on leave preparatory to retire-merit before the appointed day, but whose claims for pensions and other retirement benefits are outstanding immediately before that day, shall be the liability of the Stale of Bihar.

3. Subject to the paid adjustments, sanctions of such pension and other retirement benefits by the competent authority may be given in those cases, in which their office falls in the territory of Jharkhand State.

8. Section 53 of the Act relies upon provisions in the Eighth Schedule of the Act for passing or apportionment of liability of the erstwhile State of Bihar in respect of pensions between the successor States of Bihar and Jharkhand. Paragraph 1 of the Eighth Schedule gives overriding effect to adjustments mentioned in paragraph 3 and thereafter goes on to give a mandate that each of the successor State shall in respect of pension and other retirement benefits sanctioned before the appointed date pay from their respective treasuries. Paragraph 2 also gives overiding effect to adjustments which must be construed as adjustments mentioned in paragraph 1 and therefore, as provided in paragraph 3. Thereafter, paragraph 2 goes on to provide that the" liability in respect of pensions and other, retirement benefits of officers serving in connection with the affairs of the existing State of Bihar retiring or proceeding on leave preparatory to retirement before the appointed day and whose claims for pensions etc. are outstanding before the appointed day shall be the liability of the State of Bihar. The term existing State of Bihar has been defined in Section 2(e) to mean the State of Bihar as existing immediately before the appointed day or in other words, the erstwhile State of Bihar. Paragraph 3 also begins with the clause "subject to the said adjustments". This clause has to be understood as referring to adjustments provided in paragraphs 1 and 2. Thereafter, it is further provided by paragraph 3 that sanctions of such pension and other retirement benefits by the competent asuthority may be given in those cases, in which their office falls in the territory of Jharkhand State.

9. On a careful reading of the first three paragraphs of the Eighth Schedule together with the remaining paragraphs i.e. paragraphs 3 to 7 it becomes clear that the liability of each of the successor States to pay pension and other retirement benefits sanctioned before the appointed date from their respective treasuries is the general rule provided by paragraph 1. Paragraph 2 takes care of those cases where the liability has not crystallized because no sanction has yet been given in respect of pension and other retirement benefits. In such a situation the liability of payment has been fastened only upon the State of Bihar. Paragraph 3 clearly supplements paragraphs 1 and 2 by clarifying that in such cases sanctions may be given by the competent authority even if their office falls in the territory of Jharkhand State.

10. In respect of retirement benefits already sanctioned before the appointed

date, like in the present case, paragraph 1 of the Eighth Schedule has full application and the liability for such pension and other retirement benefits which have already been sanctioned before the appointed date, lies upon respective treasuries of the State of Bihar and the State of Jharkhand, the successor States. The submission advanced on behalf of the TMB University and the State of Bihar that liability already fastened upon respective treasuries of the State of Bihar and State of Jharkhand would be affected and shall pass on to one or the other State depending upon the place where the office of competent authority to grant sanction is located is found to be of no substance. There is nothing in paragraph 3 of the Eighth Schedule of the Act to transfer the already existing liability of pension from one treasury to another or from one State to another. The adjustment provided in paragraph 3 is merely by way of obligation upon the competent authority to grant sanction of pensions covered by paragraphs and 2 even if such competent authority is located in the territory of Jharkhand State. This paragraph only takes care of technical difficulty which may arise in certain cases of pensions covered by paragraphs 1 and 2 due to location of competent authority to grant sanction in the State of Jharkhand. In such cases, the competent authority can not refuse sanction only because of its being located in the State of Jharkhand and the State of Bihar cannot refuse its Obligation on the technical plea that sanctioning authority now happens to be located in the State of Jharkhand. This view supported by a judgment of this Court in the case of Satyendra Nath Nandan, Vs. State of Bihar and Others etc. etc., on which reliance has been placed by learned Counsel for the petition-

11. It is found that paragraph 3 of the Eighth Schedule does not relieve the successor State of Bihar or its Universities from the liability of pension and other retirement benefits as are covered by paragraph 1 of the said Schedule. Thus, even if it be presumed and accepted for the sake of arguments that pension and other retirement benefits payable by Universities of the State of Bihar fall within the ambit of Section 53 of the Act and its Eighth Schedule, those provisions do not help the submissions advanced on behalf of the TMB University and the State of Bihar. It has further been found that there is no statutory provision or a valid agreement transferring the liability of the TMB University relating to pension of the Petitioners upon the Sidhu Kannu University. In such circumstances, the contention advanced on behalf of the Petitioners must be accepted that the TMB University cannot be permitted to act arbitrarily and stop the pension/ family pension of the Petitioners. It is found that the impugned action of the TMB University is arbitrary and against law.

12. As a result, the writ petitions are allowed and the TMB University and the State of Bihar are directed to take all effective steps and ensure that payment of pension/family pension to Petitioners of both the writ petitions is regularised within a period of two months. The arrears of pension/family pension of the Petitioners should also be paid to them within the aforesaid period of two months. In case the payments are not made within the time indicated above then the Petitioners would be entitled to get the entire dues along with interest

at the rate of seven per cent per annum for the period of delay beyond the time fixed by this Court. It will be open for the concerned authorities to realise the amount of interest from the persons who may be found responsible for causing delay. In the facts of the case, there shall be no order as to costs.

