(2004) 07 PAT CK 0082

In the Patna High Court

Case No : Civil Writ Jurisdiction case No. 5850 of 2004

Madhu Mangal Tiwary APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:
Bihar Pension Rules, 1950 — Rule 58

Citation : (2004) 2 BLJR 1497 : (2004) 3 PLJR 716

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—In this writ petition, petitioner is aggrieved by the order dated 16.4.1996 issued vide Memo No. 464 by the Deputy Collector (Establishment), Saran, Chapra (Respondent No. 4) (contained in Annexure-1), by which he has been denied the payment of pensionary benefits.

2. Petitioner was initially appointed as Godown Operator in Supply Department, State of Bihar on 10.8.1967 and subsequently on 5.2.1974 the services of the petitioner along with another similarly situated employee Bishwanath Singh were transferred and placed under the disposal of the Bihar State Food and Civil Supply Corporation, wherefrom he retired on 31.5.1992 as Class IV employee. After retirement of the petitioner, his pension papers along with the papers of aforesaid similarly situated employee Bishwanath Singh were sent to the Collector, Saran, Chapra by the Respondent-Corporation and Respondent No. 4 vide Annexure-1, informed the Corporation that petitioner and the said Bishwanath Singh are not entitled for payment of pension and gratuity.

3. According to the petitioner, he never opted for the services of the Corporation and the lien remained with the Department and was never terminated on the transfer of his services to the Corporation and he was forced to work in the Corporation by the order of the Government. Thus, it has been submitted by the

learned counsel for the. petitioner that the petitioner is entitled for pensionary benefits like other Government servant after his retirement from the Corporation.

4. It is stated that against the impugned order (Annexure-1) aforementioned Bishwanath Singh moved this Court in CWJC No. 1992 of 1998 and vide order dated 23.12.1998 while disposing of the writ petition, this Court directed the State-Respondents to pay the pensionary benefits and the amount of gratuity to the said petitioner to be calculated from the date of appointment till his services were transferred to the Corporation. It was made clear that the pension is to be calculated by the State from the date of his appointment till the date of his retirement from the Corporation as his lien remained with the Department till his retirement and shall be paid by the State. Against the said order the State went in Appeal by filing LPA No. 968 of 2000, which was dismissed as time barred.

5. It has been submitted by the learned counsel for the petitioner that petitioner is also entitled for the pensionary benefits like Bishwanath Singh, whose case is entirely similar to the case of the petitioner.

6. Separate counter affidavit has been filed on behalf of Respondent No. 2, Respondent Nos. 3 and 4 as well as Respondent No. 6.

7. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Chapra (Respondent No. 6) in paragraph 6 of his counter affidavit has stated that after retirement the petitioner has already been paid his admissible dues i.e. amount of gratuity, leave encashment and the amount of E.P.F. from B.O.T., which fact has not been denied by the petitioner by filing reply to the said counter affidavit.

8. It has been stated in paragraph 11 of the counter affidavit filed on behalf of Respondent Nos. 3 and 4 that full facts were not placed before this Court on behalf of the State Government in the aforementioned writ petition filed by Bishwanath Singh, as a result of which such a decision was passed. According to the State-Respondents after the creation of State Food Corporation in the year 1973-74, the State Government decided to transfer all the godowns along with food grains, equipments and staff posted in these godowns to Bihar State Food and Civil Supplies Corporation and since then the services of the incumbents of such posts including that of the petitioner was transferred from State Government and merged with the Corporation and the petitioner ceased to be a Government servant since 5.2.1974. As such, he is not entitled for pensionary benefits. In this regard, learned State Counsel relied upon Rule 58 of the Bihar Pension Rules. As regards lien to the post of Godown Operator, in paragraph 4 of the counter affidavit, it has been stated that the petitioner was appointed as Godown Operator on purely temporary basis on temporary post and learned State Counsel submitted that after the merger of the services of the petitioner with the Corporation that post never existed in the State Government, and, as such, any lien, which might have existed also ceased to exist along with cessation of that post. Referring to Rule 28 and 68 of the Bihar Service Code, he

further submitted that as the petitioner was appointed on temporary post of Godown Operator, he never acquired any lien to that post in the State Government.

9. I find substance in the submission of learned State Counsel. Rule 58 of the Bihar Pension Rules reads as follows :

"The service of a Government servant does not qualify for pension unless it conforms to the following three conditions :

First--The service must be under Government.

Second--The employment must be substantive and permanent.

Third--The service must be paid by Government.

In the present case, the services of the petitioner and others were transferred from the State Government on 5.2.1974 and merged with the Corporation and since then the petitioner ceased to be a Government servant. Hence, in view of Rule 58 of the Bihar Pension Rules, the petitioner is not entitled for pensionary benefits.

10. This Court also finds substance in the submission of learned State Counsel that as the petitioner was appointed on temporary post of Godown Operator, he never acquired any lien to that post in the State Government and, further, that after the merger of the services of the petitioner with the Corporation that post never existed in the State Government. Rule 28 and 68 of the Bihar Service Code reads as follows :

"28. Lien means the title of a Government servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively."

"68. Unless in any case it be otherwise provided in these rules a Government servant on substantive appointed to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired to any other post."

Thus, it is apparent that it is only a substantive appointment which creates a lien and not temporary or officiating appointments. Petitioner was temporarily appointed on 10.8.1967 and latter his services were transferred and merged with the Corporation on 5.2.1974. Petitioner never raised any objection against his transfer and merger of his services with the Corporation, and now after his retirement, he cannot claim the pensionary benefits admissible to the State Government employees.

11. As regards the decision of this Court in the case of similarly situated Bishwanath Singh, it appears that full facts were not placed before this Court on behalf of the State, resulting in such a decision, which is not binding and is per incuriam. A precedent is not binding if it was rendered in ignorance of a statute

or a rule having the force of Statute (See Salmond on Jurisprudence 12th Edition by P.J. Fitzgerald at pages 150, 151).

12. Under the facts and circumstances, I do not find any merit in this writ petition and the same is dismissed.

