

(1999) 09 PAT CK 0153
In the Patna High Court
Case No : C.W.J.C. No. 10569 of 1998

Manjoor Ahmed

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-09-1999

Acts Referred:

Citation : (2000) 3 PLJR 57

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Md. Shahjahan Ali, for the Appellant; Braj Kishore Prasad, for Account General and J.D. Singh, for State, for the Respondent

Final Decision : Allowed

Judgement

R.M. Prasad, J.—Petitioners in both the writ petitions have sought for a direction to the Respondents to release Rs. 17,074.20 and Rs. 32,408.30 in favour of the respective Petitioners which have been kept withheld by the Respondents from the post-retirement benefits of their respective father. Petitioners have also prayed for grant of interest over the delayed payment.

2. Petitioners are respective sons of late Ramjan Ali and late Chedi Lal Mandal employees in the State Government's Public Health Engineering Department. Both of whom died on 30.8.97 and 21.6.98 respectively and their wife also died before them. In the aforesaid writ petitions the respective deceased employee worked till 31.8.1984. Later vide Memo No. 521 dated 18.3.1996 (Annexure-1 to both writ petitions) they were communicated that their respective date of retirement should be 28.2.83 and 1.4.81 instead of 31.8.84 and, therefore, excess payment of salary drawn by them was recoverable from the post-retirai benefits. Executive Engineer, Public Health Engineering Department, Public Health Division, Saharsa-Respondent No. 3, vide letter No. 72-75 dated 31.1.1996 directed the Treasury Officer, Supaul for deduction of the aforesaid amount paid to the respective employee as salary for the said period. It is claimed that the deceased employee approached several times to the authorities

for redressal of their grievance, but the authorities did not pay any heed and ultimately they died without redressal of their grievance. As claimed, Petitioners thereafter filed representation for release of the said amount as during the illness of their father they had taken loan for treatment and after their death religious rites were also performed after taking huge amount of loan which they are bound to repay.

3. Counter affidavit has been filed in which it is alleged that father of the Petitioners continued in Government service beyond the actual date of superannuation by manipulating his date of birth in the service book and knowingly cheated the Department. As such, it is contended that the Petitioners are not entitled for any relief as prayed in the writ petition. However, besides that nothing has been brought on record by the Respondents in support of the said allegations against the Petitioners. It is not the case of the Respondents that any departmental proceeding was initiated and/or the order contained in Annexure-1 was passed after complying with the principles of natural justice.

4. It is well settled that no penalty can be imposed without at least giving an opportunity to the concerned employee to defend himself. Moreover, the Apex Court in the case of *Sahib Ram Vs. State of Haryana and Others*, in which the benefit of higher pay scale was given to the Appellant, but by wrong construction made by the Principal for which the Appellant could not be held to be at fault, directed that the amount paid till date may not be recovered from the Appellant. This direction was given on the premise that it was on account of any misrepresentation by the Appellant that the said benefit was given to him.

5. Learned Counsel for the State has placed reliance on the decision of the Supreme Court in the case of *Radha Kishan v. Union of India and Ors.* reported in 1997 (2) PLJR 129 (S.C.) in support of his contention that even if a Government servant had actually worked for a considerable period, being aware that he could not continue to be in service as per law, the concerned Government Servant cannot be said to possess the right to claim the salary etc. unless it was a case of re-employment in the public interest. However, the said decision of the Apex Court is of no help to the Respondent-State. The said decision of the Apex Court is directly in conflict with the earlier larger Bench decision of the Apex Court in the case of *State of Bihar Vs. Narasimha Sundram*, about which there is no reference even made in the subsequent decision of the Apex Court in the case of *Radha Kishan v. Union of India* (supra).

6. In the case of *State of Bihar v. Narasimha Sundram* the facts before the Supreme Court were that the Respondent had to retire as an Executive Engineer under the Appellant-State on the basis of his true age on 31st January, 1988, but he remained in service by playing fraud on the Department. However it was admitted that he served the department till 30th September, 1989. By a writ petition out of which the appeal arose the Respondent claimed his salary from February, 1988 to September, 1989. The Respondent also complained that he was not being paid his post retiral benefits. The High Court by the impugned

judgment allowed both the reliefs. The Apex Court dealing with the question of payment of arrears of salary did not find any merit in the contention of the learned Counsel for the Appellant that the Respondent can be refused his emoluments for the period in question as no proceedings were ever initiated for enquiry as to the alleged fraud played by the Respondent on the department. In the absence of the denial that the Respondent worked till 30th September, 1989, the Apex Court confirmed that part of the impugned judgment of the High Court which referred to the salary and accordingly directed that the Respondent should be paid his arrears of salary, if not already paid, within two months from that day.

7. In the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, the Constitution Bench of the Apex Court while dealing with the meaning and effect of the "decision per incuriam" held that non-reference to an earlier larger Bench decision of the Supreme Court will make subsequent decision of the Supreme Court per incuriam if the ratio of the earlier decision is in conflict with it.

8. Accordingly this Court is of the view that earlier larger Bench decision of the Supreme Court in the case of State of Bihar v. Narasimha Sundram (supra) is binding and in view of the law settled by the said decision, the recovery of the alleged excess payment made to the employee concerned for the services rendered by them beyond the actual date of superannuation without any misrepresentation or manipulation made by them is not permissible.

9. In the present case it is not alleged that the deceased employees were aware of their actual date of retirement and still they continued to work. Respective father of the Petitioners were menial staff of the State. Thus, it has rightly been submitted by the learned Counsel for the Petitioners that they cannot be held responsible for continuance beyond the actual date of superannuation or that they continued in service beyond the age of superannuation on account of any misrepresentation or manipulation made by them.

10. Thus, both the writ petitions are allowed. The impugned order, contained in Annexure-1, whereby a direction has been given that alleged excess payment of salary drawn by the respective father of the Petitioners was recoverable from their post-retiral benefits is quashed. The Respondents are directed to release the remaining pensionary benefits of the respective father of the Petitioners within two weeks of the receipt/production of the copy of this order with interest as provided for delayed payment in the relevant Rule or Government decision which are applicable to the State Department.