(2003) 02 PAT CK 0056

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3054 of 2002

Md. Hadi APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:
Bihar Pension Rules, 1950 — Rule 145

Citation : (2003) 51 BLJR 618 : (2003) 2 PLJR 684

Hon'ble Judges : Sachchidanand Jah, J;P.N. Yadav, J

Bench : Division Bench

Advocate : Anil Kumar Jha, for Acctt. General and Prabhakar Tekriwal, for FCI, K.P.Yadav, SC V, S.N. Jha and M.S. Hoda, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The dispute in this case relates to the proportionate pensionary liability of the Government of Bihar. The petitioner, a former employee of the Government of Bihar, seeks direction upon the respondents to calculate final pension taking into account the service rendered by him under the Government of Bihar from 16-9-1946 to 28-2-1955.

2. The facts of the case are not in dispute. Shortly stated, the petitioner was appointed as Assistant Marketing Inspector at Regional Grain Supply Office, Gaya in the service of the Government of Bihar on 16-9-1946. The Regional Grain Supply Office was merged with the Supply and Control Department under the Collector, Gaya and the service of the petitioner was transferred alongwith other employees to it In the year 1952, Government of India, Department of Food, opened Central Storage Depots at Gaya and other places i the State of Bihar under the management of State Government through the Collector of the District. These godowns were managed by staff then working in the Supply and Control Department. The petitioner was one of them. In the year 1954 Supply and Control Department of the Government of Bihar handed over the Management to the Government of India. Accordingly, Storage Depots of the

Supply and Control Department, which were managed by the State Government till 28-2-1955 were taken over by Government of India with effect from 1-3-1955. It is relevant to mention here that the transfer of services of the employees was on the basis of option. The petitioner opted for the Central Government service. After scrutiny etc. his option was accepted and he was directed to join as Junior Godown Keeper, Gaya Central Storage Depot under the Central Government on 23-2-1955. The petitioner joined the said post of Junior Godown Keeper on 1-3-1955. In course of time he was confirmed on the post and deputed to the Food Corporation of India. In terms of Section 12A of the Food Corporation Act, 1964, he became employee of the Food Corporation of India. He superannuated from service on the post of Assistant Manager on 31-12-1982. After his superannuation his pension etc. were computed counting his service from the date of his joining under the Central Government i.e. 1-3-1995. The service rendered by him under the Government of Bihar from 16-9-1946 to 28-2-1955 was not counted. On 19-5-1999 the Deputy Manager (P) FCI sent his Service Book/Leave Account to Under Secretary, Food & Civil Supplies Department, Government of Bihar, for sanction of pension for the service rendered by the petitioner under Government of Bihar, but no action was taken. Finally, after the petitioner served legal notice on 30-10-2001 he was informed through his Advocate that as the service rendered by him under the Government of Bihar was less than ten years pro rata pension was not admissible.

3. It is not in dispute that in terms of Rule 145 of the Bihar Pension Rules service of less than ten year does not qualify for pension. The case of the petitioner is that in terms of Circular No. 3(20)/Pen(A)/79 dated 31-3-1982 of the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms the Government of Bihar is liable to proportionate pension to the extent of the service rendered by him under it and therefore, the period from 16-9-1946 to 28-2-1955 cannot be excluded while calculating his pension. It is said that in the case of one Managal Sinha, the State Government agreed to count the service rendered by him under it though the period of service was less than ten years, vide Memo No. 1808 dated 7- 5-1994 of the Food, Supply & Commerce Department. Said Mangal Sinha finally filed a writ petition before this Court, CWJC No. 827/95, in which his claim was allowed and placing reliance on the said Circular of the Government of India dated 31-3-1982 he was held entitled to count the period of service under the State Government with respect to which Government of Bihar was held liable to share the pensionary liability.

4. The abvesaid decision of this Court, rendered by a learned Single Judge, would seem to cover the claim of the petitioner. When the present writ petition came up for hearing before another learned Single Judge he expressed doubt about correctness of the decision and by order dated 22-10-2002 referred the case to the Division Bench and that is how the case came up before this Bench for disposal.

5. The dispute, it would appear, involves interpretation of the above Circular, Memo No. 3(20)/Pen(A)/79 dated 31-3-1982, of the Government of India which is the sheet anchor of the petitioner''s claim. De hors that memo the petitioner cannot have any claim against the Government of Bihar in view of the provisions of the Bihar Pension Rules since the period of service under the State Government was admittedly less than ten years. It would, therefore, be apt to quote the relevant part of the memo as under:

"Subject.--Allocation of pensionary liability in respect of temporary service rendered under the Government of India and State Governments.

I am directed to say that the Government of India have been considering in consultation with the State Governments, the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who has rendered temporary service under the Central Government/ State Government prior to securing posts under the various State Governments/ Central Governments on their own volition in response to advertisement or circulars, including those by the State/Union Public Service Commissions and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the Governments concerned, on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Government from where they eventually retire. The gratuity, if any, received by the Governments employee for temporary service under the Central of State Governments will, however, have to be refunded by him to the Government concerhed."

6. From a reading of the above it would appear that the underlying object was to make provisions for sharing of the pensionary liability by the Central Government and the concerned State Government in cases where an employee had rendered temporary service either under the Central Government or State Government before changing over to the State Government or Central Government, and making the Central Government or State Government as the case may be liable for pensionary liability to the extent of service rendered by him under it. The decision was taken in conclusion with the State Governments and therefore, it binds the State Government as much as it binds the Central Government. However, the proportionate pensionary liability is limited to the extent such service would have qualified for grant of pension under the rules of the respective Government.

7. The stand of the Government of Bihar is that as the extent of service rendered by the petitioner under it did not qualify him for pension under the rules i.e. Bihar Pension Rules, it is not liable to share the pensionary liability. Counsel for the petitioner agreed that the clause "to the extent such service would have

qualified" clinches the issue one way or the other. He submitted that there is distinction between the ''pensionable service'' and ''qualifying service'' for grant of pension. If the petitioner had rendred service which qualified for pensioin the State Government cannot deny its liability to share proportionate pension.

8. I am unable to accept the interpretation put forward tin behalf of the petiitoner. The interpretation overlooks the words "to the extent" occurring in the Clause. In fact, there is no distinction between ''pensionable service''.and ''qualifying service'' as such. If a service qualifies for pension, it is pensionable service. The distinction lies in the ''qualifying period of service''. As the very subject mentioned in the circular viz. "allocation of pensionary liability" indicates, the object was to make the State Government or the Central Government as the case may be share the pensionary liability to the extent of service rendreed by a person on tempoarry basis under it. If the object was to simply count the period of service rendred under the Central or State Government, the circular could have plainly said so without adding the clause "would have qualified for grant of pension under the Rules of the respective Government". Counsel tried to make distinction between "had qualified" and "would have qualified". In my opinion, read in context, as the circular intended to recognise the right of the employee to count the period of temporary service and create liability of the concerned Government, of the past, the authors of the circular rightly used the words "would have qualified" to mean that had the employee remained in service of the cocerned Government, whether the period of service would have qualified for grant of pension or not. Where he left the service of the State Government and joined the Central Government, or vice a versa, without completig the qualifying period of service, in the normal course, he would not have qualified for grant of pension. It is to be kept in mind that the liability of the Central Government/ State Government has to be worked out in terms of the rules of the respective Government as expressly stated in the circular. In other words, the circular does not amend or modify the relevant rules of the concerned Government. It is subject to those rules.

9. The circular covers temporary employees rendering temporary service under the Central Government/State Government and joining State Government/ Central Government "on their own volition in response to advertisement or circulars". The petitioner opted for the Central Government service. Apparently he found the service condition under the Government of the India better than those under the Government of Bihar. If he had rendered the service under the State Government which did not qualify forgrnat of pension, the State Government cannot be held liable. If the liability has to be worked out with reference to the rules of the respective Government, the Governement of Bihar cannot be held liable in derogation of the relevant rules of the Bihar Pension Rules. It is not in dispute, as indicated above, that de hors the circular dated 31-3-1982, the petitioner is not entitled to count the period of service rendered by him under the Bihar Government.

10. It may be mentioned that before hearing of the case was taken up the Accountant General, Bihar was added as party to assist the Court on the interpretation of the circular dated 31-3-1982. In the affidavit filed on behalf of the Accountant General it has been stated that "a plain reading of the said Circular dated 31-3-1982 reveals that the service under State Government would count for pensionary benefits provided the State Government discharge his share of proportionate liability for the period of service rendered under the State Government otherwise the petitioner is entitled to the service gratuity in terms of the said Government circular dated 18-2-1974". The circular dated 18-2-1974 has been enclosed as Annexurs ''B'' to the counter-affidavit wherein it has been stated that "in cases where the Government servant at the time of absorption, has less than 10 years service and is not entitled to pension, the question of proportiionate pensiion will not arise; he is only eligible to proportionate service gratuity in lieu of pension and to Death-cum-Retirement Gratuity based on length of service". The stand of the Accountant General thus seems to be in accord with the stand of the State Government.

11. It is true, as contended on behalf of the petitioner, that the circular is a piece of beneficial legislation and, therefore, in case of doubt or if two interpretations are possible, the iterpretation which favours the employee should be accepted. In my opinion, the circular is not capable of any other interpretation as the one made above. The Government of Bihar could be held liable to share the pensionary liability only if the extent of service rendered by the petitioner under it would have qualified for grant of pension under the Bihar Pension Rules. This is the only interpretation possible of the relevant clause of the circular. As the extent of service rendered by the petitioer under the Government of Bihar was admittedly less than ten years, to be precise, eight years five months and thirteen days, he did not qualify for grant of pension at the time he left the service of the State Government and joined the service under the Central Government and therefore, the Government of Bihar cannot be held liable. No other provision has been brought to our notice under which the petitioner could be held entitled to count entire period from 16-9-1946 for calculating the petition and payment thereof by the Central Government. It is relevant to mention that though the petitioner retired from the Food Corporation of India and the Food Corporation is payig him the pension, the burden thereof is borne by the Central Government.

12. The case of Mangal Singh was decided on different issue. His claim was resisted on the ground that in terms of the Central Government instructions contained in the Finance Ministry''s letter dated 9-10-1986 read with the circular dated 31-3-1982, pension of the petitioner had to be fixed and paid by the Food Corporation of India on completion of service rendered by him under the State Government and that denial of the benefits to those who retired prior to the date of the circular was not permissible, and as the petitioner had retired, prior to the circular, on 31-12-1980, he could not be discriminated on the ground of date of retirement. The question as to whether in view of the provisions of Rule 145 of

the Bihar Pension Rules the petitioner was entitled to count, the period of service rendered by him underthe State Government and the State Government was liable to share the pensionary liability was not considered. The decision, therefore, cannot be taken in aid on the point of interpretation of the circular.

13. In the above premises, I find no merit in this writ petition which is accordingly dismsised but without any order as to cost.

P.N. Yadav, J.

14. I agree.