
(2005) 05 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 1725 of 2000

Mosaheb Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Citation : (2005) 2 BLJR 1483 : (2005) 3 PLJR 192

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Partha Sarthy, for the Appellant; Satyabrat Verma, JC to GP VIII, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for quashing the order dated 22.12.1999 passed by the Director of Primary Education, whereby the prayer made by the petitioner for extension of service by one year has been turned down.

2. Short facts giving rise to the present application are that the petitioner at the relevant time was Headmaster of Government Middle School, Hajipur in the district of Vaishali and for meritorious service, he was conferred the State Award on the Teachers' Day i.e. 5th of September, 1992. Petitioner had attained the normal age of superannuation in March, 1996 and therefore, was to retire with effect from 1.4.1996.

3. The State Government had come out with a policy to grant extension of service by one year to such teachers who are the recipient of the State Award. However, by resolution dated 23rd of May, 1996 (Annexure-13), the State Government modified its policy and resolved to give cash-award of Rs. 10.000/- to such teachers who have got the State Award. Petitioner, before attaining the age of superannuation, requested for extension of service by one year on account of the policy decision prevailing on his normal date of retirement. The

District Superintendent of Education, by its letter as contained in memo dated 2.11.1995 (Annexure-3), forwarded the claim of the petitioner for decision to the Director of Primary Education, recommending extension of the petitioner's service.

4. According to the petitioner, he continued to function as Headmaster of the School beyond the normal age of superannuation and worked till 31.3.1997. However, when no final decision in regard to the extension of service was taken, he filed CWJC No, 3119 of 1996, Mosaheb Sharma v. The State of Bihar and Ors., before this Court. This Court, by order dated 3.7.1996 (Annexure-5), disposed of the writ application with liberty to the petitioner to file representation and direction to the competent authority to dispose of the same in the light of the order of this Court dated 26.4.1996 passed in CWJC No. 11354 of 1995, Ram Nandan Sharma v. The State of Bihar and Ors..

5. When no decision was taken, petitioner approached this Court again by filing CWJC No. 11436 of 1998, Musaheb Sharma v. The State of Bihar and Ors., and this Court, by order dated 10.2.1999 disposed of the writ application in the following words:

"It appears that the petitioner continued in service without such extension till 1st April, 1997, but has not received salary. In that view of the matter, this Court directs the respondents authorities to consider the petitioner's application for extension of service at least for the first year and pass order within a period of three months from the date of service of a copy of the order upon respondent No. 2. This Court does not pass any order for granting any extension of service of the petitioner except for the first year. The writ petition and the I.A are thus dispose of."

6. As directed, the Director of Primary Education considered the claim of the petitioner and the impugned order as contained in memo dated 28.12.1999 (Annexure-14), rejected the claim of the petitioner for extension.

7. Although this writ application was filed as back as on 15.2.2000, after service of a copy of the same on the respondents but they have not chosen to file any counter affidavit.

8. Mr. Partha Sarthy, learned counsel appearing on behalf of the petitioner, raises a very short point. He submits that the petitioner in normal course would have superannuated on 1.4.1996 and on that date policy prevailing entitled the petitioner for extension of service by one year. He submits that the modification of the policy by the State alone by its resolution dated 23.5.1996, shall have no bearing at all and that shall not divest the right of the petitioner. In support of his submission, he has placed reliance on an unreported decision of this Court dated 22.1.1996 passed in CWJC No. 6502 of 1996, Ram Ekbal Tiwary v. The State of Bihar and Ors., and my attention has been drawn to the following passage from the said judgment:

"So far as extension of service of petitioner is concerned, according to this Court, as the extension of service of petitioner for another one year is to be considered with effect from 1st February, 1996 upto 31st January, 1997, the Resolution dated 23rd May, 1996, cannot be made applicable in the case of the petitioner. As on 1st February, 1996, admittedly, the Resolution dated 23rd May, 1996 was not in existence, but the Resolution dated 25th November, 1981 was the guideline, on the basis of which the case was to be considered."

9. Yet another unreported decision on which Mr. Partha Sarthy has placed reliance is the judgment of this Court dated 17.3.1997 passed in CWJC No. 2848 of 1996, Suresh Prasad v. State of Bihar and Ors., and analogous cases and my attention has been drawn to the following passage from the said judgment:

"Although the petitioners cannot claim any vested legal right to such extension, the matter has to be considered according to the Government order as it stood at the relevant time. The relevant time would be the time when the cause of action for such consideration arose that is when they reached the normal age of superannuation. The impugned policy decision has been notified on 23.5.1996. The cause of action for granting extension to both the petitioners has arisen earlier. In other words, the resolution dated 23.5.1996 should not stand in the way of consideration of a claim which had already arisen earlier."

10. Junior Counsel to G.P. VIII, however, appearing on behalf of the respondents, submits that in the facts of the present case, the impugned order passed by the Director, cannot be faulted. He points out that the Director had passed the order relying on a decision of this Court dated 17.9.1999 passed in CWJC No. 5250 of 1998 and the other passed by him is in conformity with the order passed by this Court in the said writ application and hence same does not call for interference by this Court.

11. Having considered the rival submission, I find substance in the submission of Mr. Partha Sarthy and the decisions relied on clearly support his submission.

12. Undisputedly, the date on which the petitioner had attained the normal age of superannuation, the resolution of the State Government provided for extension of service by one year. Later on, the State Government modified its policy and provided for grant of a cash award of Rs. 10,000/- to the recipient of the State Award. It is well settled that the right of a person for extension of service is not an indefeasible right and that can be divested by a fresh decision. However, in the present case, the question falling for determination is as to whether the modification of the earlier policy of the State to grant extension of service by one year to the recipient of the State award to that of cash award shall have any bearing on the right of the petitioner, whose normal date of retirement fell on a date earlier to the date the policy is modified. In my opinion, modified policy neither specifically nor by necessary implication had divested the right accruing to the person prior to the said resolution. Accordingly, in my view, the resolution of the State Government dated 23.5.1999 shall have no bearing in

deciding the right of the petitioner. The view which I have taken finds support from the decisions of this Court in the case of Ram Ekbal Tiwary (supra) and Suresh Prasad (supra).

13. To put the record straight, it is relevant here to state that while rejecting the claim of the petitioner, the Director had relied on an order dated 17.9.1999 passed in CWJC No. 5250 of 1999. In the said case, the question falling for determination in the present case was not an issue and the issue was in regard to the validity of the modified policy. It is relevant here to state that the judgment of this Court referred to above had relied on a judgment of this Court in the case of Kedar Choudhary v. The State of Bihar and Ors. 1999 (2) PLJR 313. Paragraph No. 10 of the said judgment, reads as follows :

"10. The petitioner's right to seek extension of service accrues only after his retirement. Such right to seek extension of the service is not co-extensive with the receipt of award. Grant of award is by itself a recognition of the teacher's merit and is an honour to him. But whether the extension of service would depend on the Government policy which exists at the time when right to seek extension falls due. That right cannot become due before superannuation."

14. Here, as stated earlier, the State Government modified its policy after the petitioner had reached the normal age of superannuation and hence, the policy shall not affect the petitioner's right and the decision relied on by the Director is clearly distinguishable.

15. Accordingly, the impugned order (Annexure-14) can not be allowed to survive and is accordingly quashed and the respondents are directed to treat the petitioner to have retired from service with effect from 1.4.1997. The petitioner shall be entitled for all consequential benefits on account thereof. The benefits flowing from that be calculated and paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

16. In the result, the application is allowed, impugned order is quashed and respondents are directed to act in accordance with the direction aforesaid.