(1999) 03 PAT CK 0020

In the Patna High Court

Case No : C.W.J.C. No. 3837 of 1998

Nagendra Ojha APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Citation : (1999) 2 BLJR 1040

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioner, learned Counsel for the State, learned Counsel for the High Court of Judicature at Patna and learned Counsel for the Accountant-General, Bihar, Patna. The prayer made in this writ application is for a direction to the respondents not to make any deduction from the pay of the petitioner on re-employment, nothing beyond what is permitted by Rule 161(b) of the Bihar Pension Rules, 1950, which is as follows:

A Government servant on re-employment should draw the initial pay of the post unless Government sanction advance increment under Rule 83 of the Bihar Service Code provided always that the sum total of pay plus pension does not exceed the substantive pay last drawn by him before discharge. Where the sum total exceeds the last substantive pay only so much of the pension may be allowed to be drawn as not to make the total of pension plus the initial pay of the post exceed the substantive pay last drawn.

2. The short and relevant facts for disposal of this writ application are that the petitioner was holding the post of Deputy Registrar-cum-Principal Secretary to the Hon''ble Chief Justice in the High Court in the pay scale of Rs. 3,700.5,000 and on the date of his superannuation on 31.12.1992, he was drawing substantive pay of Rs. 4,450/- per month. After his superannuation, on 31.12.1992, he was granted extention of service on the same post till 30.6.1995 in different scales and at that time he was getting substantive pay of Rs. 4,450/- per month. After expiry of last term of extention on 30.6.1995, the petitioner

was granted re-employment on the same post in the scale of Rs. 3,700-5,000 with effect from 1.7.1995, initially for a period of one year which has further been renewed and is still continuing on re-employment.

3. The dispute is namely on interpretation of Rule 161(b). According to the petitioner, respondents will be entitled to deduct while fixing his pay after re-employment only the amount of pension from the salary of the petitioner and they erred in deducting more than the amount of pension being paid to the petitioner, on the basis of an executive decision of the State Government by which, besides pension, the pension equivalent of death-cum-retirement gratuity has been directed to be deducted from the salary to be given after re-employment.

4. It is well-settled that executive instruction cannot supplant or take away the effect of statutory rules. This is the controversy involved in this case, which earlier arose in the case bearing C.W.J.C. No. 3507/92 Janardan Prasad Yadav v. The State of Bihar and Ors., which was decided by judgment dated 16.4.94 and this Court held, such extra deduction on the basis of pension equivalent of D.C.R. gratuity to be arbitrary. The aforesaid judgment was followed in C.W.J.C. No. 1046/96 Md. Karnrul Hoda v. The State of Bihar and Ors. decided on 18.11.1997.

5. 1 find substance in the arguments of the learned Counsel appearing on behalf of the petitioner. A plain reading of Rule 161(b) of the Bihar Pension Rules, 1995 makes it clear that the sum total of pay plus pension should not exceed the substantive pay last drawn, by the pensioner in case of his re-employment, including pension equivalent of D.C.R. gratuity would amount to modification of the State statutory rules by executive instruction to the detriment of petitioner and hence, such amendment by executive instruction has to be held illegal and arbitrary. Thus, following the aforesaid earlier judgment of this Court, I find substance in the arguments advanced on behalf of writ petitioner and accordingly, the writ application is allowed. Respondent No. 4 is directed to re-fix the pay of the petitioner on re-employment with effect from 1.7.1995 strictly in terms of Rule 161(b) of the Bihar Pension Rules, 1995 in the light of observation and direction made above. Wrong deduction made on account of aforesaid error should be refunded to the petitioner within three months from the date of production of the copy of this order. There shall be no order as to costs.

