(2006) 11 PAT CK 0138

In the Patna High Court

Case No : CWJC No. 16664 of 2004

Nand Kishore Prasad APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Citation : (2007) 2 PLJR 10

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Binay Kumar Singh for the petitioner, Mr. Mukesh Kumar Thakur, learned junior counsel to Advocate General, and Mr. Raj Nandan Prasad for respondent no. 3 (The Accountant General, Bihar, Patna). This writ petition is directed against the order dated 17.8.2004 (Annexure-2), and the consequential order dated 29.9.2004 (Annexure-A to the counter affidavit on behalf of respondent), issued by the Block Development officer, Raghopur, for recovery of a sum of Rs. 76,880/- alleged to have been paid in excess by way of death-cum-retiral gratuity. The petitioner seeks two more reliefs. The petitioner''s pension was fixed at Rs.1,225/-, and he was paid a total sum of Rs. 1,25,984/- by way of gratuity. It is submitted that he is entitled to higher benefits. According to the writ petition, the petitioner was appointed as a Lower Division Clerk in Saharsa Collectorate on 2.2.1955. He superannuated from the services of the Bihar Government with effect from 31.8.1996, as Head Clerk, Supaul Collectorate. He complains before this Court that his pension has been fixed at a rate lower than his entitlement, and a sum of Rs. 76,880/- has erroneously been recovered from his post retirement benefits paid to him by way of gratuity. He lastly submits that the petitioner was, while in service, entitled to Super Selection Grade with effect from 1.8.1994 which, if granted, will result in payment of differential amount of salary, higher rate of pension as well as gratuity.

2. Respondent Nos.1 and 2, and respondent no. 3 have placed on record their separate sets of counter affidavits and have opposed the writ petition.

3. I have perused the materials on record and considered the submissions of learned counsel for the parties. In so far as the claim for Super Selection Grade with effect from 1.8.1994 is concerned, respondent nos. 1 and 2 have in their counter affidavit categorically stated that the petitioner''s turn for the Super Selection Grade not reached so long he was in service. No person junior to him was granted the benefit and, in fact a number of persons senior to him did not get it so long the petitioner was in service. In that view of the matter, it appears to me that no case of discrimination or any illegality is made out. The contention is, therefore, rejected.

4. In so far as the petitioner''s entitlement to pension is concerned, it is stated that the petitioner''s pension as per the revised rates have been issued and has been sanctioned pension at the rate of Rs. 3,729/- per month. This, therefore, takes care of the petitioner''s grievance regarding pension.

5. As to the petitioner''s grievance with respect to deduction of Rs. 76,880/-, being the allegedly excess amount of gratuity paid to him the petitioner was initially paid a sum of Rs. 1,25,984/- by way of gratuity. It appears to me that the calculation of grant of gratuity of the category of employees of the petitioner is governed by resolution No. 2318 (2) dated 16.5.1998 (Annexure-A to the counter affidavit on behalf of respondent no. 3) issued by the Finance Department, Government of Bihar, Patna, the relevant portion of which is set out hereinbelow for the facility of quick reference:

It is manifest on a plain reading of the same that the formula for calculating the amount of gratuity admissible to an employee was the last drawn salary (plus) 20% added thereto multiplied by sixteen and half times. The calculation is stated in paragraph no. 9 of the counter affidavit of respondent no. 3,. and is set out hereinbelow for the facility of quick reference:

"9. That with respect to the recovery of Rs. 76,880/- it is stated that the admissible DCRG was calculated to the tune of Rs. 49,104.00 as below:

Last Pay drawn

-- 2480

Add 20% of pay

-- 496

2976

Admissible DCRG = 2976 x 33/02 = 29104.00

But the Department had already paid him Rs. 1,25,984.00 provisionally on account of DCRG resulting in an overpayment of Rs. (1,25,984 - 49,104) = Rs. 76880/-, which was required to be recovered from the petitioner."

The calculation speaks for itself and on the very face of it, the provisional payment made to the petitioner appears to be in the teeth of the relevant resolution of the State Government set out hereinabove. The same also provides that the amount of gratuity under no circumstance shall exceed a sum of rupees one lac. Therefore, payment of a sum of Rs. 1,25,984/- was palpably erroneous and perhaps attributable to the manipulations of the petitioner. Recovery of the excess amount cannot, therefore, be faulted. I must at this stage indicate that the amount of gratuity has since been enhanced for the employees who have superannuated with effect from 1.4.1997 and onwards, vide resolution no. 11556 dated 22.12.1999 (Annexure-4). The same is obviously inapplicable to the petitioner''s case because he superannuated prior to 1.4.1997. The impugned orders are, therefore, unassailable. It will be open to the respondent authorities to recover the excess amount of gratuity along with permissible rates of interest. There is no merit in this writ petition. It is accordingly dismissed.

