(1995) 05 PAT CK 0039

In the Patna High Court

Case No : C.W.J.C. No. 3953 of 1993

Nikhil Krishna Aikat APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Citation : (1995) 05 PAT CK 0039

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner in this case has sought for direction commanding the Secretary, Food, Supply and Commerce Department of the State of Bihar to treat him as a permanent State Government employee and to give him consequential pensionary retirement benefit. In the alternative, he has prayed for any other relief, as he is entitled under the law.

2. The brief facts of the case are that the Petitioner was appointed in December, 1943 as a Cloth Inspector in the then Supply and Price Control Department of the State of Bihar. At that point of time, the Supply and Price Control Department of the State of Bihar was a temporary department and thereby, the Petitioner was appointed on temporary basis. By letter dated 23rd January, 1953 (Annexure-2), the Respondents State decided to retrench temporary non-gazetted employees of Supply and Price Control Department of the State of Bihar of different districts, excluding the employees who were in the district of Patna and two other districts. As the .Petitioner was appointed as Cloth inspector (now known as District Supply Inspector) in the district of Patna, the services of the Petitioner was not terminated in pursuance of letter dated 23rd January, 1953, which will be evident from enclosure appended with Annexure-2. The Petitioner continued to remain as temporary State Government employee. It was on 17th September, 1953, by a Telegram No. 399, the Petitioner was directed to join Rajya Transport Department of the State of Bihar. The said Rajya Transport Department was a permanent department. In pursuance of Telegram aforesaid dated 17th September, 1953 (which will be evident from Annexure-7), the

Petitioner joined the post of District Traffic Inspector in the Transport Department of the State of Bihar on 22nd October, 1953. Such appointment as Traffic Inspector in the Rajya Transport Department was also made on temporary basis.

3. It was in the year 1956, the Supply Department of the State of Bihar was made a permanent department. It was decided that the persons who were already working against different non-gazetted posts, including the post of Supply Inspector, they may be taken back in the services of the Supply Department and they be made permanent. The Petitioner having come to know of the same, filed representation in the year 1956 for his absorption as permanent Supply Inspector in the Supply Department, which was forwarded by the Transport Department vide letter dated 3rd March, 1956 (Annexure-1). On the representation of the Petitioner, the Respondents-State from Supply Department issued a fresh offer of appointment by letter dated 9th February, 1958 (Annexure-3), as temporary Supply Inspector. As such appointment given to the Petitioner to the post of Supply Inspector, was again temporary in nature, hence Petitioner refused to join the Supply Department and continued to remain in the Rajya Transport Department as Traffic Inspector.

4. It will be evident from Annexure-9 that the Respondents-State constituted Bihar State Road Transport Corporation with effect from 1st May, 1959. The persons who were already in the Transport Department of the State of Bihar, their services were placed in the Bihar State Road Transport Corporation (in short "Corporation") and they were absorbed in the services of the Corporation. As the Petitioner was already functioning as temporary Traffic Inspector in the Rajya Transport Department of the State of Bihar, on constitution of the Corporation with effect from 1 st May, 1959, the Petitioner was absorbed in the services of the Corporation and since then the Petitioner became an employee of the Corporation. On 10th April, 1974, on attaining the age of superannuation (58 years), the Petitioner retired from the services of the Corporation.

5. At this stage, it is stated that while under the Respondents-State, the rules provide post retirement benefits in favour of the State Government employees, including pension, but under the Corporation such benefits of pension or post retirement benefit is not applicable. The employees of the Corporation are entitled for contributory provident fund, whereas the State Government employees are only entitled for general provident fund. After the retirement of the Petitioner on 10th April, 1974, admittedly the Petitioner has been provided with the post retirement benefits by the Corporation, which includes contributory provident fund and gratuity. Admittedly, the Petitioner has not been provided with post retirement benefit of pension from the Corporation, as there is no such scheme under the Corporation. It was only when Shri A.B. Sen Gupta, who was initially appointed like the Petitioner as Cloth Inspector (District Supply Inspector), retired from the services of the State Government and provided with the benefit of pension, the Petitioner represented on 14th November, 1985 before the Respondent-State for giving him the same treatment, including the

pension. By letter dated 24th January, 1986 (Annexure-6), the Petitioner was intimated that he is not entitled for pension. The Petitioner, thereafter, made various representations, pointing out therein that his case is similar to that of Shri A.B. Sen Gupta and as such he should also be provided with similar benefit. It was further pointed out by the Petitioner that another Shri Parmeshwar Dayal, who was also earlier in the State Government service and subsequently taken under the Corporation, after his retirement from the services of the Corporation, the Respondents-State had given him the retirement benefits, including the benefit of pension. His one of such representations is of December, 1983, as contained in Annexure-5. Thereafter, when no reply having been received by the Petitioner, the Petitioner has filed the present writ application for the reliefs, as taken into note in the preceding paragraph.

6. Counsel for the Petitioner submitted that his case cannot be distinguished from the case of Shri A.B. Sen Gupta, who was similarly situated. It was further submitted on behalf of the Petitioner that in the year l958, the Petitioner was not provided with permanent appointment by the Supply Department of the State of Bihar, but the said Supply Department having been made permanent, the Petitioner should have been ''also provided with permanent appointment to the post of Supply Inspector, as was given to Shri A.B. Sen Gupta. In this background, it was prayed that direction should be given to the Respondents-State to treat the Petitioner as a permanent employee with effect from 1958 and thereby to hold that the Petitioner retained his lien under the Respondents-State and the Respondents-State be directed to provide the Petitioner with the post retirement benefit of pension.

7. It was further contended on behalf of the Petitioner that Shri Parmeshwar Dayal was also a Corporation employee (retired from the post of Estate Manager). After retirement of Parmeshwar Dayal, he was also provided with the benefits of Corporation like the gratuity and contributory provident fund. Thereafter, when said Parmeshwar Dayal made a representation before the Respondents-State, the Respondents-State treated said Shri Parmeshwar Dayal as a State Government employee, continuing on deputation under the Corporation and thereby, the Respondents-State has provided him with the post retirement benefits, which includes gratuity, general provident fund and pension. However, direction was given to said Shri Parmeshwar Dayal to return back to the Corporation the amount towards contributory provident fund and gratuity, which he had received from the Corporation. Counsel for the Petitioner thereby contended that such benefit should also be given to the Petitioner and the Petitioner is ready to return back the amount of gratuity and contributory part of the Corporation, which the Petitioner has already received from the Corporation.

8. Counsel appearing for the Petitioner also made an alternative argument. According to the counsel, even if it is presumed that the Petitioner was absorbed in the Services of the Corporation as on 1st of May, 1959, prior to the same, the Petitioner having already completed more than 15 years of services under the

Respondents-State (from December, 1943 to April, 1959), the Petitioner is entitled for post retirement benefit of pension and gratuity from the Respondents-State in terms with the decision of the State-Government made vide Memo No. 11779 dated 12th of August, 1969, issued from the Finance Department of the State of Bihar.

9. Counsel appearing on behalf of the Respondents-State, on the other hand, contended that the Petitioner cannot be treated to be a State Government employee, he having absorbed under the Corporation, as back as, on 1st May, 1959. It was submitted that the Petitioner all along remained as a temporary Government employee since December, 1943 to April, 1959. Thereafter, the Petitioner having been absorbed in the services of the Corporation as on 1st May, 1959, the services of the Petitioner stood automatically terminated from the services of the State Government.

10. It was further submitted on behalf of the State that the Petitioner was given appointment to the post of Supply Inspector on temporary basis again on 9th February, 1958 vide Annexure-3. If the Petitioner would have joined the post of Supply Inspector in the said year 1958, like Shri A.R. Sen Gupta, the Petitioner could have been confirmed to the post of Supply Inspector and thereby the Petitioner could have been treated to be continuing as the State Government employee. From Annexure-10, dated 16th March, 1993, it was pointed out by the counsel for the Respondents-State that Shri Parmeshwar Dayal was already a confirmed State Government employee. After the constitution of the Corporation as on 1st of May, 1959, though said Shri Parmeshwar Dayal continued under the Corporation, his lien was never terminated. In this background, it was taken into note, by the Respondents-State that though Shri Parmeshwar Dayal retired, while he was in Corporation, he continued to remain as a State Government employee, he having a lien on a permanent post. It was for the said reason, the post retirement benefit which was made in favour of Shri Parmeshwar Dayal as an employee of the Corporation, was ordered to be refunded and said Shri Dayal was provided with the post retirement benefits as a State Government employee, including the pension.

So far as Shri A.B. Sen Gupta''s case is concerned, it was contended by the counsel for the State that Shri A.B. Sen Gupta having accepted the post of temporary Supply Inspector, ana thereafter he having continued and confirmed against the said post of Supply Inspector, became a substantive employee of the Respondents-State and for that reason, said Shri Sen Gupta was provided with the post retirement benefits of pension, gratuity and provident fund. Thereby, clear distinction was made by the State vis-a-vis the case of the Petitioner, on the one hand, and the case of Shri A.B. Sen Gupta and Shri Parmeshwar Dayal on the other hand.

11. So far as the alternative argument which was advanced on behalf of the Petitioner, that the Petitioner is at least entitled for post retirement benefit of pension and gratuity from the State Government, it was contended on behalf of

the State that the Petitioner ceased to be a State Government employee as back as on 1st of May, 1959 and for the said reason, the memo dated 12th of August, 1969 (as printed in the Bihar Pension Rules), issued by the Finance Department of the State of Bihar, is not applicable in the case of the Petitioner.

12. Having heard the counsel for the parties, I feel that the substantive prayer made by the Petitioner for treating him as a permanent State Government employee upto the date of his retirement and to give him the consequential pensionary benefits, is to be rejected. The Petitioner was admittedly a temporary State Government employee since the year 1943, till 1st May, 1959 i.e. the date the Petitioner was absorbed under the Corporation. The services of the Petitioner having been absorbed in the Corporation on 1st May, 1959, he ceased to be a State Government employee from the said date. It is for the said reason, the period from 1st May, 1959 till 10th April, 1974, i.e. the period the Petitioner served under the Corporation cannot be treated to be in service under the Respondents-State of Bihar, he having no lien with the Respondents-State.

13. So far as the argument advanced by the Petitioner relating to discrimination, via-a-vis other similarly situated persons like Shri A.B. Sen Gupta and Shri Parmeshwar Dayal is concerned, the same is also misconceived. Counsel for the Respondents has correctly shown that the Petitioner comes to a different class than that of Shri A.B. Sen Gupta and Shri Parmeshwar Dayal, who were permanent State Government employees and continued to enjoy their lien under the Respondents-State and/or remained in the services of the Respondents-State.

14. So far as the alternative argument is concerned, I find that there is some force in it. It is true that the Government decision contained in Memo dated 12th August, 1969 is prospective in nature but, according to me, the Respondents-State cannot deny such benefit to the Petitioner on the ground that the Petitioner retired from the services of the Respondents State/ceased to be a Government employee prior to 12th August, 1969. The extract of the aforesaid Circular vide Memo No. Pen 1024/69/11779 F. dated 12.8.1969, is as follows:

Regarding.- Declaration of temporary service of a Government servant who is not confirmed as pensionable.

1. Under the existing pension rules, a temporary Government servant if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under Rule 59 of the Bihar Pension Rules.

2. There are a large number of temporary Government servants employed under different schemes which are in existence for the last 15-20 years, and it will cause hardship to them, if they are not allowed pension after their retirement.

3. The State Government after careful consideration have, therefore, been pleased to decide that, if the service of the temporary or officiating Government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under Rule 59 of the Bihar Pension

Rules.

4. These orders will be applicable to Government servants retiring on or after 12th August, 1969.

15. From the aforesaid Circular, it will be evident and clear that even if a temporary State Government employee has completed more than 15 years of service, he is entitled for post retirement benefits of pension.

16. In the case of D.S. Nakara and Others Vs. Union of India (UOI), their Lordships of the Supreme Court have held, as follows:

Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education (1937) 302 US 74 : 82 Law Ed. 57, a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender or rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a different portion of the compensation for service rendered. In one sentence one can say that the most practical raison deter for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to the date. If the liberalisation was considered necessary for augmenting social security in old age to government servant then those who retired earlier cannot be worse off than those who retired later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to person otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a'' day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension....

The artificial division stares into the face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rule being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours'' difference in matters of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14."

But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalized pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rule. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella, all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date.

17. Such decision of the Supreme Court has been followed in the case of Union of India and another Vs. Deoki Nandan Aggarwal,

18. On the facts and circumstances of the case, as admittedly the Petitioner had completed more than 15 years of service under the Respondents-State of Bihar from December, 1943 to April, 1959, I hold that the Petitioner is also entitled for pension and gratuity from the Respondents-State on the basis of Circular dated 12th August, 1969. The Respondents-State cannot discriminate the Petitioner of the benefit arising out-of the Circular aforesaid dated 12th August, 1969, on the basis of date of retirement of the Petitioner. The only effect would be that the Petitioner will be entitled for such benefit of pension and gratuity in terms of

Circular dated 12th August, 1969 from prospective date. i.e. with effect from 12th August, 1969 and not with effect from 1st May, 1959.

19. Accordingly, I hold and direct the Respondents to pay the Petitioner the post retirement benefits of pension and gratuity in terms of the Circular aforesaid dated 12th August, 1969, which is to be paid to the Petitioner with effect from 16th February, 1969 till date, including the arrears thereto. The Petitioner is also entitled for 10 percent simple interest on the arrears aforesaid. The post retirement benefits of pension and gratuity, including the arrears and interest thereto, is to be paid in favour of the Petitioner by the Respondents within a period of three months from the date of receipt/production of a copy of this judgment.

20. The writ petition is allowed with the aforementioned observations/directions. There shall be no order, as to costs.