
(2007) 05 PAT CK 0018
In the Patna High Court
Case No : LPA No. 648 of 2006

Pandey Jagdishwar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

Citation : (2007) 05 PAT CK 0018

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—Upon joint request, this matter was taken up for final hearing. Therefore, it was admitted and heard on 23.5.2007 and, today, the judgment is being pronounced.

2. In this Letters Patent Appeal under Clause 10 of the Letters Patent applicable to this High Court, the appellant, original writ petitioner, has questioned the legality and validity of the judgment of the learned Single Judge, dated 2.8.2006, in CWJC No. 8763 of 2005, whereby, the appellant original, writ petitioner came to be dismissed.

3. The writ petition under Article 226 of the Constitution of India, came to be filed raising grievances against the order of the respondent State authority, dated 4.12.2004 (Annexure - 1), directing recovery of the amount of salary for two years paid to the appellant - original writ petitioner, on account of a dispute with regard to birth date, despite the fact that the appellant - original writ petitioner had worked during that period. The short question, therefore, which emerges for consideration and adjudication in this Letters Patent Appeal, is as to whether the recovery of the salary on the basis of the aforesaid order of the respondent authority and affirmed by the learned Single Judge, by virtue of the impugned order could be said to be just, legal and valid? Our spontaneous and positive answer to this is in the negative in view of the following facts profile.

4. The learned Counsels appearing for the parties have been heard. The text, tenor and texture of the impugned order of the respondent authority, dated

4.12.2004, as well as, the impugned order of the learned Single Judge have also been examined.

5. There is no dispute about, the following facts that:

i) The appellant - original writ petitioner, at the relevant time, was working as Correspondence Clerk (class III) in the office of the Executive Engineer, Rural Engineering Organisation, Works Division, Sasaram;

ii) Two birth dates of the appellant original writ petitioner came to be recorded, namely, dated 11.2.1944 and 11.2.1946, simultaneously, in the service record of the appellant - original writ petitioner;

iii) A writ petition bearing, CWJC No. 12886 of 2004, was filed by the appellant earlier being first round of litigation which came to be disposed of along with other writ petitions on 11.10.2004 with a direction that the directions given in CWJC No. 7054 of 2003 should be followed in this case also;

iv) After disposal of the said first writ petition instead of complying with the direction of this Court passed in that case, the respondent authority remained quiet for some time and, therefore, an application was filed for revival of the earlier writ petition, on 7.1.2005;

v) The respondent authority, namely, Superintending Engineer, Rural Engineering Organisation passed the impugned order, thereafter, on 4.12.2004, directing recovery of the amount of two years' salary paid to the appellant - original writ petitioner;

vi) Pursuant to the direction of the original respondent No. 4, respondent No. 5 issued further direction and order of recovery of Rs. 2,60,710/- out of the retiral benefits due and payable to the appellant original writ petitioner by order dated 12.2.2005 (Annexure - 2);

vii) It appears that the department raised a controversy in regard to the date of birth after 31 years of service of the appellant - original writ petitioner. There is no dispute about the fact that the aforesaid amount directed to be recovered, has already been recovered from the retiral dues of the appellant - original writ petitioner. It is in these context again, the writ petition came to be filed, wherein, the impugned order of the learned Single Judge was passed.

6. Ordinarily, the authority concerned ought to have taken action for passing an order for superannuation of the appellant - original writ petition as per the birth date recorded in the service book. Even if the authority had taken his birth date to be 11.2.1944 as correct birth date. The petitioner - appellant ought to have been made the appellant - original writ petitioner to retire on the basis of that date of birth. However, since two birth dates came to be recorded in the service book from the beginning, the petitioner was allowed to work on the basis of his birth date recorded as 11.2.1946. It is not in dispute that the appellant original writ petitioner did work for two years and was paid salary. Therefore, ordinarily,

when a person has worked, his salary has to be paid. The petitioner cannot be penalized for waking up late from the slumber of the officials of the department. How could a contention be advanced on behalf of the respondent State that the person who has overstayed to work, not because of his own mistake or fraud or misrepresentation, should be penalized for the apathy and lethargy on the part of the respondent department? This approach, undoubtedly, is pedantic, if not fanciful. This is an instance of some of the cases in which citizens or employees are forced to knock the door of justice for no fault of their own. The State cannot be allowed to contend that since a particular employee has worked beyond the period of superannuation, recovery of amount paid to him be permitted. This proposition is very well expounded and explained in catena of judicial pronouncements, wherein, this proposition of law has not been found to be holding good.

7. Reliance is placed on exposition of law by the Hon''ble Apex Court in the case of Kailash Singh v. The State of Bihar and Ors. 2004 (1) PLJR 289 (SC) wherein, it has been held that recovery sought to be made from the salary of the employee on the ground of alleged over stay in service on the basis of age assessed or considered, despite the fact that the employee has worked during the period of alleged over stay, is not legal. This proposition is further fortified by the decision rendered in the case of Raghubir Prasad Singh v. Bihar State Electricity Board and Ors. 1996 BBCJ 15, as well as, the decision of the Hon''ble Apex Court in the case of Sahib Ram Vs. State of Haryana and Others, , wherein, it has been held that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee.

8. In the present case, there was no dispute about the fact that there is no allegation of misrepresentation or fraud purported to have been perpetrated by the appellant - original writ petitioner. Therefore, the aforesaid proposition of law will be attracted. The respondent State on being asked whether this proposition of law holds good or not, no any pronouncement or authority is placed on record to show that the aforesaid proposition of law has changed or is no longer a good law. We are, therefore, left with no alternative but to pass the following orders.

9. This Letters Patent Appeal is allowed quashing the aforesaid impugned order of the respondent authority effecting the recovery from the retiral dues, as well as, the order of the learned Single Judge challenged in this appeal. We direct the respondent authority to return and repay the amount recovered from the appellant - original writ petitioner with interest at the rate of 6% per annum from the date of recovery till the date of payment. Rule is made absolute. No costs.