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(2010) 05 PAT CK 0078

In the Patna High Court

Case No : CWJC No. 14717 of 2009

Parmeshwar Paswan APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:
Bihar Pension Rules, 1950 — Rule 58, 59

Citation : (2012) 133 FLR 750 : (2012) 1 PLJR 826

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Advocate : R. Usha, for the Appellant; Sudhir Singh For the Accountant-General, for the Respondent

Judgement

Shailesh Kumar Sinha, J.—The petitioner prays for quashing of the letter vide no. 3721 dated 18.6.2009 (Annexure-8) whereby the claim of the petitioner for pension has been rejected. The brief relevant facts are that the petitioner was initially appointed on the post of Village Chowkidar on 4.7.1955 within Benepatti Police Station, district of Madhubani. Pursuant to the policy decision of the Cabinet, the Village Chowkidars were declared as Class-IV Employee of the State Government with effect from 1.1.1990 as per letter no. 4ch-101/90/359 dated 17th of January, 1990 vide Annexure-5 of the writ application. The petitioner, on his retirement on 31st of May, 1999, requested for pension which was declined since he did not complete the minimum service of 10 years as required under the Bihar Pension Rules after being declared as Class-IV employee of the Government with effect from 1.1.1999 as per Annexure-5.

2. The petitioner filed a writ application in this court vide C.W.J.C. No. 13634 of 2006 for directing the respondent-State for extending the benefit of pension. The writ application was filed primarily on the ground that the regular pay scale was allowed to the Village chowkidars by the State Government with effect from 1.1.1977 in the pay scale of Rs. 75-1-95. The benefit of gratuity was allowed. The expenditure were to be made from the Government revenue under the Head

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"255 police and village police" vide State Government letter no. 31C3/102/77/9185 dated 29.8.1977, as contained in Annexure-3 followed by the further decision to pay ex gratia amount of Rs. 50,000/- to the legal representative of the Chowkidar/Dafadar who dies while discharging (sic) the Government expenditure to be made under the "Head 2065 administrative services and other expenses" with effect from 1.4.1987 vide Annexure-4. The other admissible allowance were also allowed from the aforesaid date followed by revision of pay scale with effect from the aforesaid date i.e. 1.4.1987. It further appears that on demand being made by the Chowkidars/Dafadars that they should be declared as Class-IV Employee of the State Government and the salary and other allowances be also paid as admissible. Pursuant to the Cabinet decision taken on 30th of December, 1989 State Government declared the Chowkidars as Class-IV Employees of the State Government with effect from 1.1.1990 in the revised pay scale of Rs. 750-12-870-14-940 as per letter no. 359 dated 17.1.1980 vide Annexure-5.

3. The aforesaid writ application upon consideration was disposed of by order dated 29th of April, 2008, as contained in Annexure-6. This court upon details consideration of the relevant facts and rules under the Bihar Pension Rules disposed of by directing that the State Government should consider the case of the petitioner for granting him the benefit of services rendered by him in between 1.1.1977 to 1.1.1990, so that the petitioner may acquire the at least minimum qualifying service for allowing pension to the Government Servant in terms of the Bihar Pension Rules as discussed in.

Paragraphs 7, 8 and 9 which are quoted below:-

Paragraph-7. Rule 58 of the Bihar Pension Rules provides that the service of a Government servant shall qualify for pension if it confirms to the following three conditions, namely, the service rendered must be under Government, employment must be substantive and permanent and finally the service must be paid by the Government. Rule 59 of the Bihar Pension Rules provides that the Government in the case of a service paid from the revenues of the State may declare the service to be pensionable even if the service is not under Government or the employment is not against substantive and permanent post.

Paragraph-8. The fact that petitioner was appointed as Chowkidar w.e.f. 9.7.1955 regularized as a Government Servant w.e.f. 1.1.1990 and superannuated w.e.f. 31.5.1999 without completing ten years of pensionable service is not in dispute. Prayer, however, has been made in this application to include even part of the earlier service rendered by the petitioner for calculating the minimum ten years of qualifying service for earning pension under the Bihar Pension Rules as the petitioner throughout his career served the Village police with all sincerity at his command and was paid from the State Exchequer right from 1.1.1977 in the light of report of the I.N. Thakur committee constituted by the State Government for providing better service condition to the Chowkidars.

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Paragraph-9. It is thus evident that the State Government in terms of Rule 59 of the Bihar Pension Rules has the necessary discretion to take into account the service rendered by the petitioner in between 1.1.1977 to 1.1.1990 for the purpose of calculating qualifying service so as to enable him to earn minimum pension under the Bihar Pension Rules. Accordingly it is directed that the State Government should consider the case of the petitioner for granting him the benefit of service rendered in between 1.1.1977 to 1.1.1990 so as to enable him to earn minimum qualifying service for pension in terms of the Bihar Pension Rules. Necessary compliance in the light of this order be made by the State Government as early as possible in any case within a period of two months from the date of receipt/production of a copy of this order.

4. Since no final decision was taken as directed by this court petitioner filed contempt application vide M.J.C. No. 3745 of 2008. Thereafter the impugned order contained in memo no. 3712 dated 18th of June, 2009 vide Annexure-8.

5. Learned counsel for the petitioner submits that this court vide Annexure-6, directed that the State Government should take necessary decision in terms of Rule 59 of the Bihar Pension Rules in view of the facts noticed above. The State Government however did not take the decision, as required to be taken in terms of Rules 58 and 59 of the Bihar Pension Rules and as directed by this Court that the decision as contained in Annexure-8 is not of State Government. It is further submitted that the grounds for rejecting the claim of the petitioner for pension that since similar cases may also arise in future causing problem for the State Government is not justified in law. As such, the impugned order as contained in memo no. 3721 dated 18th of June, 2010 deserves to be quashed.

6. Learned counsel appearing on behalf of the State on the other hand submits that petitioner did not complete the minimum 10 years of qualifying service, as required under the rules, as such, he is not entitled to receive pension. The claim of the petitioner for pension, therefore, rightly rejected referring to the statement made in the counter affidavit filed on behalf of the respondent nos. 1 and 4.

7. Considering the rival, submissions of the parties and their respective pleadings, it would appear that the basic facts with respect to appointment, allowing regular pay scale, gratuity, additional allowance and meeting the expenditure from general revenue of the State Government under the different head as indicated in Annexures-3 and 4. It is also not in dispute that the petitioner also got declared as Class-IV employee of State Government vide Annexure-5. It would be appropriate to refer Rules 58 and 59 in connection with entitlement of pension under the Bihar Pension Rules which are quoted below:-

Rule 58. The services of a Government servant does not qualify for pension unless it conforms to the following three conditions:-

First-The Service must be under Government.

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Second-The employment must be substantive and permanent.

Third-The service must be paid by Government.

These three conditions are fully explained in the following sub-sections.

Rule: 59. The provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled.

(1) Declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension.

(2) In individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.

8. On perusal of the aforesaid provision it would appear that Rule 58 prescribes three necessary conditions to be fulfilled for qualifying for pension by the Government servants. The conditions are that the service must be under Government, the employment must be substantive and permanent and the service must be paid by the Government. The Rule 59 empowers the State Government declare even though the person claiming pension may not fulfill the above conditions no. 1 and 2 to direct that the service rendered by the Government servant shall count for pension considering the individual cases with respect to any specific kind of service rendered in non-gazetted capacity having the paramount consideration for service of such individual cases that services must have been paid from the general revenue of the State Government.

9. The case of the petitioner that after initial appointment on the post of Chowkidar the regular pay scale revisions of pay scale as also the allowances and extending other benefits like payment of gratuity and ex gratia amount to the legal representatives of the Chowkidar in case of his death even prior to 1.1.1990 were allowed. The expenditure on account of such payments were made from the public exchequer under the specific police heads mentioned in Annexure-3 and 4 even before the petitioner alongwith other village Chowkidars were declared as Class-IV Employee. These facts are not in dispute.

10. The only reason for disallowing the benefit of pension is that in case, pension is allowed to the petitioner, the Government may be face more similar individual cases causing problem for the Government in future. The stand is not justified in law in view of the provisions of Rules 58 and 59 of the Bihar Pension Rules. Moreover, this court as per the order dated 29.4.2008 in C.W.J.C. No. 13634 of 2006 as contained in Annexure-6 specifically directed for consideration by "State Government" to consider the case of the petitioner in terms of Rule 59 of the Bihar Pension Rules for considering the service rendered by him in between 1.1.1977 to 1.1.1990. The impugned order does not indicate any such consideration.

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11. Learned counsel for the State is not in a position to controvert the submissions of the petitioner that such considerations were made in the impugned order dated 18.6.2009 as contained in Annexure-8.

12. In the above circumstances and in view of the discussions made in the foregoing paragraphs, this court is unable to uphold the decision'' as contained in impugned order dated 18.6.2009 (Annexure-8), accordingly, the same is quashed with direction that the State Government should take conscious decision for counting the previous service of the petitioner between 1.1.1977 to 1.1.1990 for qualifying service for pension in light of the relevant consideration required to be taken under Rules 58 and 59 of Bihar Pension Rules in the individual cases. Such decision be taken after considering the entire facts and circumstances of the case in respect of the petitioner as also directed by the Court on the previous writ application filed by the petitioner Vide Annexure-6 within a period of six months on receipt/production of certified copy of the present order. The writ application stands disposed of with the above observations/directions.

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