(2011) 07 PAT CK 0017

In the Patna High Court

Case No : LPA No. 1311 of 2010

Prafulla Chandra Chaudhary APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0017

Hon'ble Judges : Vikash Jain, J;S.K. Katriar, J

Bench : Division Bench

Judgement

1. Heard Mr. Anil Kumar Jha for the appellant, Mr. Shashi Bhushan Kumar, learned Standing Counsel No. 7 for respondent nos. 5 and 6, and Mr. Praveen Kumar Jaipuriyar for respondent nos. 2, 3 and 4. The petitioner of CWJC No. 10613 of 2010 has preferred this appeal u/s 10 of the Letters Patent of the High Court of Judicature at Patna, and is aggrieved by the order dated 9.7.2010, whereby the writ petition has been dismissed, and his prayer for grant of pay scale of Rs. 12,000-16,500/- for the post of Joint Director (Accounts) in the Bihar Institute" of Public Administration and Rural Development (BIPARD for short), has been rejected.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. The appellant is a Chartered Accountant by profession and was an employee of Bihar Industrial Development Corporation as Financial Advisor. Government of Bihar created BIPARD for training of its functionaries. A meeting of the Executive Council comprising of the following functionaries of the State Government was held on 22.3.2006:-

1. Sri G.S. Kang, Chief Secretary

2. Sri J.K. Datta, Development Commissioner

3. Sri P.N. Narayanan, Finance Commissioner

4. Sri Ashok Kumar Choudhary, Director General, BIPARD

5. Sri K.C. Saha, Commissioner and Secretary, Rural Development Department

6. Sri Alok Kumar Sinha, Secretary, Deptt. of Disaster Management

7. Sri Ravikant, Secretary, Department of Personnel & Administrative Reforms

By its resolution of 22.3.2006 (Annexure-1), it was decided to create various posts alongwith pay scales mentioned therein. The post of Joint Director (Accounts) carrying pay scale of Rs. 12,000-16,500/- was created by the said resolution dated 23.3.2006 (Annexure-1). After the post was so sanctioned, the Director General of BIPARD sent his communication dated 19.6.2006 (Annexure-2), to the Industrial Development Commissioner, to suggest names for appointment to the post of Joint Director (Accounts), carrying pay scale of Rs. 12,000-16,500/-. It appears from the communication dated 25.7.2006 from the Corporation to the Department of Industries, the Department of Industries had, in its turn forwarded the appellant''s name to BIPARD for consideration and selection for the post in question. By its communication dated 2.9.2006 (Annexure-4), BIPARD selected him for the post of Joint Director (Accounts), by order dated 5.10.2006. Consequently, the appellant submitted his joining report dated 10.10.2006 (Annexure-5). He continued to function until his superannuation on 31.5.2010, as Joint Director (Accounts) in BIPARD.

3. It appears that a dispute arose about the pay scale admissible to the appellant while on deputation to BIPARD.

The appellant''s stand has been that he is entitled to the pay scale of Rs. 12,000-16,500/-. On the other hand, the respondent authorities took the stand that this pay scale sanctioned by the 5th and 6th Pay Commission which has not been adopted by BIPARD and, therefore, inadmissible to the appellant. Further stand of the respondent authorities is that he is entitled to the pay scale he was enjoying before his deputation to BIPARD, leading to the writ petition. The same has been dismissed on the ground that the recommendations of the 5th and 6th Pay Commission have not been adopted by the corporation or BIPARD and, therefore, the pay scale in question has rightly been denied to the writ petitioner (the appellant herein).

4. We have perused the materials on record and considered the submissions of the Learned Counsel for the parties. It appears from the resolution dated 23.3.2006 of the executive council of BIPARD that the posts stated therein were created with the pay scales mentioned therein. Relevant portion of the resolution is reproduced hereinbelow:-

It is thus evident from the resolution that the executive council had taken the decision on 23.3.2006, and decided to create the posts stated therein, mainly because the State Government has already sanctioned those posts. The post of Joint Director (Accounts) was created with the pay scale of Rs. 12,000-16,500/-.

5. In pursuance of this resolution, the Director General of BIPARD had forwarded his communication dated 19.6.2006, to the Industrial Development

Commissioner, to depute a person for appointment as Joint Director (Accounts) in BIPARD carrying pay scale of Rs. 12,000-16,500/-. The relevant portion of the communication dated 19.6.2006, is reproduced hereinbelow:-

6. The Corporation forwarded the appellant''s name alongwith his bio-data and other relevant particulars to the Industries Department which, in its turn, forwarded the same to BIPARD by its communication dated 2.9.2006. This was followed by the order dated 5.10.2006 taking the appellant on deputation. The appellant agreed to go on deputation to BIPARD in view of the aforesaid recommendation made by the Executive Council of BIPARD as well as the letter of requisition dated 19.6.2006 from BIPARD. It is evident on a perusal of these documents that the post of Joint Director (Accounts) was created in BIPARD carrying the pay scale of Rs. 12,000-16,500/-. We are therefore, clearly of the view that the appellant is entitled to the pay scale of Rs. 12,000-16,500/- so long he functioned as Joint Director (Accounts) in BIPARD.

7. Learned Counsel for the appellant has rightly relied on the well known principle of law -that no one can approbate and reprobate at the same time. The law in this behalf has been very well enunciated in Halsbury''s Laws of England (4th Edition Reissue), page 844, para 957, and is reproduced hereinbelow:-

957. Approbation and reprobation.- On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais. The principle that a person may not approbate and reprobate expresses two propositions:-

(1) that the person in question, having a choice between two courses of conduct, is to be treated as having made an election from which he cannot resile; and

(2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent.

Thus a plaintiff, having two inconsistent claims, who elects to abandon one and pursue the other may not, in general, afterwards choose to return to the former claim and sue on it, but this rule of election does not apply where the two claims are not inconsistent and the circumstances do not show an intention to abandon one of them.

The common law principle which puts a person to his election between alternative inconsistent courses of conduct has no connection with the equitable doctrine of election and relates mainly, though not exclusively, to alternative remedies in a court of justice.

8. Applying this well established principle of law to the facts and circumstances of the present case, the appellant had accepted the post of Joint Director (Accounts) in BIPARD on the clear representation of the authoritfes that this post would carry the pay scale of Rs. 12,000-16,500/- in the resolution marked Annexure-1. The letter marked Annexure-2 requisitioned an appropriate

functionary for the post in the pay scale in question. After having deputed the appellant to the BIPARD, and the latter having accepted his deputation on the pay scale of Rs. Rs. 12,000-16,500/-, neither can be permitted to resile from the position because the situation has become irreversible for all. To this has to be added the appellant''s superannuation on 31.5.2010. In the result, the appeal is allowed. We disagree with the order of learned Single Judge. Respondent No. 4 is hereby directed to ensure release of the differential amount of salary to the appellant. His post-retirement benefits shall also be computed accordingly. In the circumstances, there shall be no order as to costs.

