
(1999) 06 PAT CK 0004
In the Patna High Court
Case No : L.P.A. No. 343 of 1997(R)

Prem Shankar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-06-1999

Acts Referred:

Citation : (1999) 06 PAT CK 0004

Final Decision : Allowed

Judgement

R.A. Sharma, J.—The appellant, who claims to be the Chairman of the Bihar Pensioners Samaj, Ranchi, filed C.W.J.C. No. 2080 of 1996(R), seeking appropriate writ, order or direction quashing paragraph Nos. 1(i) and 2.1 of the State Government's Resolution Nos. 1853 and 1854 dated 11-4-1990, respectively (hereinafter referred to as the Resolutions, whereby and whereunder the State Government revised the pension of the State Government employees with effect from 1-1-1986 with the rider that the monetary benefit of the said revision will be available with effect from 1-3-1989 only. Consequential direction to give monetary benefit of the revised pension with effect from 1-1-1986 was also claimed. This writ petition has been dismissed by the learned Single Judge vide judgment dated 10-7-1997. Being aggrieved thereby the appellant has filed this appeal under Clause 10 of the Letters Patent.

2. The State Government vide Resolution No. 1853 dated 19-4-1990 revised the provisions regulating pension and death-cum-Retirement gratuity of those Government Servants, who retired/died in harness on or after 1-1-1986. This revision was made effective from 1-1-1986 with a condition that the financial benefit of such revision will be admissible only with effect from 1-3-1989. Paragraph "1(i)" of the said Resolution being relevant in this regard is reproduced below:

1(i) Date of effect: The revised provisions as per these orders shall apply to Government servants, who retire/die in harness on or after the 1st January, 1986. The revision of Pension with effect from 1st January 1986 shall be merely

notional as the financial benefit of revision of pension will be admissible only with effect from 1st March, 1989, to wit, no arrear accruing from revision of pension during the period from 1st January, 1986 to the 28th February, 1989 shall be paid to the pensioners.

3. Resolution No. 1854 of the same date (i.e. 19-4-1990) provided for rationalisation of pension structure of pensioners/family pensioners with effect from 1-1-1986. Paragraph 2.1 of this Resolution also provided that although the revised pension scheme shall come into force on 1-1-1986 but its financial benefit will be admissible only with effect from 1-3-1989. Paragraph "2.1" of the said Resolution is also reproduced below:

2.1 Date of effect: The revised pensionary provisions contained in this order shall come into effect from 1st January, 1986 notionally and the financial benefit will accrue only with effect from 1st March, 1989.

4. The Bihar Pensioners Samaj through its Secretary filed C.W.J.C. No. 2467 of 1991, Bihar Pensioners Samaj through its Secretary v. The State of Bihar and Anr. before this Court at Patna challenging the validity of the aforementioned paragraphs 1(i) and 2.1 of the Resolutions. This writ petition was allowed by a Division Bench of this Court vide judgment dated 21st August, 1996, whereby and whereunder the said paragraphs 1(i) and 2.1 were quashed. The operative part of the judgment of the Division Bench is quoted below:

8. For the reasons stated above, paragraph 1(i) of Resolution No. 1853 dated 19-4-90 and paragraph 2.1 of resolution No. 1854 dated 19.4.90 containing the impugned decision of the State Government are quashed. The State Government is directed to reconsider the matter in accordance with law and in the light of the observations made above. This writ petition is, thus, allowed. There will be no order as to costs.

5. Against the said judgment of the Division Bench, the State of Bihar filed Special Leave to Appeal (Civil) which was dismissed by the apex Court on 20-1-1997. After the said decision of the Division Bench in Bihar Pensioners Samaj's case (supra), the present appellant filed the writ petition, which has been dismissed by the learned Single Judge relying on a decision of the Full Bench dated 9-8-1996 in L.P.A. No. 71 of 1995 Harold Kujur v. The State of Bihar and Ors. in which the controversy was with regard to the payment of the revised pay-scale to the State employees. It is against this judgment that this appeal has been filed.

6. The learned Counsel for the appellant has made two submissions, namely, (i) as the controversy involved in the writ petition which has given rise to this appeal is squarely covered by the Division Bench decision in Bihar Pensioners Samaj's case (supra) whereby and whereunder the impugned paragraphs of the Resolutions have already been quashed, it was not open to the learned Single Judge to dismiss the writ petition following the law laid down by the Full Bench in which the controversy was different ; and (ii) the judgment of the Division Bench

in Bihar Pensioners Samaj's case (supra) operates as res-judicata between the parties and is binding on the State Government and it is bound to be implemented by it.

7. While disputing the above submissions, the learned Counsel for the State Government has made the following submissions:

(i) The learned Single Judge rightly dismissed the writ petition on the basis of the law laid down by the Full Bench, and the judgment of the Division Bench on which reliance has been placed by the learned Counsel for the appellant being per incurium is not binding on the parties, inasmuch as it was given ignoring the law laid down by the Full Bench. In this connection, it has further been submitted that although before the Full Bench, the dispute related to the date of payment of the revised pay-scale to the State employees, but as the principle for revising the pay-scale and the pension is the same, the Full Bench's decision is binding even where considering the question of date of payment of revised pension ;

(ii) The Division Bench judgment does not lay down the correct, law, inasmuch as it has failed to consider the important factors and the relevant case law regarding the cut-off date; and

(iii) The Resolution No. 602 dated 18-12-1989 is the main resolution of the State Government and the other two Resolution Nos. 1853 and 1854 dated 9-4-1990 are its off-shoot and, therefore, it is not open to the Government to deviate from the principles laid down in the main resolution, but if it follows the Division Bench judgment it will be acting contrary to the principles contained in the main resolution, the validity of which was not challenged in the Bihar Pensioners Samaj's case.

8. The State Government vide different resolutions has revised the pension and the pay-scales of the State employees. The controversy before the Division Bench in Bihar Pensioners Samaj's case (supra), was about the validity of two paragraphs of the resolutions, whereby although the pension has been revised with effect from 1-1-1986, but its monetary benefits have been made available only with effect from 1-3-1989. The impugned paragraphs of the Resolutions were quashed by the Division Bench in that case. When an order or part thereof has been quashed by the Court, that order or its part, as the case may be, ceased to exist. The effect of quashing of an order or part thereof is that no notice of such an order or part thereof, which has been quashed, can be taken. It has to be ignored as if it does not exist. Paragraphs 1(i) and 2.1 of the Resolutions having been quashed by the Division Bench, they ceased to be the part of the resolutions and in the eye of law, they are to be treated as if they do not exist. There was thus no justification for the appellant to file another writ petition seeking quashing of the same paragraphs of the resolutions which have already been quashed. The appellant could have asked for payment of pension to the pensioners in accordance with the resolutions ignoring the two paragraphs, which have been quashed. The writ petition under the circumstances was thus

not liable to be dismissed and it should have been disposed of with a direction for payment of pension in accordance with the two resolutions minus the two offending paragraphs which have already been quashed.

9. But it appears that the decision of the Division Bench in Bihar Pensioners Samaj's case was not placed before the learned Single Judge. The learned Counsel for the appellant in this connection, however, submitted that the said decision of the Division Bench was already on record of the writ petition having been filed along with the affidavit. But, it may be that the attention of the learned Judge was not invited to the same. Be that as it may, the fact remains that the impugned paragraphs of the resolutions have already been quashed on account of which the writ petition was not liable to be dismissed.

10. The controversy before the Division Bench in Bihar Pensioners Samaj's case and before the Full Bench in Harold Kujur's case was not the same. In the former case, the dispute related to the payment of pension to those, who have already retired from service, in accordance with the revised pension scheme, whereas the controversy before the Full Bench related to the payment of revised pay-scale to the State employees, who are in service. The Division Bench and the Full Bench were not dealing with the same resolution of the Government. The controversy involved before them was different though it may be somewhat similar but not the same. In this connection, reference may be made to the *The Regional Manager and Another Vs. Pawan Kumar Dubey*, wherein the apex Court has laid down regarding the ratio decidendi as follows:

7. ...It is the rule deducible from the application of law in the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

11. Similar argument as has been made in the present case was made in Bihar Pensioners Samaj's case also, which was rejected by the Division Bench negating the plea of similarity between the cases of the pensioners and those who are still in service. The Bench in this connection held as under:

The submission that the same cut-off date has been fixed for the serving employees and in their case also arrear of pay has not been allowed for the period between 1-1-86 and 28-2-89 is not very convincing. Firstly, the serving employees had already been granted interim relief as well as cumulative dearness allowance on the total of pay and dearness allowances, as a result of which they had already been allowed a substantial measure of the benefits of actual pay revision prior to 1-3-89. Nothing of the kind was done to pensioners. Secondly, pay and pension cannot be treated at par. While serving employees are entitled to annual increments, there is no such provision for the pensioners. In the present case, the serving employees were allowed three annual increments on the pay fixed on 1-1-86 (with effect from 1-1-87, 1-1-88 and 1-1-89) and

then their pay was fixed in the revised scale on 1-3-89 and consequential monetary benefits could not be and was not given to pensioners because they do not get "increments". In other words, although arrears of pay revision were not given to the serving employees, they were compensated to a substantial extent by giving the benefits of the annual increments in the matter of their pay fixation, besides granting them interim relief, etc. Therefore, the plea that the same treatment was given to the employees in active service and the retired employees does not appear to be tenable.

12. In view of the facts and circumstances of the case and for the reasons given above, the judgment of the Division Bench in Bihar Pensioner Samaj's case is binding on the Government and the "per incuriam" Rule cannot be applied in such a situation.

13. That apart, the offending paragraphs of the resolutions have already been quashed by the Division Bench in Bihar Pensioners Samaj's case and that judgment has become final. Those paragraphs are no more part of the resolutions and by no rule or principle they can be restored as part of the resolutions. The State Government is thus duty-bound to pay pension in accordance with the two resolutions minus their paragraphs 1(i) and 2.1.

14. For the reasons given above, the submissions of the learned Counsel for the appellant are liable to be accepted. But for the same reasons the first submission of the learned Counsel for the State has to be rejected.

15. The last two submissions of the learned Counsel for the State also deserve the same fate. The plea raised on behalf of the State challenging the validity of the Division Bench judgment in Bihar Pensioners Samaj's case on the ground that the said decision does not lay down correct law with regard to cut-off date, has to be rejected for two reasons:

(i) The State Government itself has fixed the cut-off date being 1-1-1986, which has not been challenged and still stands. The challenge in Bihar Pensioners Samaj's case was to the effect that having once fixed the cut off date it was not open to the State Government to deny the monetary benefit of the revision pension from such date ; and

(ii) The earlier judgment in Bihar Pensioners Samaj's case is binding on the Government. It cannot ignore it on the ground that it does not lay down the correct law. In this connection, reference may be made to S. Nagaraj and Others Vs. State of Karnataka and Another, wherein the apex Court has laid down as under:

12. Was it So? Could the Government take up this stand? Law on the binding effect of an order passed by a Court of law is well settled. Nor, there can be any conflict of opinion that if an order had been passed by a Court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher Court or by an application for clarification, modification or recall of

the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In Halsbury's Laws of England (Fourth Edn. Vol. 9. P. 35, Para 55) the law on orders improperly obtained is stated thus:

The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the Court for relief from compliance with the order.

Any order passed by a Court of law, more so by the higher Courts and especially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No Court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the Court which pass the order and not by an authority according to its own understanding.

In T.R. Dhananjaya Vs. J. Vasudevan, , the apex Court again reiterated the same rule holding as under:

12. Question is whether, it is open to the respondent to take at this stage is volteface step. It is seen that all through the Government was a party. When the direction was given in LA. No. 3 filed by the petitioner, it was not brought to our notice that the petitioner was not eligible for promotion, in contradistinction with Dasegowda, or any other. When the claim inter se had been adjudicated and the claim of the petitioner had become final and that of Dasegowda was negatived, it is no longer open to the Government to go behind the orders and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimate legal alibi to circumvent the orders passed by this Court. Thus, it is clear that the officers concerned have deliberately made concerted effort to disobey the orders passed by this Court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and wilfully, with an intention to defeat the orders of this Court, passed the impugned order.

16. The last submission made on behalf of the State also does not deserve acceptance. It is not open to the State Government not to follow the judgment of the Court on the ground that it will be acting contrary to the principles contained in its earlier main resolution. If such plea of the State is entertained it will become easier for the Government to ignore the binding judgment of the Court.

17. This appeal and the writ petition, which has given rise to it, are allowed and the impugned judgment of the learned Single Judge is set aside. As the paragraph 1(i) of Resolution No. 1853 dated 19-4-1990 and paragraph No. 2.1 of Resolution No. 1854 dated 19-4-1990 have already been quashed, the question of quashing them again does not arise. The State Government is directed to pay

the pension to the pensioners in accordance with the resolutions ignoring paragraphs 1 (i) and 2.1 thereof. No cost.

A.K. Prasad, J.

18. I agree.