

(2002) 01 PAT CK 0088
In the Patna High Court
Case No : C.W.J.C No. 11334 of 2001

Prem Shankar Sahay

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0088

Judgement

P.K. Deb, J.—The writ petitioner is a retired Judge of this High Court and his grievance in this writ petition is that the period for which he had served as Presiding Officer of the Industrial Tribunal, Patna on his retirement as a Judge of this High Court has not been construed as qualifying service for the purpose of calculation of pension benefits and a representation made by the petitioner vide Annexure-3 before the Respondent No. 2 had not been paid heed to. The admitted position remains that on 27.7.1976, petitioner was appointed as High Court Judge of the Patna High Court and on 24.11.1986, he retired on superannuation. Before his retirement by notification of the State Government on 30.11.1986 he was appointed as a Presiding Officer of the Industrial Tribunal, Patna and in pursuance of that notification soon after retiring from the High Court he joined as such on 25.11.1986 and on 24-11-1989, he retired from the post of Presiding Officer. During the period of his tenure as Presiding Officer of the Industrial Tribunal he was drawing the salary which he was drawing as a Judge of the Patna High Court deducting his pension amount as was fixed on his superannuation from the High Court but as he was not given other emoluments and benefits/perquisites as a High Court Judge while serving as a Presiding Officer of the Industrial Tribunal, he moved before this Court in CWJC No. 5040 of 1989. A Division Bench of this Court had allowed the writ petition of the petitioner vide order dated 20.9.1989 vide Annexure-7 directing the State Government to allow House Rent allowance, Price of Petrol, Sumptuary allowance and allowance for electricity and water charges as was done in respect of other similarly situated persons Justice, namely S.K. Choudhary. Thus, the petitioner's contention is that for all practical purposes, the petitioner was treated as High

Court Judge while serving as a Presiding Officer in the Industrial Tribunal and, as such the period for which he was in the Industrial Tribunal as its Presiding Officer at Patna should be added as a qualifying service of a High Court Judge for the purpose of calculation of pension benefits. State of Bihar although had been given several chances to file counter-affidavit in the case no counter-affidavit has been filed. On the other hand, Union of India had filed a counter-affidavit contending that the services of the petitioner was guided under the High Court Judges (Conditions of Service Act, 1954 and the services of the subsequent period of the petitioner as Presiding Officer in the Industrial Tribunal has got no nexus with the High Court Judges Act and there remains no question of calculating the period of service as Presiding officer of the Tribunal as qualifying service for the purpose of pensional benefit under the High Court Judges Act to the petitioner.

2. In the writ petition, the petitioner had referred to a Judgment of the Allahabad High Court being Civil Misc. Writ Petition No. 18496 of 1999 wherein similarly situated Justice Nand Lai Ganguly of the Allahabad High Court who was afterwards appointed on superannuation as Chairman of the Industrial Tribunal and Labour Court, U.P. was granted the period of his service in the Industrial Tribunal as a qualifying service for the purpose of pension benefits. That judgment of the Allahabad High Court was tested in the Supreme Court in SLP (Civil) No. 12466 of 2000 but the judgment of the Allahabad High Court was upheld observing in the following manner:

Keeping in view all these factors and the peculiar facts and circumstances of this case, we are not inclined to interfere with the impugned order. The special leave petition, therefore, fails and is dismissed.

It has been contended by the Union of India in their counter-affidavit that the case of Justice N.L. Ganguly of Allahabad High Court is not similar to that of the present petitioner as the guidelines given by the Union of India through the Ministry of Law, Justice and Company Affairs as mentioned in the SLP order had never been adopted/or not by the State Government is not known to the Union of India and that there were some circumstances which were in favour of Justice Ganguly in getting the order in his favour. Because during the service period above petition was filed claiming the benefits of the High Court Judges. It has already been mentioned that the State Government has never come up with any counter-affidavit in the case although the State Government is the main respondent who is to bear the liability if the writ petition is being allowed but the State Counsel has fairly submitted that although instruction has been sought for but no instruction has been given meaning thereby the State Government does not want to claim of the petitioner. The matter regarding the position and status of a High Court Judge adorning another post after superannuation came in controversy while Justice Pratibha Bannerjee of Calcutta High Court had moved a petition before the central Administrative Tribunal, Calcutta of which she was the Chairman appointed afterwards on her superannuation as High Court Judge from

the Calcutta High Court. The period of her service in the C.A.T. was considered as adorning the post as a High Court Judge. The matter had gone to the Apex Court and it was held by the Apex Court as reported in Union of India and others Vs. Pratibha Bonnerjea and another, that the position and status of the High Court Judge is totally different from any Government service as the High Court Judge is a holder of the Constitutional office and, as such, the period of service in the other Department even on superannuation from the post of High Court Judge should be determined and calculated under Part I and not Part III of the Schedule I of the High Court Judges (Conditions of Service) Act, 1954. The judgment passed in Justice N.L. Ganguly's case is directly in flow from Justice Pratibha Bannerjee's case and the similar is the case of the present petitioner. Here also the petitioner had been construed to be a High Court Judge while he was serving as the Presiding Officer of the Industrial Tribunal and all emoluments and perquisites as were available in the High Court Judges Act had been granted to the petitioner while serving as such in the Industrial Tribunal. In that way the period of service of the petitioner in the Tribunal should definitely be construed as qualifying service for the purpose of pensional benefits. In that way the writ petition is hereby allowed and the respondent Nos. 3 and 4 are hereby directed to recalculate the pensional benefits to the petitioner as contained in Part I of the High Court Judges (Conditions of Service) Act, 1954 and in making such calculation. The calculation which has been given by the petitioner as contained in Annexure-3 should be taken into consideration and the process must be completed within a period of two months from this date.

3. A copy of this order be made over to the Advocate-General, State of Bihar and the Standing Counsel Union of India for facilitating the implementation of the order within the time frame as mentioned above.