
(2008) 04 PAT CK 0057

In the Patna High Court

Case No : Letters Patent Appeal No. 1291 of 2000

Purushottam Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Citation : (2008) 04 PAT CK 0057

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Rekha Kumari, JJ.—Heard learned Counsel for the appellant, learned Counsel for the State, learned Counsel for the High Court and learned Counsel appearing for the Accountant General, Bihar.

2. The appellant- writ petitioner is a retired Judicial Officer. He filed writ petition bearing CWJC No. 5732 of 2000 to seek directions for finalization/payment of pension, gratuity and unutilized leave salary in accordance with law. The main issue which arose for decision by the Writ Court was whether the appellant- writ petitioner will be treated to have superannuated from service on 31.12.1993 in accordance with his offer seeking voluntary retirement from that date or from 31.7.1995 when he attained the age of 60 years, the age of superannuation in accordance with directions relating to Judicial Officers given by the Supreme Court in its judgment in the case of All India Judges' Association and Others Vs. Union of India and Others, . The Writ Court gave no relief to the appellant-writ petitioner because he had been given the post retiral benefits by treating him to have voluntarily retired with effect from 31.12.1993. It was held by the Writ Court that the petitioner having opted for voluntary retirement with effect from 31.12.1993, there was no mistake on the part of the respondent State in finalizing his retiral dues treating him to have retired from that date.

3. Some important dates and facts may be noticed in brief for appreciating the rival submissions. The appellant- writ petitioner as a member of the Bihar Judicial Service faced certain allegations and was placed under suspension on 30.8.1993. Ordinarily, he would have retired on reaching age of 58 years on

1.8.1993 but as noticed earlier on account of judgment of the Supreme Court in *All India Judges' Association v. Union of India* (supra) he received an automatic extension in the age of retirement by two years. The necessary direction of the Apex Court on this issue has been noticed in paragraph 5 of the judgment of the Writ Court and there is no controversy between the parties that appellant - writ petitioner in ordinary course was to superannuate on reaching age of 60 years on 31.7.1995. After being placed under suspension on 30.8.1993, appellant- writ petitioner applied for voluntary retirement through a letter dated 15.9.1993 indicating that he wanted voluntary retirement with effect from 31.12.1993. The Standing Committee of the High Court accepted the request of the appellant-writ petitioner in its resolution dated 28.9.1993 and accordingly made recommendations to the State Government which was competent authority to take appropriate decision under the proviso to Rule 74(b)(i) of the Bihar Service Code. The State Government in spite of recommendation by the Standing Committee of the Patna High Court, for one reason or the other, kept the matter pending at its own end and ultimately issued an order on 23.2.1998 accepting appellant's offer to seek voluntary retirement with effect from 31.12.1993. It is not in dispute that as a fact the writ petitioner continued to be in Bihar Judicial Service under suspension till his superannuation on completing 60 years of age on 31.7.1995. At that time he was Sub Judge at Chaibasa.

4. The stand of the writ petitioner is that in accordance with provisions of the relevant Rule 74(b)(i) petitioner's right to seek voluntary retirement after giving at least three months previous notice was dependent upon the grant of specific approval of the State Government as required by the proviso that no government servant under suspension shall retire from service except with the specific approval of the State Government. Since there is no dispute that writ petitioner was under suspension, he could not have treated himself to have retired by virtue of his offer of voluntary retirement without receiving specific approval of the State Government. No such approval was issued till the writ petitioner actually continued in service till 31.7.1995. The State Government in fact compelled the writ petitioner to continue in service under suspension till he superannuated as per law on reaching the age of 60 years. According to learned Counsel for the appellant- writ petitioner, in such circumstances the action of the State Government in not granting retiral benefits to the writ petitioner by treating him to have retired on 31.12.1993 is contrary to facts and law and it amounts to depriving the writ petitioner of his lawful retiral dues for the fault of the State Government in not granting specific approval to petitioner's request for voluntary retirement which resulted in continuation of the writ petitioner in service till 31.7.1995.

5. On behalf of the High Court learned Senior Counsel relied upon judgments of the Apex Court in the case of (1) *Dinesh Chandra Sangma Vs. State of Assam and Others*, and (2) *B.J. Shelat Vs. State of Gujarat and Others*, , to submit that in those cases, in the context of fundamental rules applicable to the concerned petitioners it has been held that the employee has a corresponding right to seek

voluntary retirement in terms of the service rules and no order of acceptance was required to make the voluntary retirement effective from the date desired by the employee. On going through those judgments it is found that the rule position in those cases was quite different than the Rule 74(b)(i) read with its proviso as provided in the Bihar Service Code which is applicable to the writ petitioner.

6. On going through the relevant provision in the Bihar Service Code it is found that in the case of a government servant under suspension, his right to seek voluntary retirement has been seriously curtailed and made dependent upon specific approval of the State Government. Unless and until the State Government issues specific approval of the request for voluntary retirement of a government servant under suspension, he would continue to be in service and his request for voluntary retirement would remain in abeyance. In view of such clear position in rules, the aforesaid judgments relied upon by learned senior counsel representing the Patna High Court are found to be without any relevance.

7. On behalf of appellant- writ petitioner it was submitted that right to seek voluntary retirement and the determination of the issue as to when the voluntary retirement becomes effective is dependent upon provisions in the rules as well as on the facts of each case, as would appear from a recent judgment of the Supreme Court in the case of P. Lal Vs. Union of India (UOI) and Others, . On a perusal of that judgment, and particularly paragraph 27 thereof, it is found that the Apex Court has considered different fact situations in order to arrive at a just and proper understanding of the issue as to when voluntary retirement should come into effect in a situation where the employee has a right to seek voluntary right but subject to any specific order by the State Government denying him such right. It has been held that in such a situation non- passing of any order by the government or passing of a specific order after delay would be of no consequence and the relationship of master and servant would come to an end on the date indicated in the notice seeking voluntary retirement. This would be desirable to prevent absurd situation where the employee concerned may have abandoned the service and joined other service or gone abroad after expiry of the notice period. In such a situation the essential element to give effect to acceptance of the request for voluntary retirement would be the date of decision on the request for retirement and not the date of its communication. However, the requirement of communication of acceptance would arise in cases where, even after giving of a notice of voluntary retirement the employee continues to work/perform his duties. The Apex Court has held that "in such cases the member would need to know from what date he can stop attending the office".

8. In view of aforesaid reasonings of the Apex Court in the case of P. Lal v. Union of India (supra) and the provisions in Rule 74(b)(i) of the Bihar Service Code, in this case we find that the appellant- writ petitioner actually continued to be in service while under suspension till 31.7.1995 and till then the State Government passed no specific order as required by proviso to Rule 74(b)(i). As a

consequence, in absence of specific approval of the State Government, the request of the appellant- writ petitioner for voluntary retirement remained in abeyance and he continued in service till 31.7.1995. In such circumstances, his post retiral benefits, particularly his pension, gratuity and unutilized leave salary must be redetermined by treating him to be in service till 31.7.1995. To that extent, the judgment and order of the Writ Court is modified. The Writ Petition and the Appeal are allowed to the aforesaid extent.

9. Before parting with this judgment, we feel constrained to refer to our order dated 18.4.2008. In that order we have taken note of relevant facts and have expressed our anguish that in spite of decision and recommendation by the Standing Committee of the Patna High Court on 28.9.1993 making a favourable recommendation for accepting petitioner's request for voluntary retirement with effect from 31.12.1993, the State Government took such a decision only on 23.2.1998. This resulted in allowing an unwilling Judicial Officer to continue in service (though under suspension) till 31.7.1995 when he superannuated on reaching the normal age of superannuation. Such delay in matters where this Court has primacy on account of constitutional scheme does not leave a good taste. It is expected that such unusual delay in accepting the recommendation of the Standing Committee of this Court would be avoided in future.

10. Let a copy of this order and a copy of order dated 18.4.2008 be communicated to the Chief Secretary, Bihar and the Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar for use and guidance of all concerned.