(2008) 09 PAT CK 0091

In the Patna High Court

Case No : CWJC No. 7713 of 2003

Rabi Bhushan Ojha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Citation : (2009) 4 PLJR 285

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Rupak Kumar and Nishant Kumar, for the Appellant; R.K. Choubey, Minu Kumari and Prashant Kr. Choudhary for the State, for the Respondent

Final Decision : Allowed

Judgement

J.N. Singh, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner in the capacity of Assistant Engineer superannuated with effect from 31.10.1985 from Road Division, Dehri-on-Sone under Road Construction Department.

2. After his retirement he submitted his pension papers while the final fixation to his pension and gratuity and sanction of all retiral benefits were pending. By order dated 25.7.1986, 90 per cent pension and an amount of Rs. 35,000/- by way of provisional gratuity was sanctioned by the respondent-Executive Engineer and communication to that effect was sent to the Accountant General vide Annexure-3. It appears that the sanction of provisional pension to the extent of 90 per cent and amount of provisional gratuity were not approved by the department. Therefore, vide letter dated 11.11.1986 under the signature of the Joint Secretary of the Road Construction Department, the payment of provisional pension of the petitioner was stopped and the amount of gratuity sanctioned by Annexure-3 was ordered to be recovered. The said order was communicated to the respondent-Executive Engineer. In reply, the Executive Engineer, vide Annexure-4 dated 4.12.1986, informed the Joint Secretary that 90 per cent pension and provisional gratuity had been sanctioned to the petitioner in

accordance with the instruction of the Finance Department. However, complying with the directions of the department he directed the petitioner to refund a sum of Rs. 36,872/- in one lump sum received earlier pursuant to Annexure-3. After receipt of Annexure-4 petitioner started making applications to various authorities, which are Annexures-5, 6 and 8. Finally an order was issued from the department vide memo No. 4235(s) dated 19.8.1991 sanctioning 90 per cent provisional pension vide Annexure-10, but in this order it was directed that an amount of Rs. 35,000/- received by the petitioner earlier as provisional gratuity and an amount of Rs. 9,360/- received by him towards his provisional pension be recovered by an equal monthly instalment of Rs. 500/- from the month of November, 1985 itself. Pursuant to the said sanction order by the Department, the Accountant General vide Annexure-11 dated 10.12.1991 issued authority slip for start of pension to the petitioner with note for recovery of the said amount as ordered by the department.

3. It appears that final sanction of pension and gratuity of the petitioner remained pending due to non-verification of service book of the petitioner by various authorities. As the matter was getting delayed the petitioner filed representation before the various authorities of the department as contained in Annexures-15, 16, 17, 18, 19, 21, 22 and 24 for fixation of his final pension and gratuity as well as for payment of his other retirement dues under other heads. From the representations of the petitioner it appears that he had been pursuing for final fixation of pension and gratuity and payment of other retiral dues since the very beginning up to 2002 on regular basis. However having lost hope due to inaction by the respondents on his representations, petitioner filed this writ application on 6.8.2003 after serving two copies of the writ applications on the learned counsel for the respondents. In the writ application, petitioner also pleaded that no proceeding either under Rule 43(b) or in any Court of law was pending against him. On receipt of the information of the writ application the respondents appeared and filed counter affidavit in the case.

4. Counter affidavit on behalf of the respondent Nos. 1 and 3 was filed on 19th of May, 2004. In the counter affidavit it was stated that full pension and gratuity of the petitioner was sanctioned vide letter No. 399(s) dated 15.1.2004; it was also stated that leave encashment for 180 days was sanctioned vide letter No. 400(s) dated 15.1.2004; it was also stated that instructions had been issued to the Executive Engineer for sanction of Group Insurance amount and a reminder was sent vide letter No. 709(s) dated 24.1.2004. With regard to the GPF amount it was submitted that petitioner''s application in the prescribed proforma filed in 1986 was not traceable. However, request had been made to the concerned authorities of the Provident Fund Directorate to do the needful vide letter No. 709(s) dated 24.1.2004.

5. Petitioner filed a rejoinder in which apart from other statements it was reiterated that petitioner was given promotion after his retirement with retrospective effect. Therefore, he was entitled to get his pensionary benefits

revised and refixed taking into account his promotion. A notification with regard to the same was already annexed by the petitioner as Annexure-2 to the writ application. Petitioner contended in his reply that he was being made victim of criminal neglect on the part of the respondents in the matter of fixation and payment of his retiral dues

6. A counter affidavit has also been filed on behalf of the Accountant General. It has been stated in the said counter affidavit that revised pension payment order was issued in favour of the petitioner on account of his time bound promotion vide order dated 28.11.2003. It has been further stated that sanction order with regard to unutilised leave has been issued vide order dated 21.1.2004. It has also been stated that pay slip in respect of time bound promotion to the petitioner has been issued vide letter dated 6.11.2003 and sanction order with regard to remaining 10 per cent pension and full gratuity has been issued on 15.1.2004. Further authority for revised gratuity and pension has been issued vide order dated 19.8.2004.

7. A supplementary counter affidavit has also been filed on behalf of respondent Nos. 1 and 3, in which it has been stated that the order with regard to recovery vide letter dated 19.8.1991 (Annexure-10 to the writ application as well as Annexure-A to the counter affidavit) was not a case of recovery, rather it was a case of adjustment of amount provisionally sanctioned to the petitioner. It has also been said that Rs. 157-45 towards arrears of leave salary has been paid to the petitioner vide Bank Draft dated 21.6.2005.

8. A second supplementary counter affidavit has also been filed on behalf of respondent Nos. 1 and 3, in which it has again been stated that full pension and gratuity have been sanctioned by order dated 15.1.2004 and authority slip in this regard has been issued by the Accountant General and subsequently authority slip has been issued with regard to revised pension and revised gratuity also. The order of sanction of leave encashment has also been issued vide letter dated 19.2.2008. It has also been stated that Group Insurance amount has also been paid to the petitioner vide letter dated 19.2.2008. It has also been stated that in respect of final withdrawal of the G.P.F. amount necessary letter has been sent to the District Provident Fund Officer vide letter dated 24.2.2005.

9. A counter affidavit has been filed by District Provident Fund Officer also, who is respondent No. 12 in the case, in which it has been stated that on the basis of available documents calculation was made and authority with regard to G.P.F. amount of Rs. 39,211/- was issued in favour of the petitioner vide memo No. 857 dated 2.8.2005. It has also been stated that vide letters issued in 2005, 2006, 2007 and 2008, the Executive Engineer, Road Construction Division, Dehri-on-Sone has been requested for sending certified copy of statement of deductions towards G.P.F. amount with a copy to the petitioner and upon receipt of the same full G.P.F. amount will be authorized.

10. The above pleadings of the respective respondents have been noticed by this

Court with exact dates of various payment orders just to demonstrate that it was only after filing of the writ application and getting knowledge of the same the respondents woke up from their slumber and started taking steps for sanction and payment of retiral dues of the petitioner under different heads. There is no explanation whatsoever in any of the counter affidavits as to what the respondents were doing in the matter after receipt of the pension papers from the petitioner and after receipt of his formal application for G.P.F. in 1986 till 2003, except for a vague statement that the application of the petitioner for G.P.F. was misplaced. There is no whisper in any of the counter affidavits with regard to any of the respondents taking any action in the matter of sanction and payment of retiral dues of the petitioner. There is no mention also in the counter affidavit, in the first supplementary counter affidavit and in the second supplementary counter affidavit filed on behalf of respondent Nos. 1 and 3 as to why the sanction of the provisional pension and provisional gratuity to the tune of Rs. 35,000/- by the Executive Engineer in favour of the petitioner vide Annexure-3 was cancelled and order for recovery was passed. From Annexure-10 it is clear that 90 per cent pension of the petitioner was sanctioned by the department in 1991. If the petitioner was entitled for sanction of 90 per cent pension on provisional basis and sanction of provisional gratuity from the very beginning what inspired the respondent-Joint Secretary, to cancel the order as contained in Annexure-3 and to issue the same again in 1991.

11. The facts of the case demonstrates a glaring example as to how the different functionaries of the Government casually approach in the matter of sanction and payment of retiral dues of a retired employee. The criminal neglect and deliberate inaction, which can very well be termed as mala fide on the part of the various authorities of the Government is writ large in this case.

12. In the circumstances, this Court is of the opinion that it is a fit case in which penal interest at the rate of 12 per cent at yearly rest be allowed on all payments made to the petitioner subsequent to his filing of this writ application. The said interest shall be calculated from the date of retirement of the petitioner till the date of payment of respective amounts to the petitioner under different heads. It shall be in addition to statutory interest, which may have been paid to the petitioner or may be payable to the petitioner in terms of provisions of law and under any Government instructions.

13. The respondents are further directed to pay to the petitioner the amount if deducted/adjusted pursuant to Annexure-4, Annexure-10 and Annexure-11 forthwith. The respondents are also directed to pay remaining amount of G.P.F. with statutory interest up-to-date forthwith without waiting for any information from the petitioner.

14. The remaining amount of G.P.F. with interest, deducted/adjusted amount of gratuity and interest as directed above, on all amount paid to the petitioner after filing of the writ application shall be calculated and paid to the petitioner within two months from the date of receipt/production of a copy of this order.

15. However, it is apparent that petitioner has been victim of callous approach of the functionaries of the State Government, due to which he could not get his dues since 1986 to 2003. As such, the respondent-Secretary, Road Construction Department is directed to hold an enquiry or to get an enquiry held by any senior officer of the department to fix up responsibility for non-payment of retiral dues of the petitioner under different heads. The said enquiry shall be conducted and responsible officer(s)/employee(s) shall be identified and after due notice to them the amount of interest calculated shall be realized from their salary and paid to the petitioner. If more than one officer/employee are found responsible for non-payment of retiral dues of the petitioner under different heads, the order for realization of amount of interest from their salary shall be made proportionate to their responsibility in causing delay. In addition, the respondent-Secretary, Road Construction Department shall be at liberty to take disciplinary action against the erring officers/ employees in terms of the Cabinet decision as notified by Memo No. 10804F dated 9.10.1973.

16. The respondent-Secretary of the Road Construction Department shall see that enquiry is completed and orders are passed with regard to realization of amount so paid to the petitioner by way of interest within three months positively from the date of this order. In case within the said time he fails to take final decision in the matter and pass orders, he shall be liable to refund, the amount of interest paid to the petitioner, to the State exchequer from his own salary.

17. In the result, this writ application is allowed with the above observations/ directions.

18. The matter shall be listed under the heading To Be Mentioned'' after four months to enable the Secretary, Road Construction Department to inform this Court with regard to compliance of the order passed herein. Let a copy of this order be handed over to the learned Government Pleader No.-VII as well as learned counsel for the Accountant General for information and needful.