(2008) 07 PAT CK 0197

In the Patna High Court

Case No : LPA No. 264 of 2001

Rabindra Pandey APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Citation : (2008) 4 PLJR 82

Hon'ble Judges : J.N. Singh, J;Barin Ghosh, J

Bench : Division Bench

Advocate : Bijay Kumar Pandey, for the Appellant; S.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh & J.N. Singh, JJ.—On 8th August, 1994, Coffee Board introduced Voluntary Retirement Scheme, 1994. It was made clear in the Scheme that the expenditure, pay and allowances under the Scheme will be met out of the pool fund either wholly or partially. The Scheme, in accordance therewith, came into force with effect from 10th August, 1994 and remained open till 7th November, 1994 (both days inclusive). One of the benefits under the Scheme was ex gratia payment equivalent to three months'' emoluments (Basic Pay + D.A.) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement, whichever is less. On 6th November, 1996, Coffee Board decided to infuse blood in the said Scheme and accordingly by a Circular dated 6th November, 1996 held out that the Voluntary Retirement Scheme, 1994 would continue to apply to all those employees if they opt for the same even now. The Circular dated 6th November, 1996 made it abundantly clear that the employees interested to opt should send their option in the format enclosed to the Head Office through proper channel before 8th December, 1996. The appellant applied on 4th December, 1996 under the said Scheme for voluntary retirement. The said application was accepted vide letter dated 17th January, 1997 and he was paid benefits under the Scheme as well as his pay and allowances up to 1st April, 1997. While calculating the benefits under the Scheme ex gratia payment was calculated on the basis of basic pay plus D.A. as the appellant was then receiving. Subsequent thereto by a pay fixation memo dated 10/ 11.2.1998 Coffee Board revised the basic pay of the appellant at Rs. 5,500/- and 5,600/- with effect from 1.1.1996 and 1.12.1996 respectively in the revised scale of Rs. 4,000/- 100-6000/. In view of such revision, the basic pay of the appellant stood increased. Inasmuch as the basic pay of the appellant stood increased, he made a representation for recalculation of ex gratia payment on the basis of his increased basic pay and thereupon to pay the difference to him, which representation was refused by a letter dated 18.2.1999, whereby and whereunder it was contended that payment of ex gratia was applicable only in the pre-revised scale and not in the revised pay scale, since Coffee Board voluntary retirement scheme was introduced during the year 1994 when there was no contemplation of revision of pay scale. It was further held out in the said letter that the Board had taken a decision at a meeting held on 5.12.1996 that the payment of ex gratia shalhbi calculated in the pre-revised scale and not in the revised pay scale. The said decision of the Board was assailed in the writ petition by the appellant. The writ petition having been dismissed, the appellant is before us.

2. In the counter affidavit filed by the respondents, it was stated that Coffee Board (pool fund) made expenses towards ex gratia. However, it was not stated that the said pool fund stood closed. Otherwise, whatever had been stated in the said letter dated 18.2.1999 had been repeated in the counter affidavit.

3. It is true that when the Scheme was introduced on 8th August, 1994 there was no contemplation of revision of pay of the employees of the Board. However, when the said Scheme of 1994 was given a rebirth on 6th November, 1996, to the knowledge of Coffee Board, pay revision of its employees was under consideration. Despite that, in the circular dated 6th November, 1996 it had not been mentioned that pre-revised pay scale shall be taken note of as the basic pay for the purpose of calculation of ex gratia.

4. Despite getting an opportunity on 18.2.1999, while considering the representation of the appellant, as well as while filing the counter affidavit in the writ petition, the Coffee Board did not bring to the notice of the appellant that the Resolution of the Board dated 5.12.1996 had been circulated amongst any of the employees of the Coffee Board.

5. In the circumstance, in law, there was no defence of the Board to the claim as had been put forward in the writ petition founded on the scheme propounded by the Board and accordingly, instead of dismissing the writ petition, the order under appeal ought to have had allowed the same. We, accordingly, allow the appeal, set aside the judgment and order under appeal with a direction upon the Coffee Board to recalculate ex gratia payable to the appellant on the basis of revised pay and pay the difference to the appellant within a period of four

months from today. In default, such difference would carry interest at the rate of 12 per cent per annum.

