
(2007) 04 PAT CK 0028
In the Patna High Court
Case No : LPA No. 168 of 1998

Raj Kumar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2007) PLJR 98

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

Bench : Division Bench

Advocate : Awadhesh Kr. Mishra, Arun Kr. Mandal and B.S. Mishra, for the Appellant; Shashi Bhushan Kumar, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—On 31st January, 1994 the writ petitioner, appellant, having worked for thirty two years and two months was to attain his age of superannuation. On 28th November, 1956 the Government made a rule under proviso to Article 309 of the Constitution of India and thereby authorized the State Government to relax any rule regulating the conditions of service of the State Government employees or any Class of such Government servants to the extent the same causes undue hardship to any particular case.

2. On 31st January, 1993 an employee of the Government, namely, Gorakh Prasad, was to retire after having served the Government for thirty one years and six months. At the request of Gorakh Prasad the Government extended his service on 1st February, 1993 on and from the said date until 31st July, 1994 only in order to enable Sri Gorakh Prasad to serve the Government for thirty three years and thereby to enable him to receive full pension. The said order dated 1st February, 1993 would amply demonstrate that the object of the said extension, as was granted to Sri Gorakh Prasad, was only for the purpose of enabling Gorakh Prasad to serve thirty three years for obtaining full pension.

3. The writ petitioner, appellant, on 25th June, 1993, i.e. about six months before his retirement, requested the Government for extension of his service by ten months so as to enable him to serve for thirty three years for obtaining full pension. When such request was made, the writ petitioner, appellant, brought to the notice of the Government the aforementioned rule made by the Government under proviso to Article 309 of the Constitution of India on 28th November, 1956 and also supplied a copy of the order of the Government dated 1st April, 1993 whereby the period of service of Sri Gorakh Prasad was extended from 1st April, 1993 to 31st July, 1994 only for the purpose of enabling Sri Gorakh Prasad to obtain full pension upon completion of thirty three years service.

4. This request remained in the cold storage and, accordingly, the writ petitioner, appellant, was constrained to move this Court by filing a writ petition. The said writ petition was registered as CWJC No. 8158 of 1994. The said writ petition was contested by the State Government by filing a counter affidavit. The writ court dealt with the said writ petition by its order dated 31st January, 1996. The writ court found as a fact that the State has not been able to show from the counter affidavit that there is anything against the appellant which would disentitle him for similar treatment as that of Gorakh Prasad. Ultimately, the said writ petition was disposed of by directing the Government to take a decision on the said request of the writ petitioner, appellant, within the time mentioned in the said order.

5. Subsequent thereto by the order dated 2nd July, 1996 the said request of the writ petitioner, appellant, was turned down by the Government without disclosing any reason whatsoever.

6. In the circumstances, the writ petitioner, appellant, once again approached the writ court by filing CWJC No.7727 of 1996. To the said writ petition no counter affidavit was filed. Said writ petition was dealt with by a learned single judge of this Court who, by an order dated 28th January, 1998, dismissed the said writ petition on the ground that it was for the State to consider whether the rules should be relaxed or not for grant of full pension and the State Government has considered and rejected the said prayer and, accordingly, there is no scope for interference.

7. Against the said order dated 28th January, 1998 the present letters patent appeal has been filed. In the present letters patent appeal a counter affidavit has been filed by the respondent-State. In that no attempt has been made to demonstrate that the case of Gorakh Prasad is at all dissimilar to the case of the writ petitioner, appellant. On the contrary, it was contended in paragraph 8 of the counter affidavit that extension is granted by the Government for the benefit of the Government and it was insinuated that such extensions can only be granted in continuation of service.

8. In the order dated 1st February, 1993 passed by the Government in relation to Gorakh Prasad, there is no mention that the said order is being passed for the

benefit of the Government or that the extension of service of Gorakh Prasad would benefit the Government. On the contrary, the said order clearly demonstrates that the same is being passed only for the purpose of enabling Gorakh Prasad to serve for about one year and six months more after reaching his age of superannuation only for the purpose of enabling him to complete thirty three years of service so that he could get full pension.

9. In the writ petition, the writ petitioner, appellant, had brought on record yet another order passed by the Government on 09th March, 1995 in relation to Sri Ram Swaroop Singh, again an employee of the Government. In the first paragraph of the said letter it was mentioned that Sri Singh joined the services of the Government on 15th July, 1963 and he was still, i.e., even on 9th March, 1995, was working. In the second paragraph of the said letter it had been stated that Sri Singh having been born on 28th February, 1936 reached his age of superannuation on 28th February, 1994 but still then an impression was given that he is still working. In the third paragraph it had been mentioned that Sri Singh is being granted an extension of service from 1st March, 1994 to 17th September, 1996, i.e., two years six months and seventeen days, in order to complete thirty three years of service in order to enable him to obtain full pension. No attempt was made by the State to bring on record anything to suggest that apart from the said order dated 9th March, 1995 there was any other order by virtue whereof despite having had reached the age of superannuation on 28th February, 1994 Sri Singh was entitled to serve the Government and, in fact, he served the Government subsequent to 28th February, 1994 until 9th March, 1995. This letter dated 9th March, 1995 amply demonstrates that even if a person has reached the age of superannuation and, accordingly, has retired, he could be granted extension with retrospective effect. This letter too does not contain a single word which would suggest that the extension of service, as was granted, was required for the benefit of the Government.

10. On the other hand, as aforesaid, six months before his retirement the writ petitioner, appellant, had asked for ten months extension. The State Government had ample time within six months to grant the writ petitioner, appellant, such extension, if otherwise he was entitled to the same and if the same had been granted, the services of the writ petitioner, appellant, would have continued.

11. In the previous writ petition it had been concluded that the case of the writ petitioner, appellant, is not dissimilar to either Gorakh Prasad or Sri Singh. Even after getting an opportunity to file an affidavit in the subsequent writ petition no affidavit was filed by the State to make an effort to establish dissimilarity in the case of Gorakh Prasad and Sri Singh, on the one hand, and the writ petitioner, appellant, on the other. Despite filing a counter affidavit in the letters patent appeal, no attempt has been made to show any difference in between the writ petitioner, appellant, on the one hand, and Sri Gorakh Prasad and Sri Singh, on the other.

12. The logical conclusion, therefore, would be that for no just reason the representation made by the writ petitioner, appellant, seeking extension of ten months" of his service was kept in cold storage and later on the same was rejected without disclosing any reason, but mechanically, for the writ petitioner, appellant, does not have reach within the high circle of the Government. Despite being similar to that of Sri Prasad and Sri Singh, the writ petitioner, appellant did not get what he was entitled to get in view of the finding of the writ court in the earlier writ petition that the writ petitioner, appellant, Sri Prasad and Sri Singh stand in the same footing. By filing the counter affidavit before the letters patent court a deliberate and intentional mis-statement was made to the effect that the extensions are granted for the benefit of the State; whereas the letters issued by the State to extend the services of Sri Prasad and Sri Singh clearly demonstrate that those extensions were not granted for the benefit of the State, but for the benefit of Sri Prasad and Sri Singh. The manner in which the case of the State has been projected in the said counter affidavit is malicious. In the counter affidavit, it has not been denied that the said rule made by the Government on 28th November, 1956 under proviso to Article 309 is still in vogue and there under such extensions can be granted. That rule authorizes relaxation of rules to remove hurdles which would cause undue hardship to an employee. Having exercised power under the said Rule in the matter of Sri Prasad and Sri Singh, in the manner indicated above, there was no just reason not to use the said rule in relation to the writ petitioner, appellant, when there is a clear cut finding, which has reached finality in the previous writ petition, that the case of the writ petitioner, appellant, is identical to that of Sri Prasad and Sri Singh.

13. In those circumstances, we have no other option but to interfere with the judgment and order impugned in this appeal and, accordingly, the same is set aside and the writ petition is allowed by issuing a writ in the nature of mandamus directing the State Government to grant extension to the writ petitioner, appellant, of his services from 1st February, 1994 until 30th November, 1994. In as much as the writ petitioner, appellant, did not get an opportunity to serve the State for the said period for the utter malicious action on the part of the Officers of the State, though the writ petitioner, appellant, shall not be entitled to salaries for that period, but for all other purposes it must be deemed that the writ petitioner/appellant, reached the age of superannuation on the eve of 30th November, 1994. Let the pension and terminal dues of the writ petitioner, appellant, be re-calculated and paid to him on the basis, as above, as quickly as possible but not later than three months from today. Despite having had noted malicious conduct on the part of the Officers of the State, we have restrained ourselves from imposing exemplary cost in the matter.