(1992) 08 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No. 6475 of 1990

Rajendra Prasad Mishra @ Rajendra Pd. Mishra APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (1994) 1 PLJR 289

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : S.J. Mukhopadhya, Shivendra Kishore and Ambar Nath Banerji, for the Appellant; Devendra Kumar Sinha and Nawal Kishore Pd. Singh and Ganesh Pd. Jayaswal, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—In the present writ application under Articles 226 and 227 of the Constitution of India the Petitioner has prayed for the following reliefs:

(a) Payment of arrears of salary as Deputy Controller of Accounts for the period 21st January 1981 to 31st January 1987 when the Petitioner retired, in accordance with fixation of pay recommended by Pay

Revision Committee releasing increment due on 1st January 1979. During this period the Petitioner served as Deputy Controller of Accounts. By annexure 14, an order dated 30th June, 1987, he has been granted promotion with effect from 21st January 1981.

(b) On the basis of aforesaid salary, his pension be fixed accordingly and the arrears of pension be granted to him falling due since 1st February, 1987.

(c) Payment of 100% total gratuity, which has not been paid to him.

(d) Payment of bonus for the years 1984-85, 1985-86 and 1986-87.

(e) As stipulated in annexure 26, he be paid the leave encashment amount of 186 days.

(f) Payment of ex gratia amount of, Rs. 500/ -, as paid to other State Government employees on the recommendation of Pay Revision Committee.

(g) 18% interest on all the aforesaid amounts.

2. On 31st January 1987 the Petitioner retired from the service as Deputy Controller of Accounts, Finance (Audit) Department. He was initially appointed as Junior Auditor in the Law Department (Jail Section) in September, 1953. His services were transferred to the Finance (Audit) Department in November, 1953. He was subsequently promoted as Auditor Class I in the said Finance (Audit) Department in August, 1954. He was then promoted to the next higher post of Senior Auditor Class II in January, 1959 and, thereafter, he was promoted to the post of Senior Auditor Class I in June, 1966. In May, 1978, nine posts of Assistant Controller of Accounts were created and he, being one of the senior-most Senior Auditor Class I, was promoted to the post of Assistant Controller of Accounts on adhoc basis with effect from July, 1978.

3. In January, 1979 the Respondent State merged the post of Assistant Controller of Accounts with the higher post of Deputy Controller of Accounts and since January, 1979 the Petitioner became Deputy Controller of Accounts, which was notified in February 1980.

On expiry of the period of promotion the Respondent State extended the Petitioner''s promotion as Deputy Controller of Accounts till July, 1979, which was further extended to January, 1980. Having passed the requisite Departmental examination, which was essential for the purposes of confirmation as Deputy Controller of Accounts, and having completed his Treasury training in November, 1979, the Petitioner expected that the Respondent State would have come out with regular order of promotion of the Petitioner as Deputy Controller of Accounts but the same having not been issued and on the other hand a number of other persons, junior to the Petitioner, having been promoted on regular basis, the Petitioner raised his grievances before the Respondent State that instead of passing a regular order of promotion as Deputy Controller of Accounts, he was being continued by the orders extending the service which continued again from January, 1980 to July, 1980 and as on 24th November, 1980 and he continued to function as Deputy Controller of Accounts again, by a notification issued on 30th June, 1981. In the meantime a number of Junior persons were given regular promotion to the post of Deputy Controller of Accounts, whereas, inspite of number of representations and recommendation made by the Senior authority, the Respondent State did not choose to issue any notification regarding regular promotion of the Petitioner as Deputy Controller of Accounts. On account of notification dated 30th June, 1981 he was paid his salary as Deputy Controller of Accounts up to 20th January, 1981 but since no subsequent notification of extension was issued, he was not paid his salary as Deputy Controller of

Accounts since 21st January, 1981. While thus performing his duty as Deputy Controller of Accounts in anticipation of regular order of promotion, as provided to his juniors, the Petitioner was, in the meanwhile, transferred and posted as Deputy Controller of Accounts to Hazaribagh vide notification dated 10th July, 1981. Although, on such transfer as Deputy Controller of Accounts the Petitioner served at Hazaribagh as Deputy Controller of Accounts but in absence of notification issued for regular promotion of the Petitioner as Deputy Controller of Accounts and/or extension of the earlier order of adhoc promotion he was not paid salary for the said post. The Petitioner then moved Ranchi Bench of the Hon''ble Court in a writ application (C.W.J.C. No. 67 of 1984 (R)) seeking direction on the Respondent State for payment of the salary for the post of Deputy Controller of Accounts on which the Petitioner was performing his duty. He also represented to Hon''ble the Chief Justice of Supreme Court of India and the Chairman of the Legal Aid Committee of the Supreme Court and his representation was forwarded to the Ranchi Bench of the Hon''ble Court which was converted as Writ Petition (C.W.J.C. No. 1587 of 1983 (R)). In March 1984 the Ranchi Bench passed similar order on both the Writ petitions on the basis of statement of the State Counsel that within a short time they were going to pay a sum of Rs. 19,000/ - to the Petitioner and shall also examine the claim of the Petitioner within a period of one month. On the basis of this statement the Petitioner withdrew both the writ petitions. In terms of the same undertaking the Petitioner was paid a sum of Rs. 19,000/ - as advance payment in the rank of Deputy Controller of Accounts but soon thereafter, the Respondent State issued Anr. order reverting the Petitioner from the said post to two rank lower on the post of senior Auditor Class I and transferred the Petitioner by one order dated 19th April, 1984 to Patna as senior Auditor Class I. The Petitioner then moved Anr. writ application at Ranchi Bench (C.W.J.C. No. 722 of 1984(R)) challenging the said order of transfer which amounted to reversion of the Petitioner on the lower post. In pursuance of the stay granted by the High Court staying reversion the Petitioner continued to perform his duty as Deputy Controller of Accounts at Hazaribagh. In the meanwhile, the Respondent State released the salary of the Petitioner which was falling due from 21st January, 1981 to 28th January, 1983 and from 10th March, 1983 to 31st March, 1984 but not in the rank of Deputy Controller of Accounts, although, there was specific order of the Ranchi Bench. Not only he was paid salary for the lower post of senior Auditor Class I for the aforesaid period but also the advance payment of Rs. 19,000/ - which had been earlier paid to him in accordance with the order of the High Court, was recovered. In July, 1984 C.W..I.C. No. 722 of 1984 (R) was dismissed with a view to enable the Petitioner to file a representation before the Respondent State.

4. It is to be noticed that even after disposal of the aforesaid writ application, the Respondent State did not relieve him from the post of Deputy Controller of Accounts Hazaribagh to join his lower post at Patna and the Petitioner continued to function at Hazaribagh as Deputy Controller of Ac counts. Suddenly, on 15th December, 1984 a notice was published in the newspaper ''Indian Nation''

intimating the Petitioner that a departmental proceeding had been initiated against him, for which, enquiry is going on at Patna and since the Petitioner was not attending the same he was informed by means of the said publication to join at Patna as his headquarter to attend such departmental proceeding. Thus, on 18th December 1984 the Petitioner relinquished his charge of Deputy Controller of Accounts at Hazaribagh and joined the Patna Division on 19th December, 1984, which had been fixed as his head-quarter for attending the departmental enquiry. One Sri K.K. Tripathi, I.A.S. was appointed as Enquiry Officer, which continued up to the end of the year 1985. The Petitioner attended the day to day departmental proceeding at Patna. By an order dated 14th April, 1986 he was exonerated from all the charges, which were all relating to his absence from the duty. Even though he was exonerated from the charges and continued to function as Deputy Controller of Accounts till 18th December, 1984, while he was at Hazaribagh and till 14th April, 1986 while his headquarter was Patna Division and when the order dated 14th April, 1986 was passed, but it was mentioned in the order that the Petitioner shall be receiving his salary only as Senior Auditor Class I with effect from 21st January, 1981.

5. The Petitioner then filed a representation before the Respondent State reiterating his grievances that a number of persons junior to him had already been given promotion with effect from 1979 but the same has been denied to the Petitioner. Further, although the Petitioner was given promotion to the higher post of Deputy Controller of Accounts on ad hoc basis, which continued up to 21st January, 1981 and although he worked, even thereafter, as Deputy Controller of Accounts, the Respondent State did not issue any order for regular promotion and he was not paid salary of the said higher post which is due to him since January, 1981.

6. Ultimately, considering the case of the Petitioner, the Respondent State issued a notification on 30th January, 1987 (Annexure 14), extending the promotion of the Petitioner as Deputy Controller of Accounts from 21st January, 1981 to 31st January, 1987. The Petitioner superannuated on 31st January, 1987 and just one day prior to his date of superannuation the Respondent-State issued the said notification accepting the continuity of promotion of the Petitioner as Deputy Controller of Accounts even after 21st January, 1981 till the date of his retirement i.e. 31st January, 1987.

7. In view of annexure 14, although it was incumbent upon the Respondent State to pay salary for the higher post of Deputy Controller of Accounts to the Petitioner which was due from 21st January, 1981 and also taking into account the revision of pay on the basis of recommendation of the 4th Pay Revision Committee as on 1st April, 1981 and subsequent revision of pay on the basis of recommendation of the 5th Pay Revision Committee with effect from Ist January, 1986, but till date even though the Petitioner retired on 31st January, 1987, the Respondent- State did not pay arrears of salary as Deputy Controller of Accounts with effect from 21st January, 1981 to 31st January, 1987. His pension

calculating his pay as Deputy Controller of Accounts was not paid. It may be stated that first they calculated the provisional pension on the basis of his salary as Deputy Controller of Accounts which he was receiving prior to 21st January, 1981, but subsequently they made it provisional pension (100%) not on the basis of salary as Deputy Controller of Accounts as on 31st January, 1987. The difference of pension arose because as on 20th January, 1981 the salary which he was receiving as Deputy Controller of Accounts in the unrevised scale was Rs. 1650/ - whereas, after the two revisions in the scale of pay, he was entitled for his salary as Deputy Controller of Accounts at Rs. 3600/ - as on 31st January, 1987.

8. After superannuation it was incumbent upon the Respondent State to pay the amount of gratuity but till date not a single paisa was paid. He was also not paid a single paisa on account of leave encashment which was due for 186 days nor was he paid bonus for the years 1984 to 1987. The Petitioner was paid salary for the post of Senior Auditor Class I from 21st January, 1981 to 20th January, 1983 and from 10th March, 1984 to 31st March, 1984, although for these periods the Petitioner was entitled for salary on the post of Deputy Controller of Accounts. Number of representations since March, 1987 to July, 1990 remained unattended but till date no such payment was made.

9. Although counter affidavits have been filed and the rejoinder and reply thereto are on the record but the only objection for not releasing the aforesaid dues, as stated in the counter affidavit of the Respondents, is stated to be that the Petitioner was absent from 6th April, 1984 to 25th April, 1984, 27th April, 1984 to 25th May, 1984 and 3rd June, 1984 to 29th January, 1987, for which period the Petitioner will have to give leave application and only thereafter the dues can be released.

10. The aforesaid averment has been categorically denied in the reply filed by the Petitioner and in paragraph 12 of the second Supplementary affidavit, while referring and annexing a letter of the Finance (Personnel Entitlement Claim Cell) Department dated 23rd October, 1987 (annexure 26) it was demonstrated that taking into account all the aforesaid period, it has now been held that the Petitioner is entitled for 186 days leave encashment. On the basis of aforesaid document it was strongly urged on behalf of the Petitioner that the contention of the State raised in the counter affidavit was baseless and it was a wrong statement that the Petitioner was on leave on those days.

11. The Petitioner has also annexed charge report dated 19th December 1984 (annexure 22) in order to show that in pursuance of the notice published in the newspaper "Indian Nation" dated 15th December 1984, the Petitioner relinquished his charge of his post at Hazaribagh and joined at Patna Division for attending the departmental proceeding. Thus it was wrongly alleged in the counter affidavit that the Petitioner was absent from 1984-1987. In paragraphs 25 and 26 of the writ application it has been stated that the enquiry continued even in the year 1985-86 in which the Petitioner took part and finally exonerated

by the Enquiry Officer. In paragraph 13 of the reply to the counter affidavit the Petitioner has categorically stated and it is evident from the said statement that the Enquiry Officer had come to the conclusion that in all these years the Petitioner was harassed by the officials of the Respondent State and while exonerating the Petitioner the Enquiry Officer concluded by saying that:

In sari bato ko dekhane se mai is nishkarsh par pahucha hu ki Shri Rajendra Prasad Mishra ko lagata hai ki vibhag kai kuchh logo ne janbujhkar tang aur pareshan karne kee niyat se kai aarop layai hai jinme ek bhi aarop paramanit nahi hua hai.

12. The finding of the Enquiry Officer is a pointer to the fact that prior to his retirement the Petitioner was harassed by some of the officials of the department in not granting the post retirement benefits, ar rears of salary and other legal dues. The gratuity and increments, without any order of punishment even after five years of Petitioner''s retirement has been withheld without any justification. On the basis of certain letters of the department dated 27th February, 1987, 23rd March, 1987 and 13th October, 1987, which were produced at the time of hearing, wherein it was stated that 186 days leave encashment is due to the Petitioner and the is facing financial crisis it has been fully established that the department had the knowledge that prior to his retirement the Petitioner was on leave.

13. The facts and circumstances of the present case justify me to hold that the Petitioner was fully harassed for all these years, deliberately and arbitrarily. The finding of harassment, while exonerating the Petitioner of the charges by the Enquiry Officer was justified that the Petitioner was harassed for all these years by the State Respondent. It has been fully demonstrated in this case that even to this Court unnecessary and ill-founded objection was raised "that the Petitioner would get all the retirement benefits in terms of memo No. 16 dated 30.1.87 contained in annexure 14, subject to the condition that the Petitioner should disclose his reason for absence from 6.4.84 to 25.4.84; 27.4.84 to 25.5.84 and 3.6.84 to 29.1.87 as he was not on duty during these period. The grievances of the Petitioner was pending only because of the fact that he was absent without leave from the period above said."

This information is in the teeth of annexure 26 dated 23rd October 1987, which was filed alongwith second supplementary affidavit of the Petitioner. The said annexure 26 is a letter of the Finance (Personnel Entitlement Claim Cell) showing that taking into account all the aforesaid period it. had been held that the Petitioner was entitled for 186 days leave encashment. Therefore, the allegations in the counter-affidavit were based on wrong facts that the Petitioner was on leave during those days. Thus, knowing fully well that the Petitioner had been found to be entitled for 186 days leave encashment, he was fully harassed and not paid a farthing on account of his salary, increment, pension, gratuity and other retirement benefits. His claim was thus being negatived arbitrarily and he was fully punished in the sense that even though he superannuated on 31st

January, 1987, for all these years these retirement benefits were denied to him and he was dragged to unnecessary litigation and non est grounds were raised to defeat his claim in order to continue the harassment. The department had full knowledge about the number of days when the Petitioner was on leave prior to his retirement and that was established by the department''s own letter dated 27th February, 1987, 23rd March, 1987 and 13th October 1987 produced at the time of hearing stating in unequivocal terms that 186 days leave encashment was due to the Petitioner and he was facing financial crisis. In the teeth of these documents and their own letters, the department had no face to fight this, litigation in Court and the Petitioner ought to have been paid all his retirement benefits long before.

14. For the reasons stated above I have no hesitation in holding that the action on the part of the Respondent State in non-payment of retirement benefits to the Petitioner for all these years was arbitrary and discriminatory and was thus violative of Articles 14 and 16 of the Constitution of India. The Respondent State is thus directed to make all the payments in accordance with the relief claimed by the Petitioner with 18% interest on all the aforesaid amounts from the date of retirement till the date of payment, since all these amounts were withheld by the State for more than three years. The. Respondents shall also pay to the Petitioner an exemplary cost of Rs. 5,000/ - All these payments shall be made to the Petitioner within two months from the date of receipt of a copy of this order. The application is accordingly allowed with the directions indicated above.