
(2011) 06 JH CK 0045
In the Jharkhand High Court
Case No : L.P.A. No. 185 of 1998 (P)

Ram Surat Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Municipality (Officers and Servant) Pension Rules, 1987 — Rule 3, 4(1)

Citation : (2011) 4 JCR 199

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Kanti Kumar Ojha and Rakesh Kumar, for the Appellant; Shamim Akhter, S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner-Appellant retired from service on 31.8.1987 and then he preferred the writ petition before the Patna High Court, which was disposed of by order dated 24.3.1995, after taking note of the fact that the Petitioner submitted a representation before the Municipal Board for getting his retiral benefits and that application was pending before the Municipal Board, therefore, the Petitioner sought permission to withdraw the writ petition with the liberty to seek remedy before the Municipality. The said writ petition was dismissed with the liberty by observing that nothing has been said in the order dated 24.3.1995 which should be construed as expression or opinion on the claim of the Petitioner. The Petitioner in his writ petition before the Patna High Court submitted that the Petitioner though has withdrawn the full amount of the provident fund, yet he is entitled to claim the pensionary benefits under the Rules. The Municipal Board vide Annexure-5 considered the Petitioner's claim with respect to all the retiral benefits including the pension and rejected the Petitioner's claim. Then, the Petitioner approached this Court by filing this writ petition.

2. The learned Single Judge after hearing the parties observed that the Municipality has considered the payment of post retiral benefits and from the

order- Annexure-5 (referred above), it appears that the Petitioner has been paid the gratuity and his claim for pension and unutilized leave has been rejected on the ground that he is not entitled to the pens on on the reasons of that the provisions of pension came into force in the year 1991, whereas the Petitioner retired in the year 1987, and there is no provision for payment of unutilized leave in the Municipality. The learned Single Judge has held that the claim of the Petitioner for pension and unutilized leave has rightly been rejected.

3. Learned Counsel for the Appellant drew our attention to the Rules of 1987 i.e. the Municipality (Officers and Servant) Pension Rules 1987, and submitted that these Rules were made effective from 1.4.1986 and since the Petitioner retired from service on 31.8.1987, therefore, he was covered under the Rules of 1987 and the learned Single Judge committed mistake in observing that the Petitioner was not covered by the Rules of 1991. It is also submitted that under Sub-rule 1 of Rule 4 of the Rules of 1987, the Petitioner submitted the option opting for pension and therefore, the Petitioner was entitled to the pension under the Ruins of 1987.

4. We have considered the submissions made by the learned Counsel for the Appellant-Petitioner and so far the contention of the learned Counsel for me Appellant-Petitioner that the learned Single Judge has proceeded on assumption that the Petitioner's case was covered by the Rules of 1991, appears to be not correct in view of the fact that the Rules came in force from 1.4.1986 retrospectively by Rules-of 1987, copy of which has been placed on record along with the Supplementary Affidavit as Annexure-A.

5. In view of the above, the Petitioner was eligible to pensionary benefits under the Rules of 1987 subject to certain compliance. The Rules clearly provides that the Rules shall come into force on 1.4.1986 and admittedly the Petitioner retired after coming into force of the Rules as provided in Rule 3 of the Rules of 1987. However, these Rules were published in Gazette on 13.11.1987 and before that date the Petitioner admittedly retired. Therefore, the contention of the learned Counsel for the Petitioner that he opted for the pension under Sub-Rule 1 of Rule 4 of the Rules of 1987 is concerned, does not stand on logic as the Petitioner could not have known on-31.8.1987 or before that date that he can get the pension. The Petitioner therefore, could have opted for the pension after 31.11.1987 and as per Sub-rule (i) of Rule 4 of the Rules of 1987, he could have applied within 90 days from the corning into effect of the Rules of 1987 i.e. within 90 days from 13.11.1987.

6. The Appellant-Petitioner's contention is that he applied for the said benefit of pension by moving application on 18.12.1987 and therefore, the Petitioner's case is fully covered by the Rules of 1987. So far this fact is concerned that the Petitioner opted for pension on 18.12.1987 is not proved as the copy of alleged option application is unreliable which is being without any endorsement and without receipt or the copy by the Municipal Board concerned. The Municipal Board concerned has denied the receipt of such application and admittedly the

Petitioner was paid the amount of provident fund and according to the counsel for the Appellant-Petitioner, the Petitioner has not been paid full amount of the provident fund, but as per the Sub-clause (ii) of the Rule 4, it is clear that the Municipal employee, who retired after the effect of Rules of 1987 and received the payment of half or whole of the amount of the provident fund contribution, was not held eligible for the pension. Therefore, since there is no material on record on the basis of which it can be inferred that the Petitioner in fact submitted the application of option under Sub-rule (i) of Rule 4 of the Rules of 1987 and since the Petitioner has received the amount of provident fund, therefore, it cannot be held that the Petitioner was entitled to pensionary benefit and was wrongly denied to the Petitioner.

7. In view of the above reasons, we do not find any merit in the L.P.A. and hence, the same is hereby dismissed.