(2000) 01 PAT CK 0022

In the Patna High Court

Case No : C.W.J.C. No. 958 of 1997

Ramanandan Singh APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 10-01-2000

Acts Referred:

Citation : (2000) 2 BLJR 1077 : (2000) 3 PLJR 55

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—The question involved in the present writ, petition is as to whether the Dafadars, who are made Class IV employees of the State Government with effect from 1.1.1990 can get the benefit of their past services while they worked under the Village Chaukidari Manual. This question came up for consideration in the case of Karoo Paswanv. The State of Bihar reported in 1999 (2) PLJR 336, and the learned Single Judge of this Court held that Dafadars are not entitled to count past services for the purpose of computation of pension.

2. Mr. Kamlapati Singh, learned Senior Counsel appearing for the petitioner, who was also a Dafadar, submitted that certain provisions of the Bihar Pension Rules and the Bihar Service Code, such as Rule 19 of the Bihar Pension Rules and Rule 24 of the Bihar Service Code read with Appendix 4 were not brought to the notice of the learned Single Judge. Rule 2 of the Bihar Pension Rules deals with the applicability of the provisions of the said rules to all Government servants to whom the rules in the Bihar and Orissa Service Code apply. Rule 19 of the said Rules defines ''inferior service'' which means any kind of service which may be specially classed as such by the Provincial Government, and any other kind of service the maximum pay of which does not generally exceed Rs. 35/- a month, Rule 24, of the Bihar Service Code also defines ''inferior service'' and according to the said provision, it means any kind of service which may be specially classed as such by the State Government,, any other kind of service the maximum pay

of which does not ordinarily exceed Rs. 95/- a month. The classification of inferior and superior service under the said rule is provided in Appendix 4, which includes Dafadars also. As such, according to the learned Covinsel for the petitioner, Dafadars have been Government servants since their initial appointment and thus, entitled for pensionary benefits like other Government servants.

3. This Court does not find any merit in the contention of the learned Counsel for the petitioner, who has made endeavour for declaring the aforementioned judgment of the learned Single Judge per incuriam. Besides what has been considered by the learned Single Judge, this Court finds that the present case is governed by Clause (e) of Rule 45 of the Bihar Pension Rules, according to which, pension is not admissible when a Government servant serves under an agreement which contains no stipulation regarding pension, unless the Provincial Government specially authorise him to count such service towards pension. In the note to the said provision, it is clearly mentioned that the agreement should be so worded as to preserve inviolate the indefeasible right of the Provincial Government to modify the rules from time to time, at their discretion, so that no claim may arise to the benefits of rules as they stood at the date when the agreement was executed.

4. According to the case of the petitioner himself by letter/circular dated 29.8.1977 of the Home (Police) Department, Government of Bihar, Patna, pay of the Chaukidars and Dafadars of the State was fixed in the scale of Rs. 75-1-95 and Rs. 100-1-115-2-125 respectively with effect from 1.1.1977. With regard to the retirement benefits, it was decided that Chaukidars and Dafadars will get half salary of a month as a gratuity for every year of their completed service but the aforesaid amount shall not exceed Rs. 15,000/- to Rs. 20,000/- respectively. It was further decided that the aforementioned amount will be paid under the head "255-Police-Rural Police".

5. Thus, the petitioner''s case was governed by the aforementioned agreement which, however, was modified vide Annexures-3 and 4 dated 17th January, 1990 and 19th November, 1994 respectively, under which Dafadars became Class IV employees of the State Government and have been treated to be the Government servants with effect from 1.1.1990. As per Clause (3) of Annexure-3, their other service conditions were also made equivalent to other Government servants and under Clause (6) of Annexure-4, their service was made pensionable under the Bihar Pension Rules in case of those who superannuated after 1.1.1990. Thus, in my opinion, the petitioner cannot claim the benefit of service rendered by him as Dafadar before 1.1.1990.

6. Accordingly, this Court does not find any merit in the writ petition and the same is dismissed, but without costs.

