(2013) 01 PAT CK 0109

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.936 of 2007

Ramdayal Singh APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) 2 BBCJ 274 : (2013) 2 BLJud 92

Hon'ble Judges : Mr. Navaniti Prasad Singh, J.

Bench : Single Bench

Advocate : Mr. Raj Kishore Prasad and Mr. Tej Bahadur Roy, Advocates, for the Petitioner; Mr. Ashwani Kumar Rai, Advocate, for the Buxar Municipality; A.C. to G.P.4, for the State

Final Decision : Dismissed

Judgement

Mr. Navaniti Prasad Singh, J. (Oral)—The petitioner retired as a Tax Collector from Buxar Municipality on 28.2.1998. He is aggrieved by letter no. 856, dated 29.12.2000, issued by the Special Officer, Buxar Municipality by which his application for grant of pension has been rejected.

2. Heard the parties and with their consent this writ petition is being disposed of at the stage of admission itself.

3. There is no dispute that the petitioner was a permanent employee of the Buxar Municipality. There is no dispute that being an employee of the Buxar Municipality, the petitioner was contributing towards C.P.F. In 1987, Bihar Municipal Officers and Servants Pension Rules, 1987 came into force. This provided for monthly pension payment to retiring permanent employees of the Municipality but as the two provisions i.e. C.P.F and Pension are materially different in their application, clause 4(i) was enacted in the said Rules as noted hereunder:-

"4(i) Municipal employee on roll on the date of confirmation of this rule and who had subscribed to the contributory provident fund under provident fund rules and want to be governed by these rules shall have the option to do so and such option shall be exercised in writing in the prescribed form (Annexure 1) and submitted to their head of office within 90 days from the date of framing of this rule by the State Government. If such option in writing in prescribed form is not received within the period so fixed it will be deemed that they would retain the existing contributory provident fund.

(ii) Municipal employees who retired before the date of effect of this rule and have received the part or whole amount of Provident Fund Contribution will not be eligible for the pension."

4. The petitioner''s contention is that being a permanent employee he was not on roll of the Municipality as an employee and as such he was not required to give option as contained in clause 4 (i) of the aforesaid rules. That being so, he would automatically be covered by pension scheme after the said rules.

5. In my view, the contention of the petitioner is not correct.

6. A reference to the said rule would show that it relates to clause (i) thereof to all permanent employees of the Municipality and Notified Area Committees. The expression "on roll" as used in clause 4 does not mean an employee on master roll. It only means that an employee, who is on record as an employee of the municipality. Thus seen, clause (i) of Rule 4 applies to the petitioner. Clause(i) of Rule 4 clearly envisages that a permanent employee, who prior to the rule was contributing towards C.P.F., could switch to pension scheme provided that he had given option within 90 days of the rule coming into force. Obviously, the petitioner had given no such option because his own contention is, in the writ petition, that no option was required. This fact is also clear from the impugned order, as contained in Annexure 1 itself. The impugned order clearly states that up to 1986 i.e. prior to coming into force of the rule in his Provident Fund Account No.199935 there was an amount of Rs. 3356. 50 paise, out of which up to 1986, he had withdrawn Rs. 2200/-Further in the said order itself it is noted that on the date of retirement there was a total amount of Rs. 6943.70 paise in his said C.P.F. account, which he was free to withdraw upon his superannuation. This fact clearly establishes that the petitioner had, in fact, not opted for pension scheme rather continued to contribute towards C.P.F. If that be so, in my view, clause 4(i) has no application and by virtue of Rule 4(i) itself the petitioner does not become entitled to pension.

7. Thus, I find no error in the impugned order. The writ petition is accordingly dismissed.

