
(2000) 01 PAT CK 0158
In the Patna High Court
Case No : C.W.J.C. No. 6557 of 1999

S. Sarwar Ali

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Bihar Lokayukta Act, 1973 — Section 20, 3, 5

Citation : (2000) 4 PLJR 399

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Chittaranjan Sinha no. 1, for the Appellant; Amar Nath Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner has sought for issuance of an appropriate writ in the nature of mandamus directing the respondents to pay cash equivalent to leave salary with interest while he held the office of Lokayukta for a period of five years. The short relevant facts are that the petitioner upon his retirement as Acting Chief Justice of this Court was appointed as Lokayukta on 7.2.1990 u/s 3 of the Bihar Lokayukta Act, 1973 (hereinafter referred to as "the Act") and ceased to hold the said office on 6.2.1995 on completion of full term of five years from the date he entered upon his office. In exercise of the powers conferred by section 20 of the Act, the Governor of Bihar framed the rules called the Bihar Lokayukta (Condition of Service) Rules, 1974 (hereinafter referred to as "the Rules"). Rule 5 of the Rules deals with the leave admissible to the Lokayukta and cash equivalent to leave salary in respect of the period of earned leave to the credit of the Lokayukta on the date he ceases to hold office. For the determination of the question involved in this case it is useful to quote the said rule in extenson.

5. (1) The Lokayukta may be granted leave as follows.—(a) earned leave, on full allowance, upto 1/11th the period spent on duty, subject to a maximum of four

months at any one time;

(b) leave on medical certificate, on half the allowance admissible on earned leave, subject to maximum of three months at any one time;

(c) extraordinary leave without allowance, subject to a maximum of three months at any one time.

Explanation.-(1) All or any two of these kinds of leave may be granted in combination, at one time.

(2) The Lokayukta may, in addition to any leave salary he may be entitled to under sub-rule (1), draw the service pension.

(3) The Lokayukta appointed u/s 3 of the Bihar Lokayukta Act, 1973 (Bihar Act VI of 1974), on ceasing to hold office after completing his full term of five years as provided in sub-section (1) of section 5 of the Act, shall be entitled to the cash equivalent of leave salary in respect of the period of earned leave to his credit on the date he ceases to hold office, subject to maximum period of 180 (one hundred and eighty) days.

2. According to the case of the petitioner, he did not avail of any leave during the period he held office and as such he applied for cash equivalent to leave salary as envisaged under rule 5(3) of the Rules sometimes in November, 1996. However, vide letter dated 28.8.1997, the petitioner was intimated that he was not appointed Lokayukta under rule 3 of the Rules and hence he was not entitled to cash equivalent to leave salary. Rule 3 of the Rules is as follows:

3. A Lokayukta who, immediately before the date of his appointment as such, was a Government Servant, shall be deemed to have retired from parent service with effect from the date of his appointment as Lokayukta.

3. A photo copy of the said letter dated 28.8.1997 has been annexed as Annexure 1. In reply, the petitioner wrote a D.O. dated 12.9.1997 to the then Secretary, Department of Personnel and Administrative Reforms stating that the Lokayukta is not appointed under rule 3 at all. The appointment is made u/s 3 of the Act and as such the ground for refusal of cash equivalent to leave salary was wholly untenable. The petitioner has also pointed out that his predecessor in office, namely, Justice T.S. Mishra, was allowed cash equivalent to leave salary.

4. Thereafter the State Government on 7.2.1998. vide Annexure 2, informed the petitioner that he must have received cash equivalent to leave salary when he was a High Court Judge and that Shri. Mishra, the predecessor in office of the petitioner, was also not granted cash equivalent to leave salary. The petitioner again, vide Annexure 4, wrote to the Secretary, Department of Personnel & Administrative Reforms that the said objections were also wholly untenable inasmuch as the question whether the petitioner had been paid cash equivalent to leave salary for the period he held office as a High Court Judge was wholly irrelevant to the question as to whether he was entitled to cash equivalent to

leave salary under the provisions of the Rules as Lokayukta. He also refuted the denial as regards the grant of such benefit to his predecessor and referred to the Government order dated 17th November, 1990, a photo copy whereof has been annexed as Annexure 3 to the present writ petition. Thereafter the petitioner again, vide letter dated 13.10.1998 (Annexure 5) was also informed that he was not entitled to cash equivalent to leave salary and that his predecessor Justice Mishra was not paid cash equivalent to leave salary.

5. A counter affidavit has been filed on behalf of the Secretary to the Government, in the Department of Personnel and Administrative Reforms, Bihar (respondent no.3) in which there is no dispute with respect to the facts aforementioned. However, as regards grant of the said benefit to Justice Mishra, the respondent has admitted about issuance of Annexure 3, but further stated that later on it was found that the aforementioned sanction order was issued inadvertently due to incorrect interpretation of rules and that on the advice of the learned Advocate General and Finance Department, the matter was rectified and cash equivalent to leave salary was not paid to him, vide Government letter dated 28.9.1993, a true copy whereof has been annexed as Annexure A. The stand of the respondent in the counter affidavit is that the petitioner was not entitled to cash equivalent to leave salary during his tenure as Lokayukta as he has drawn the same by virtue of his previous service. In support of this, reliance has been placed on rules 3, 4, 10 and 11 of the Rules, which are as follows:

3. A Lokayukta who, immediately before the date of his appointment as such, was a Government Servant, shall be deemed to have retired from parent service with effect from the date of his appointment as Lokayukta.

4. A Government Servant appointed as Lokayukta while in service may be permitted to carry forward after the leave earned by him in the parents service, to be availed of by him during the tenure of his office as Lokayukta Subject to this, the calculation of leave admissible to the Lokayukta will be done in accordance with rule 5.

10. Pension payable to the Lokayukta.-Subject to the provision of these rules, the Lokayukta shall, on his retirement or ceasing to hold office be paid a pension:

Provided that no such pension shall be payable to the Lokayukta-

(a) unless he has completed not less than three years of service to pension: or

(b) if he has been removed from service; or

(c) if he has resigned, unless he has completed three years of service or more for pension, and such resignation is accepted by the Governor:

Provided further that if the Lokayukta, at the time of his appointment is in receipt of a service pension (other than a disability or wound pension), the pension payable under those rules shall be in lieu of, and not in addition to, that pension:

Provided further that if the Lokayukta, at the time of his appointment, is in receipt of a service pension he shall count his service as Lokayukt for pension and retirement benefits under the rules applicable to the service to which he belonged before such appointment.

11. Special provision for pension respect of the Lokayukta who has held any pensionable civil post under Government.-The Lokayukta, who immediately before his appointment as such, was in the service of Government, shall, at his option, to be exercised within a period of six months from the date of his appointment of the publication of those rules, be entitled to draw his service pension and other retirement benefits accruing therefrom, if he had not been appointed Lokayukta:

Provided that every such person shall count his service as Lokayukta for pension and retirement benefit under the rules applicable to the service to which he belongs immediately before such appointment.

6. No reply to the said counter affidavit has been filed on behalf of the petitioner. However, Mr. Chittaranjan Sinha, learned counsel appearing for the petitioner submitted that bare reading of rule 5 of the Rules shows that every Lokayukta appointed u/s 3 of the Act on ceasing to hold office after completing his full term of five years as provided in sub-section (i) of section 5 of the Act is entitled to the cash equivalent to leave salary in respect of the period of earned leave to his credit on the date he ceases to hold office, subject to maximum period of 180 days. Thus, it was submitted that the plea of the respondents that only Government servant appointed as Lokayukta while in service is entitled for the said benefit and not any other person appointed as such u/s 3 is not tenable as it will be arbitrary and discriminatory.

7. On the other hand, Mr. Amar Nath Singh, learned Standing Counsel No. VIII appearing for the State submitted that the submission advanced on behalf of the petitioner is misconceived and not tenable. According to him, the action of the respondents in rejecting the claim of the petitioner cannot be said to be arbitrary or discriminatory. Explanation 3 to rule 5 cannot be read in isolation. The said provision has to be read with other provisions of rules 3, 4 and 10 harmoniously.

8. This Court does not find substance in the submission of the learned Standing Counsel no. VIII. There cannot be any dispute that a person on his appointment as Lokayukta is entitled for leave under rule 5 of the Rules and that under third proviso to rule 10, if the Lokayukta, at the time of his appointment, is in receipt of a service pension, he shall count his service as Lokayukta for pension and retirement benefits under the rules applicable to the service to which he belonged before such appointment. There cannot be any dispute that the retirement benefits include leave encashment, but under rule 4 a Government servant appointed as Lokayukta while in service can carry forward all the leave earned by him in the parent service to be availed of by him during the tenure of his service as Lokayukta, but exception has been carved out with respect to

entitlement of leave and pension payable to a Government servant appointed as Lokayukta under the said provision while in service.

9. Under rule 4 of the Rules, a Government servant appointed as Lokayukta while in service is permitted to carry forward all the leave earned by him in the parent service, to be availed of by him during the tenure of his office as Lokayukta and subject to it, the calculation of leave admissible is to be done in accordance with rule 5. Rule 5(1) provides for the leave admissible to Lokayukta irrespective of as to whether he is appointed on retirement from previous service or a Government servant appointed while in service. The manner of calculation is mentioned in explanation to rule 5(1) of the Rules. Under sub-rule (2) of rule 5 of the Rules the Lokayukta may, in addition to any leave salary he may be entitled to under sub-rule (1), draw the service pension and under sub-rule (3) the Lokayukta appointed u/s 3 of the Act on ceasing to hold office after completing his full term of five years as provided in sub-section (i) of section 5 of the Act, is entitled to the cash equivalent to leave salary in respect of the period of earned leave to his credit on the date he ceases to hold office, subject to maximum period of 180 days.

10. Under rule 10 of the Rules pension is admissible to the Lokayukta but only on fulfilment of the conditions mentioned in three provisos to the said rule. Under second proviso if the Lokayukta, at the time of his appointment is in receipt of a service pension (other than a disability or wound pension), the pension payable under those rules shall be in lieu of, and not in addition to, that pension, but under third proviso, his service as Lokayukta shall count for pension and retirement benefits under the rules applicable to the service to which he belonged before such appointment, which obviously means other than those which is admissible under the exceptions as provided under rules 4 and 5 relating to leave. This is also evident from the reading of the provisions, contained in sub-rule (3) of rule 5 of the Rules which does not make any distinction in the matter of entitlement to the cash equivalent of leave salary in respect of the period of earned leave to the credit of Lokayukta on the date he ceases to hold office, subject to maximum period of 180 days either in the case of appointment of a Government servant as Lokayukta while in service or in any other manner, including on retirement from service, obviously because it is a fresh appointment u/s 3 of the Act and not in continuation of the earlier appointment except in the case of appointment of a Government servant while in service for whom certain conditions have been granted to carry forward all the leave earned by him in the parent service to be availed of by him during the tenure of his office as Lokayukta.

11. Thus, this Court finds no justification for denying the cash equivalent to leave salary in respect of the period of earned leave to the credit of the petitioner on the date he ceased to hold office.

12. Accordingly, this writ petition is allowed, the orders, contained in Annexures 1, 2 and 5, denying cash equivalent to leave salary in respect of the period of

earned leave due to the petitioner are quashed and the respondents are directed to issue necessary sanction order/authorisation with respect to the same within two weeks of the receipt/production of a copy of this order. However, in the facts and circumstances of the present case, there shall be no order as to costs.