(2011) 04 PAT CK 0297

In the Patna High Court

Case No : CWJC No. 13702 of 2006

Sambhu Nath Choudhary APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 59 BLJR 2665 : (2011) 2 PLJR 1046

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—Heard Sri Ashok Kumar Singh, learned Counsel for the Petitioner, Sri Tej Bahadur Singh, learned A.A.G. No. 7, appearing on behalf of Respondent Nos. 1 to 4 and Sri Binod Kumar Labh, learned Counsel appearing on behalf of Respondent No. 5/Accountant General.

2. The Petitioner while invoking extraordinary writ jurisdiction of this Court has prayed for directing the Respondents for payment of full pension and gratuity treating his service with effect from 12.1.1960 to 31.1.1998 and has also made a prayer for directing the Respondents to refund Rs. 30,849.58/- which was deducted from his D.C.R. gratuity. Prayer has also been made to re-calculate G.P.F. amount.

3. The Petitioner was a Class-IV employee and he was to retire with effect from 31.1.1998. However, even after the date of retirement, the Petitioner continued to discharge his duties for further six months. After noticing that the Petitioner had drawn salary even after the date of his retirement, a decision was taken by the Respondent/State to recover the said amount from his retiral dues, and accordingly, deduction of Rs. 30,849.58/- was made from his D.C.R. gratuity.

4. Learned Counsel for the Petitioner submits that deduction has incorrectly been made. It was submitted that the Petitioner being a Class-IV employee had discharged his duty for further six months, and for his work he had received remuneration, which was not required to be recovered from his retiral dues.

5. In this case, a detailed counter affidavit has been filed on behalf of Respondent No. 4 i.e. Superintendent, T.B. Hospital, Koeilwar, District-Bhojpur. In the counter affidavit, it has been clarified that his service was counted from the date of his initial appointment, even though, it was temporary i.e. 12.1.1960, and accordingly, his pension was fixed. Besides this, specific averment has been made in the counter affidavit that all other retiral dues of the Petitioner have been fixed. It has been categorically stated that all other retiral dues of the Petitioner have been paid calculating his service from 12.1.1960 to 31.1.1998.

6. In this case, no rejoinder to the counter affidavit has been filed nor it has been disputed by learned Counsel for the Petitioner that all other retiral dues has been paid. Accordingly, it is evident, that all the other retiral dues have already been paid to the Petitioner.

7. Now, question is, as to whether, payment made to the Petitioner in lieu of his services can be recovered, even though, the Petitioner retired on 31.1.1998, and he continued for further six months. On this issue, learned Additional Advocate General No. 7, has argued that this point has already been settled long back in the year 1997, which makes it clear, that if an employee after retirement continues to discharge his duty without any order of re-employment, any amount paid as salary is recoverable. Learned Additional Advocate General No. 7, has heavily relied on a judgment of Hon''ble Apex Court reported in 1997 (2) P.L.J.R. (SC)129 (Radha Kishan v. Union of India and Ors.). The law laid down by the Hon''ble Apex Court in Radha Kishan case (supra) has been followed by this Court in number of cases. For reference, he has referred Rajendra Prasad Vs. The State of Bihar and Others, & Ramesh Chandra Pandey @ Phoolan Vs. State of Bihar and Another, .

8. In view of the proposition laid down by the Hon''ble Apex Court, the Court is of the opinion that while passing an order for recovery of the amount paid as salary after the date of retirement it has rightly been recovered from the retiral dues of the Petitioner which requires no interference.

9. Accordingly, in view of the facts and circumstances, no relief can be granted in favour of the Petitioner so far as recovery of Rs. 30,849.58/- is concerned.

10. Since other grievances have already been redressed, there is no need to further keep the matter pending.

11. The writ petition stands disposed of.

