
(1999) 09 PAT CK 0002
In the Patna High Court
Case No : C.W.C. No. 9092 of 1998

Shanti Ojha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 3 PLJR 958

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : M.P. Shukla, for the Appellant; Dilip Kumar for the State, for the Respondent

Judgement

S.K. Chattopadhyaya

1. Being a recipient of National Award, the petitioner has prayed for a writ of mandamus commanding upon the respondents to grant three years extension in her service pursuant to the Government resolutions. There is no denial of the fact that the petitioner while working in the Education Department of the State of Bihar was awarded National Award in September, 1990 and in view of resolution of the State Government dated 16.5.73 such awardees were entitled to get an extension in service for three years. Before her retirement on 31.7.1996 the petitioner made an application for grant of extension of her service for three years with effect from 1.8.1996 but without any result.

2. On the other hand, Learned Counsel for the State contends with reference to the subsequent resolution of the State Government dated 23.5.1996, as contained in Annexure-5A, that subsequently the earlier resolution was amended by the State Government and now such awardees are not entitled to get any extension in service, rather they are entitled to get cash amount of Rs. 20,000/- (Rupees twenty thousand) from the State Government. Referring to the decision of this Court in the case of Kedar Choudhary vs. The State of Bihar & ors. reported in 1999 (2) PLJR 313 the Learned Counsel submits that this point has

been settled by this Court upholding the validity of the subsequent resolution as contained in Annexure-5A.

3. However, Mr. Shukla with reference to some decisions of the Supreme Court has tried to impress upon the Court that the learned Single Judge while deciding the case of Kedar Choudhary (supra) did not consider the law laid down by the Apex Court. Before advertng to factual aspect of the matter it is necessary to deal with the decisions cited by Mr. Shukla. The first case relied by Mr. Shukla is on the decision in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, . The respondents before the Supreme Court were retired Railway employees and their pensionary benefits were to be calculated on the basis of Rule 2544 of the Indian Railway Establishment Code. However, subsequently when the pay scale of Railway employees were revised, the Railway Board vide its letter dated 21.1.1974 intimated that existing percentage of running allowance would continue for the time being, though it was under revision. In a subsequent letter dated 22.3.1976, the percentage was reduced to 45% retrospectively with effect from 1.4.1976, which was quashed by the Central Administrative Tribunal in another case. Without challenging the validity of the said judgment of the Tribunal the Railway Board, it appears, issued two statutory notifications, in which the percentage was reduced to 45% retrospectively with effect from 1.1.1973 and to 55% retrospectively with effect from 1.4.1979. The respondents retired from service after 1.1.1973 and before 5.12.1988. Considering the facts of the said case their Lordships were of the opinion that pension was payable to the respondent after their retirement. They were no longer in service on the date when the impugned notifications were issued. The impugned amendments take away the right of the employees to have their pension computed on the basis of their average emoluments in accordance with the provisions applicable at the time of their retirement. This according to the Supreme Court, was not permissible in law because by giving retrospective effect to the said notification valuable right (sic) to the respondents could not be taken away.

4. On the other hand, as noticed above, in the case in hand the amendment was made on 23.5.1996 when admittedly the petitioner was in service as he retired on 31.7.1996. Under this circumstance, the petitioner was aware of the amendment made subsequently by the State Government. In the aforesaid decision in the case of Chairman of the Railway Board, the Supreme Court inter alia, has held that "a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution but a rule which seeks to reverse from an anterior date, a benefit which has been granted or availed, e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively". Similar view has been expressed by the Constitution Bench of the Supreme Court in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , wherein it has been held that accrued rights of the respondent cannot be taken away by making

amendment of the rules with retrospective effect. Similarly facts and circumstances of the decision in the case of P.D. Aggarwal and Others Vs. State of U.P. and Others, are quite distinguishable.

5. In the present case the petitioner admittedly did not acquire any right for extension of her service on retirement on the ground of being an awarded of National Award because the State Government revised its earlier policy by amending the same. This aspect of the matter has been dealt with in extenso by the learned Single Judge in the case of Kedar Choudhary (supra) who was of the opinion that nobody can claim extension of service as a matter of right. In my view, grant of extension by the State Government through its earlier notification was merely a privilege in order to encourage the teachers in their functioning. However, after considering the large scale unemployment which is threatening the country at large, the State Government has subsequently withdrawn the said privilege. The same cannot be said to be opposed to public interest. Moreover, the petitioner being an awardee Is entitled to get a cash amount of rupees twenty thousand as an Award from the State Government. For the reasons stated above, I find no ground for issuing any writ to the respondents as prayed for by the petitioner.

I find no merit in this case, which is, accordingly, dismissed.