

(2009) 09 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4268 of 2009

Shashi Kant Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Citation : (2009) 09 PAT CK 0022

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Judgement

Shailesh Kumar Sinha, J.—Heard learned Counsels for the petitioner and State.

2. Through this writ application a direction is sought for commanding the respondents to make payment of the retiral dues of the petitioner on his superannuation on 30th of June, 2008 from the post of Circle Officer, Nawhatta at Rohtas as stated in paragraph 1 of the writ application.

3. Counter affidavit and Supplementary counter-affidavit of the State followed petitioner's Interlocutory application and reply thereof of the State have been filed.

4. It is not necessary to state the facts in detail since during the pendency of the writ application all the retiral dues of the petitioner have been settled and the respondent Accountant General issued the necessary authorization for the aforesaid payment pursuant to the sanction accorded by the respondent -State issued as per the letter No. 14/PEN-302-08 PER-5050 dated 2.06.2009, as contained in Annexure-A to the counter affidavit filed on behalf of the respondent No. 4 (Accountant General).

5. Petitioner on receiving the sanction order for payment of the leave encashment amount for 241 days instead of 300 days as contained in Memo No. 418(23) dated 22.04.2009, vide Annexure-10 filed representation dated 08.05.2009, as contained in Annexure-11 claiming that he is entitled to be paid

the leave encashment amount equivalent to 300 days. The petitioner claimed that he joined the service of the State on 16.03.1975, as Assistant in the department of Home and served till his joining the post of Deputy Collector in the State on 15th of July, 1991, on being successful in the limited departmental examination conducted by the Bihar Public Service Commission vide notification 5268 dated 12th of April, 1991, as contained in Annexure-2 to the writ application. It would appear that under the nomination quota, on being selected by the Board of Revenue, Bihar and upon recommendation of the Bihar Public Service Commission, petitioner was appointed as Deputy Collector. Through a supplementary counter affidavit filed on behalf of the State in reply to the claim of the petitioner for calculating the period rendered by him for a period of about 16 years, in the Department of Home, before being selected and appointed as Deputy Collector as referred to the above, it has been replied in paragraph-7 to the effect that for calculating the past services for the purpose of pension, a decision was taken that the previous service can be counted provided the employee concerned makes a request for the same within 10 years of his joining on the latter service, however, in old cases the concerned employee was required to make such request within a period of 2 years from the date of the aforesaid decision of the Government as contained in Circular No. 1191 dated 01.06.2005, annexed-A/2 to the aforesaid affidavit which is quoted below:

Paragraph 7- "That it is submitted that a government employee has to submit application for calculation of his ex-service for pension purposes within ten years from the date of joining later service (vide circular No. 1191 dated 01.06.2005 issued by the Finance Department) and for the old employees a last chance was given vide the circular No. 1191 dated 01.06.2005 issued by the Finance Department and the time limit was fixed for two years from the date of issuance of the circular. It is relevant to mention here that after lapse of prescribed time limit the petitioner has submitted his application on 16.04.2009. The petitioner has submitted the application after his retirement and after filing the writ petition. Since his petition is time barred and so is not admissible.

6. Learned Counsel appearing on behalf of the petitioner submits that the request was made before filing the writ application, however, in absence of any statutory restriction prescribed under the Bihar Pension Rules no mandatory restrictions can be imposed by Executive order for not counting the previous service if such application could not be made within time as indicated for valid reasons which is admittedly otherwise permissible under the Bihar Pension Rules/ Bihar Service Code. Beside the above, it is further submitted that the so called circular No. 1191 dated 01.06.2005, as contained in Annexure-2 was never given its wide publication so that the concerned employee could have known the aforesaid administrative instruction issued by the Department of Finance. Petitioner accordingly submits that the respondent-State deserves to be directed to issue revised sanction order for payment of the pensionary benefits after calculating the period of service rendered by the petitioner as non-gazetted employee in the Department of Home, Government of Bihar.

7. Learned Counsel appearing on behalf of the State on the other hand submits that since the petitioner did not make the request for counting his previous service within two years of the issuance of the aforesaid letter No. 1191 dated 01.06.2005 as contained in Annexure-2 prescribing the time limit of two years with effect from the date of such letter, the previous service rendered by the petitioner before joining as a Deputy Collector was not be counted. Notwithstanding the above, learned Counsel, however, submits that in case petitioner files a fresh representation, the same would be considered as per law.

8. After having considered the submissions of the parties as noticed above and upon perusal of their respective pleadings/affidavits, it would appear that during the pendency of the writ application, the retiral dues of the petitioner have been settled except one controversy regarding the calculation of pensionable service. According to the petitioner his pensionable service ought to have been counted from the date of his joining in the State in the Department of Home as non-gazetted employee on 16.03.1975 whereupon he rendered his service for 16 years and later on being selected by the Board of Revenue, Govt. of Bihar and recommended by the Bihar Public Service Commission in a limited departmental examination meant for the serving government employees joined as Deputy Collector on 15.07.1991. From the pleadings and the affidavits, it would appear that there is no dispute between the parties on principle that previous service can be counted for the purpose of calculating the pensionable service.

9. The stand taken by the State that petitioner did not make application for calculating his service within a period of two years after issuance of letter dated 01.06.2005 as contained in Annexure-2. However, nothing has been brought on record or attention has been drawn to any of the statutory provisions of Bihar Service Rules/Bihar Service Code which prohibits calculating the previous service, if request could not be made within the limit indicated in the aforesaid Letter No. 1191 dated 1.6.2005. Notwithstanding the above, it appears that the employees of the State Government on joining from one post to another may be from non-gazetted to gazetted the requirement of making request for calculating the previous service appears to be a mere formality. Had it been a case of joining the latter service from any other employer including Central Government or any other Government and receiving some retiral benefits from the previous employer it may have become necessary for such request for calculating the previous service as while fixing the pensionable service, the retiral dues received from the previous employer may become relevant. However, in the instant case, petitioner joined as an Assistant in the Department of Home and later on joined as Deputy Collector under the same employer i.e. State of Bihar on the basis of the limited examination for the eligible employees of the States.

10. In the facts and circumstances of the case as also the discussions made above, the respondents are directed to consider the period rendered by the petitioner on the non-gazetted post in the Department of Home, Government of Bihar before joining the gazetted post of Deputy Collector for the purpose of

calculating the pensionary benefit and accordingly, issue the necessary revised sanctioned order for payment of all the admissible pensionary benefits in accordance with law expeditiously, preferably within a period of four months on receipt/production of the certified copy of the present order.

11. The writ application stands disposed of with the above observations/directions.