(2000) 02 PAT CK 0039

In the Patna High Court

Case No : C.W.J.C. No. 3884 of 1997

Shri Rounak Lal APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2000) 1 PLJR 1078

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Gajendra Kumar Jha, for the Appellant; Bhrigunath Singh for the State and Mr. Manu Shankar Mishra for the Accountant General, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Petitioner has sought for quashing of the orders contained in Memo no. 806 dated 30th October, 1996, Memo no. 872 dated 27.11.1996, notice dated 2.1.1997, 20.2.1997 and 11.4.1997 of the Circle Officer, Goroul, Vaishali, contained in Annexure-1 series, whereby he has been communicated that the provisional pension and gratuity amounting to Rs. 31,686/- paid to him has been rejected by the Accountant General, Bihar vide letter no. 368 dated 9th October, 1996 and further he has been directed to deposit the aforesaid amount in the Circle Office, failing which necessary action shall be taken for attachment of his property to recover the said amount. Petitioner has also sought for declaration that he is entitled to receive pension, gratuity and ail other retirement benefits at par with the employees of the State Government. Petitioner held the post of Dafadar in Beet No. 5 under Goroul Police Station, in the district of Vaishali before his superannuation with effect from 31.12.1991. After his retirement, petitioner submitted his pension papers before the Circle Officer, Goroul, who vide his letter no. 369 dated 17.6.1996 forwarded the same to the Accountant General, Bihar, Patna. Meanwhile, he was paid provisional pension and gratuity of Rs. 12,380/- and Rs. 19,306/- and his provisional pension of Rs. 394/- was also fixed. However, later the Accountant General rejected his claim for grant of pension and gratuity and accordingly vide impugned orders he was directed to deposit the aforesaid amount.

2. According to the counter affidavit filed on behalf of Accountant General service of Chaukidar/Dafadar has been declared as Government service with effect from 1.1.1990 vide Government of Bihar, Home (Police) Department letter no. 9/Le-2013/90/Home Police-3236 dated 25.4.1990. Further case in the said counter affidavit is that as per Rule pension is admissible after completing ten years of Government service which the petitioner did not complete on calculation of his qualifying service from 1.1.1990 (date of declaration of Government service). Hence, his pension case was returned to the Department vide letter no. Pen-17-267-68 dated 3.9.1996. A photostat copy whereof has been annexed as Annexure-A/1.

3. In the counter affidavit filed on behalf of Circle Officer, Goroul (Respondent no. 5) also the similar objection has been taken. Counter affidavit has also been filed on behalf of the State of Bihar and the Secretary, (Home), (Respondent nos. 1 & 2) taking the similar objection. It is stated that since the petitioner retired on 31.12.1991 and completed only two years of service, so he did not possess the qualifying service for payment of pension and gratuity, and thus, not eligible for the same.

4. Petitioner has filed reply to the counter affidavit filed on behalf of Respondent nos. 1 & 2 in which it is reiterated that he was appointed on 5.8.1958 and superannuated from service on attaining the age of 58 years on 31.12.1991. It is asserted that the age of retirement of Chaukidar and Dafadar is 60 years as per Rule 21 (K) of the Bihar Chowkidari Manual, but the petitioner retired at the age of 58 years and now he has been denied pension and gratuity in the light of the letter dated 19.11.1994, contained in Annexure-5 to the writ application.

5. Mr. Gajendra Kumar Jha, learned counsel appearing for the petitioner submitted that denial of pensionary benefit to the petitioner at par with other Government servant is wholly arbitrary and violative of Articles 14 & 16 of the Constitution of India. It was also submitted by him that past service of the petitioner before declaring it to be Government service cannot be denied for the purpose of computation of pensionary benefits as earlier also the petitioner though was not treated to be fullfledged Government servant but was in the Government service and received his payments from the Government fund. In support of this he placed reliance on the service book, photostat copy whereof has been annexed as Annexure-2. He also placed reliance on the decision of the Government contained in Annexure-3, whereby Chowkidars and Dafadars were treated to be Government employees with effect from 1.1.1990. One of the conditions in the said Government decision was that whoever completed 58 years of service on 31.12.1989 they would not be made Government servant and they will automatically stand relieved. However, learned counsel submitted that as per

the subsequent communication in that regard, contained in Annexure-5, which is dated 19th November, 1994, the pensionary benefits under Bihar Pension Rules were made admissible to those who superannuated from service after 1.1.1990 and as the petitioner superannuated on 31.12.1991 he was entitled to avail the said benefit.

6. Mr. Jha, learned counsel for the petitioner placed reliance on the decision of the Apex Court in the case of Kanpur Suraksha Karamchari Union (Regd.) vs. Union of India and others, reported in Supreme Court Service Rulings (Vol. 13) 21 in which the question involved was as to whether the workmen, who were working in canteens established u/s 46 of Factories Act, 1948 in Ordnance Equipment Factory, Kanpur, Central Ordnance Depot, Kanpur and Air Force Station, Kanpur were entitled to claim the period of service in such canteens prior to 22.10.1980 with effect from when all employees of canteens established in defence industrial establishments u/s 46 of the Act were treated as Government employees, as part of the qualifying service for claiming pension. The Supreme Court in the facts and circumstances turned down the plea of the Union Government that the services rendered by the workers in canteens on and after 22.10.1980 alone can be included in the qualifying service for pension. The period prior to 22.10.1980 also should be counted for the purpose of pension.

7. He also placed reliance on two judgments of this Court passed in C.W.J.C. No. 2945 of 1980 disposed of on 1st July, 1985 and C.W.J.C. No. 5869 of 1986. The first case was with respect to take over the services of the Assistants and other employees of the District Board, who were on deputation in the office of the District Superintendent of Education with effect from 1.1.1971. They were denied of their past service before the take over in the matter of payment of pension and gratuity. Learned Single Judge of this Court held that they were entitled to count total period of service rendered by them for calculation of pension and gratuity. In the second case, Division Bench was dealing with the case of those who were initially, appointed in the District Board and later before they retired they became employees of the State Government, but they were denied of their past service for the purpose of fixation of pensionary benefits. The Division Bench following the earlier aforesaid judgment in C.W.J.C. No. 2945 of 1980 directed that the case of the petitioners be examined in the light of the said decision and if they are found to be entitled to the benefits extended to others in the matter of pensionary benefits, then their past service in the District Board should be taken into consideration for the purpose of fixation of pension.

8. Learned Standing Counsel No. V appearing on behalf of the State submitted that the question directly with respect to Chowkidars and Dafadars came for consideration before this Court in Karoo Paswan vs. State of Bihar & others reported in 1999 (2) B.L.J. 346 : 1999 (2) PLJR 336. In the said decision on consideration of the provisions of Village Chaukidari Act Manual and giving them status of Grade-IV employees with effect from 1.1.1990 and also the provisions of Bihar Pension Rules, 1950 held that the Pension Rules are only applicable to

the Chaukidar/Dafadars after 1.1.1990 when they were treated Class IV employees of the State. As the petitioner had not rendered 10 years of qualifying service in a pensionable establishment, he is not entitled for pension. The Court found the Government policy justified. The learned Single Judge relied upon Rule 2 of the Bihar Pension Rules, which provides that "Except where otherwise provided, these rules apply to all Government servants to whom the rules in the Bihar and Orissa Service Code apply". On consideration of fact it was held in the said case that the petitioner came to be governed by Bihar Service Code only with effect from 1.1.1990 and prior to that he was governed under the provisions of Bihar Chaukidari Manual and was not entitled to any pension, and accordingly, it was held that the petitioner had rendered service in a pensionable establishment only with effect from 1.1.1990 and does not possess the requisite qualifying service to get the benefit of pension under the Bihar Pension Rules.

9. This Court finds substance in the submission of the learned counsel for the State. The present case is squarely and directly covered by the said decision in the case of Karoo Paswan (supra) and, thus, the present petitioner also cannot be held to be entitled for the said benefit. Accordingly, this Court does not feel persuaded to hold that the petitioner of the present case is entitled for pensionary benefit under the Bihar Pension Rules as admittedly he did not possess the qualifying service rendered by him since 1.1.1990, the date of declaring them as Government employee. Accordingly, this Court does not find any merit in the writ petition and the same is dismissed, but without costs.

