(2016) 01 PAT CK 0062

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9887 of 2011

Shukdeo Chowdhary APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 01 PAT CK 0062

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Dev Kumar Prasad Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—1. Heard Sri Dev Kumar Prasad Sinha, learned counsel for the petitioner and learned AC to GP No. 18.

2. The petitioner who retired on 31.1.2010 has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India with a prayer for granting the following reliefs:--

"(i) For issuance of an appropriate writ, order or direction, commanding the respondents to quash letter No. 168 dated 5.2.2011 and office order No. 1466 dated 14.8.2010 issued under the signature at the Executive Engineer, Minor Irrigation Department, Minor Irrigation Division, Bhagalpur and to direct the respondents not to recover the amount of payment made by virtue of First Time Bound Promotion and two A.C. Ps. allowed to the petitioner from his Gratuity amount.

(ii) And further to make payment of amount of the accrued dues of 1st A.C.P. and 2nd A.C.P. to the petitioner sanctioned by Memo No. 39 dated 11.1.2008 with effect from 9.8.1999 and 21.1.2002 respectively to the date of retirement of the petitioner with 18% compound interest.

(iii) And also to direct the respondents to make payment of amount of Leave Encashment admissible to the petitioner with 18% compound interest per annum with effect from the date of his retirement to the date of actual payment.

(iv) And to compensate the petitioner for mental torture, financial loss due to litigation and humiliation met by the petitioner as per the decision of the Hon''ble Supreme and this Hon''ble Court in citadel of cases."

3. The petitioner after he superannuated was served with a notice vide Annexure - ''12'' to the writ petition asking him to file show cause within a week as to why his First Time Bound promotion and other benefits given under the A.C.P. scheme prior to 27.6.2007 may not be recovered. Finally, vide Annexure - ''13'' the First Time Bound Promotion granted to the petitioner, which was granted in the year 1986 was cancelled and pay scale was reduced. It was also directed to recover the excess paid amount from the petitioner. It has been pleaded that after retirement the petitioner was granted only 90% pension. He was not paid his gratuity amount and amount against the leave encashment. The petitioner was initially appointed as Junior Accounts Clerk in the year 1976 and he passed Hindi Noting and Drafting Examination conducted in the year 1977. He, after completion of 10 years of service, was granted First Time Bound Promotion with effect from 24.1.1986 in the pay scale of Rs. 785-1290/-. He was also granted 1st and 2nd A.C.P. vide Memo No. 39 dated 11.1.2008. It has been pleaded that the petitioner tried to pass the Departmental Accounts Examination, however, he failed to pass the said Examination. Subsequently, after attaining the age of 50 years vide Annexure - ''7'' to the writ petition i.e. Memo No. 3536 dated 27.6.2007 he was exonerated from passing the Departmental Examination and finally, without any complaint with blameless and spotless service, he superannuated on 31.1.2010 from the post of Accounts Clerk. Thereafter, he was paid G.P.F. amount. 90% provisional pension was sanctioned. All those things were done in the year 2010 itself. Surprisingly, in the year 2011 the petitioner received communication from the Executive Engineer whereby it was intimated that due to non passing of the Departmental Accounts Examination he was not entitled to be given 1st Time Bound Promotion and thereafter, notice was issued vide Annexure - ''12'' to the writ petition to the petitioner to file his response within a week and finally, the impugned order i.e. Annexure - ''13'' has been issued.

4. Learned counsel for the petitioner submits that after issuance of notice the petitioner had filed a detailed representation but without considering the same final order was passed whereby the pay scale of the petitioner was reduced and also order was passed for recovering the excess amount. It has been argued that for grant of Time Bound Promotion passing of Departmental Accounts Examination was not at all mandatory. The issue has already been set at rest by number of judgments of this court. He has relied on a judgment of this court reported in , 2009 (2) PLJR 830 (Kamla Kant Das v. State of Bihar & Ors.).

5. In this case a counter affidavit has been filed on behalf of the respondent No.

4 and 5 which has also been replied by filing rejoinder by the petitioner. In the counter affidavit in sum and substance same stand has been reiterated that the petitioner without passing the Departmental Accounts Examination was incorrectly granted First Time Bound Promotion. It has also been indicated that petitioner was entitled to get all the benefits under the A.C.P. scheme only after he was exonerated from the Departmental Accounts Examination which permission was granted in the month of June 2007. According to learned counsel for the State no error has been committed by the respondents. In the counter affidavit it has been indicated that pension and gratuity has been fixed by the Accountant General on 15.4.2011. The amount of gratuity has been withheld till the decision of recovery of the excess amount paid to the petitioner. Nothing has been indicated as to whether the gratuity amount has been paid or not.

6. Learned counsel for the petitioner on instruction submits that till date gratuity amount has not been paid to the petitioner.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that in the year 1986 itself the petitioner was granted First Time Bound Promotion. Thereafter, he availed the enhanced pay scale, being granted First Time Bound Promotion and enjoyed the fruit till the date of his superannuation. Till the date of retirement of the petitioner no any objection was raised by any of the respondents. Suddenly when the retiral dues was to be cleared, on the plea of objection by the Accountant the petitioner was asked to file show cause and vide Annexure - ''13'' the pay scale of the petitioner was reduced and also direction was given to recover the excess paid amount. So far as grant of Time Bound Promotion is concerned repeatedly it has been held that such promotion was to be granted after completion of 10 years and 25 years of service. There was no condition for passing Departmental Accounts Examination. This issue was examined by a bench of this court in a case reported in , 1998(3) PLJR 902 (Abdul Qayum Ansari v. The State of Bihar and Ors.) which was followed in a case reported in , 1999 (3) PLJR 648 (Ramjee Prasad Singh v. State of Bihar & Ors.) and thereafter in a case reported in , 2009 (2) PLJR 830 (Kamla Kant Das v. State of Bihar & Ors.) same has been reiterated. Meaning thereby that after knowing well regarding the proposition of law that Time Bound Promotion granted may not be unsettled on the plea of non-passing of the departmental examination whether Accounts or Noting And Drafting Examination, the respondents without any authority has raised an objection and after about more than 25 years from the issuance of the order same has been cancelled, which is completely unsustainable in the eye of law. Accordingly, the order whereby after cancelling the 1st Time Bound Promotion, the pay scale of the petitioner was reduced and also direction was issued to recover the excess paid amount i.e. Annexure - ''13'' is hereby set aside.

8. In view of the facts and circumstances and the proposition of law, the impugned order is set aside with a direction to the respondents to grant all benefits to the petitioner treating the 1st Time Bound Promotion granted to the

petitioner in the year 1986 as valid and legal and calculating the same pay the differential amount and fix the pension. Accordingly, the respondents are directed to pay the gratuity amount which has not been paid to the petitioner within a period of eight weeks from today.

9. It is made clear that petitioner shall be entitled to get interest on all such amount at the simple rate of 7% per annum. All the formalities must be completed within a period of three months. Meaning thereby, that the respondent/State and Accountant General both are directed to re-calculate the pension of the petitioner, issue sanction order and authority slip and credit the amount to the account of the petitioner within a maximum period of three months from the date of receipt/production copy of this order.

10. The writ petition stands allowed.

