
(1998) 11 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 677 of 1994

Shyam Jee Tiwari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Citation : (1999) 1 PLJR 360

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Kumar Virendra Narayan and Surendra Mishra, for the Appellant;
V.N. Sinha, Ajay Kumar Jha for State and Nand Kishore Prasad Sinha, for
Respondent Corporation, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Mishra, J.—In this writ application the Petitioner Shyam Jee Tiwari has prayed for a direction to the Respondents to pay the pensionary benefits, legally payable to him including accumulated sixteen months dearness allowance, arrear pay for March' 93, arrears of regional allowance and medical allowance as per replacement pay scale.

2. The case of the Petitioner in short, is that the Petitioner was initially appointed as Assistant in the Political (Transport) Department of Government of Bihar on 20.1.1956. After the establishment of the Bihar State Road Transport Corporation (hereinafter referred to as Corporation) the services of the employees of the Transport Department were transferred and placed" at the disposal of the Corporation. The Petitioner is one of such employees who was also transferred to the Corporation wherefrom he retired as conductor on 31.3.1993.

3. In this case counter affidavit has been filed including supplementary counter affidavit on behalf of the Respondent Corporation wherein inter alia it has been stated that all the pensionary benefits, legally payable to the Petitioner has already been paid vide cheques dated 15.7.1993 and 25.4.1995. The specific

statement has been made in paragraph-11 of the supplementary counter affidavit which reads thus:

That as has already been stated in the previous counter affidavit, entire dues of the Petitioner has already been paid to him by cheque dated 15.7.93 and 25.4.95 in accordance with the rules and service conditions applicable to the Corporation employees and which he has accepted.

The aforesaid statement made by the Corporation in its counter affidavit is not being disputed. However the grievance of the Petitioner is that, though the legal dues have been paid by the Corporation yet the pension is not being sanctioned for which the Petitioner is legally entitled to in view of the decision taken by the Government vide order dated 30.4.1959, copy of which is made Annexure-10 to this writ application.

4. From perusal of the order of the Government as contained in Annexure-10 no doubt the Government has taken a decision that the employee who has been transferred from the Transport Department to the Corporation will be deemed to be Government servant and entitled to all the benefits available to such Government servants including pension, gratuity etc.

5. Admittedly, there is no provision of grant of pension to the employee of the Corporation, it is relevant to mention here that the employee who have opted for Corporation service, their age of superannuation was extended to 60 years whereas the Government servant retires at the age of 58 years. There is a special provision of contributory provident fund in the Corporation to which the Petitioner has admittedly contributed and ultimately he has withdrawn contributory provident fund amount at the time of retirement. The employee who has adopted for Corporation's service is admittedly governed under the rules and regulation of the Corporation.

6. Admittedly, the Petitioner superannuated at the age of 60 years and willingly contributed and accepted the contributory provident fund amount at the time of his retirement and, as such he cannot claim as a matter of right, the grant of pension which is not available to the other employees of the Corporation similarly situated like Petitioner. Having enjoyed the benefits available to the Corporation employees, the Petitioner cannot claim the pension like other Government servants.

7. The Corporation in its counter affidavit has specifically stated that there is no provision for grant of pension to its employees. The moment, an employee opted for Corporation's service, he will be deemed to be the employee of the Corporation and governed under the rules and regulation prevalent in the Corporation. The regulation of the Corporation does not provide grant of pension to its employee, the Petitioner cannot claim such benefits, particularly when he has availed the opportunity and benefits available to the employees such as C.P.F. including the extension of service for two years i.e. up to the age of 60 years.

8. After having heard the learned Counsel for the parties and going through pleadings filed on their behalf, I am of the view that the Petitioner is not entitled to the pension as claimed by him for the reasons stated above. Accordingly, this writ application is dismissed but without cost.