

(2010) 02 JH CK 0138
In the Jharkhand High Court

Sister Shashi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Bihar Pension Rules, 1950 — Rule 101(a), 101(b)

Citation : (2010) 02 JH CK 0138

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Judgement

Sushil Harkauli, J.—I have heard both sides. On 27.08.2009 the following order was passed in this writ petition:

Post retirement benefits are not charity by the State. It is a right earned by the employee upon completing qualifying period of service, and an employee can be deprived of the aforesaid right only if there is an express provision to that effect which must be exist prior to the date on which the benefit has been earned.

The stand of the respondent appears to be that because there is no scheme for voluntary retirement for teachers like the petitioner, therefore, post retirement benefits are being denied as she has wrongly obtained voluntary retirement. It is not in dispute that the petitioner has completed the qualifying period of service.

The respondents are given a last opportunity to show any Government order or notification or circular within two weeks, in which there is prohibition that if a teacher, like the petitioner, resigns after completing qualifying period of service, post retirement benefits will not be payable.

List immediately after two weeks.

2. In response, a supplementary affidavit of Prem Prakash Sinha, Deputy Director (Secondary Education), Ranchi has been filed on 9.10.2009 which encloses a copy of the Bihar Government Order No. 1775 dated 30.08.1930. After going through this order I do not find the same to be applicable at all.

3. The facts which are relevant for the purpose of this case have already been mentioned in the order quoted above.

4. Firstly, the voluntary retirement of the petitioner was not a unilateral act on his part. It was accepted by the College Management consequent upon which the petitioner was allowed to retire. Therefore, now at the stage of grant or denial of pensionary benefits or post retirement benefits it is a little difficult to accept this U-turn taken by the respondents saying that voluntary retirement was not permissible. The respondents having allowed the petitioner to retire voluntarily pursuant to the petitioner's request, and the respondents not being in a position to put the clock back by allowing the petitioner now to serve the remainder of his service period, in such a situation, permitting the respondents to deny the post retirement benefits on the aforesaid ground of lack of provision for voluntary retirement would be allowing the respondents to a very unfair advantage by denying the earned benefits to the petitioner.

5. Moreover, even if a voluntary retirement was not permissible, it is obvious that resignation from a service with the consent of the employer is always permissible. As such, if the voluntary retirement of the petitioner, alleged to have been wrongly granted, is treated as a resignation after completing qualifying service, the question would arise whether the post retirement benefits can be denied to the employee who has resigned.

6. In this connection, in the aforesaid supplementary counter affidavit Rule 101(a) of the Bihar Pension Rules 1950 has been quoted in paragraph No. 5. The said Rule 101 (a) as well as (b) is quoted below:

101.(a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment [with the approval of the appointing authority] to take up another appointment, service in which counts, is not a resignation of the public service.

7. Against this the petitioner has placed reliance upon Rule 135 of the same rules which is quoted below:

135. Government servants mentioned in Rule 5 are entitled, on their resignation being accepted, to a retiring pension after completing qualifying service of not less than 25 years.

8. Rule 5 referred to in the aforesaid Rule 135 is also quoted below:

5.(1) The provisions of Rules 86, 135, 146 and 147 apply only to Government servants (other than military officers) appointed substantively to services or posts specified in the schedule below, who-

(a) joined their posts after 29th August, 1919, or

(b) were in service on 29th August 1919, but have definitely elected in writing with the permission of Government to come under them.

Note: ...

(2) The Provincial Government may include in the list given in the schedule any gazetted service or post, the duties of which are so important that they cannot be regarded as subordinate

Note....

9. It appears from reading of the Bihar Periston Rules, 1950 which incidentally applies only to Government servants in the State of Jharkhand without any modifications with regard to the aforesaid rules in question being brought to my notice, that the forfeiture of service referred to in Rule 101(a) refers to forfeiture for purposes other than the grant of pensionary benefits. This is clear from the Section (V) of the said Rules in which the said Rule 101 appears. That Section (V) deals with break; and deficiencies in service. Thus the forfeiture of the past service, as suggested by Clause (b) of Rule 101 also, is for the purpose of adding of that past service in any new service which the employee submitting resignation, may join subsequent to the resignation, and the forfeiture is not related to the grant or denial of pensionary benefits which are governed by Rule 135.

10. Thus, it is not open to the respondents to deny pension or other post retirement benefits which are permissible under the Rules to the petitioner on the ground that voluntary retirement was not permissible.

11. In the light of the aforesaid, the matter of grant of pensionary benefits to the petitioner will be considered afresh by respondent No. 2 i.e. Director, Secondary Education, Jharkhand Human Resources Development Department, Ranchi, as suggested by the learned Counsel for the respondents, within three months of the date on which a certified copy of this order is presented before respondent No. 2. The decision of respondent No. 2 will be a reasoned decision and will be communicated to the petitioner also.

12. With the aforesaid direction, this writ petition is disposed of.