

(2007) 08 SC CK 0116

In the Supreme Court Of India

Case No : Civil Appeal No's. 1684 and 2594 of 2005

State of Bihar and Others

APPELLANT

Vs

Kamal Bansh Narayan Singh
Ramanand Prasad Vs The
State of Bihar and Others

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Citation : (2007) 4 PLJR 62

Hon'ble Judges : Markandey Katju, J;A.K. Mathur, J

Bench : Division Bench

Advocate : Mohit Shah, Rituraj Biswas, Anukul, Gopal Singh, S.K. Bhattacharya, Suresh Bharti, R.D. Upadhyay, S.B. Sanyal, Sudarshan Saran, Shefali Jain and Akhilesh Kumar Pandey, for the Appellant; S.B. Sanyal, Sudharshan Saran, Shefali Jain, Akhilesh Kumar Pandey, Mohit Shah, Rituraj Biswas, Anukul and Gopal Singh, for the Respondent

Final Decision : Allowed

Judgement

C.A. No. 1684/2005

1. Heard learned Counsel for the parties. We have gone through the record and the order dated 12.2.2004 passed by the learned Division Bench of the High Court of Patna, We do not find any reason to interfere with the impugned order. The appeal is dismissed. No order as to costs.

2. However, we direct that the State Government shall pay the pension or other benefits which are due to the Respondent in accordance with law within a period of six months from today. Arrears of pension, if any, shall also be paid within the same period.

C.A. Nos. 2594/2005 and 2595/2005

3. Heard learned Counsel for the parties.

4. The facts involved in both these appeals are substantially the same, hence

they are being disposed of by a common order.

5. For the purposes of disposing of these appeals, we are taking into account the facts of Civil Appeal No. 2594/2005.

6. Civil Appeal No. 2594/2005 is directed against the judgment and order dated 25.11.2003 passed by the Division Bench of High Court of Patna in Letters Patent Appeal No. 973/2003 filed by the Appellant-Ramanand Prasad. The Division Bench dismissed the said appeal being without any merits. It is not necessary for us to give detailed facts. Suffice it to say that the Appellant was initially appointed on adhoc basis on 14.6.1962 in the Bihar State Small Industries Corporation Ltd. and thereafter on 3.4.1963 he was appointed as a Salesman in the said Corporation and his services were transferred to the Department of Industries and he remained there from 1.4.1963 to 21.9.1975. In the meantime, the State Government created Handloom and Handicrafts Corporation by Notification dated 13th August, 1975 and the services of the Government employee who were on regular basis were transferred on deputation on foreign service terms. With regard to temporary employees it was provided that their services could be terminated with effect from 22.9.1975 after giving one month's notice. A copy of the said notification has been placed on record as Annexure-R1 at page 66 of the paper-book. However, subsequently, the Appellant was absorbed in the Handloom and Handicrafts Corporation and from there he superannuated on 31.7.1996. He was paid partial pensionary and retiral benefits due to him so far as his service in the Corporation were concerned but he claimed that he should also be paid pension and retiral benefits by taking into consideration service rendered by him in the State Government and in that behalf he pressed into service the order dated 13.1.1999 passed by the State Government whereby the services of the Appellant were confirmed. In these circumstances, the Appellant herein filed a writ petition before the Patna High Court which was dismissed by a learned Single Judge. Aggrieved against the order of dismissal dated 16.9.2003, the Appellant preferred a Letters Patent Appeal which was also dismissed by the Division Bench vide impugned order dated 25.11.2003. The Division Bench took the view that the Appellant's service stood terminated in 1975 and he was absorbed in the Corporation and, therefore, the confirmation order dated 13.1.1999 issued by the Government is erroneous. Hence, the Appellant is before us by way of this appeal by special leave.

7. We have heard learned Counsel for the parties and perused the record. The learned senior counsel for the Appellant has submitted before us that as per the Government's order dated 13.8.1975 the services of the Appellant were not terminated by giving him one month's notice as contemplated in Clause (3). He invited our attention to necessary averment in the writ petition and submitted that the State Government has not come out with any reply to the said averment in their counter affidavit whether any notice was given or not before terminating the services of the Appellant. On the contrary, learned Counsel submitted that on 13.1.1999 the State Government has issued an order confirming the Appellant in

service, therefore, it is obvious that if the Government wanted to terminate the services of the Appellant, it ought to have given one month's notice in terms of the notification dated 13.8.1975. The Notification dated 13.8.1975 only enables the State Government to terminate the services of regular employees by giving one month's notice but no such notice of termination was given to the Appellant herein. This is more so for the reason that the Government has already confirmed the Appellant in service right from the date of his initial appointment, i.e., 14.6.1962. In this view of the matter, we are of opinion that the view taken by the learned Single Judge as well as the Division Bench of the High Court does not appear to be well founded. It is wrong for the High Court to presume that the order dated 13.1.1999 passed erroneously. This is not the case of the State Government also that the order dated 13.1.1999 was passed erroneously or at any time the same was revoked and, therefore, the Appellant was a permanent Government servant from 14.6.1962 and he was sent to corporation, his entire service should be counted for all pensionary and other benefits which are due to him in accordance with law. Accordingly this appeal is allowed and the order of the learned Single Judge dated 16.9.2003 dismissing the writ petition and the order of the learned Division Bench dated 25.11.2003 dismissing the Letters Patent Appeal are both set aside.

8. For the reasons given hereinabove, Civil Appeal No. 2595/2005 is also allowed and the order of the learned Single Judge dated 9.3.2004 dismissing the writ petition is set aside.

9. Since these cases relate to pensionary benefits of superannuated Government servants, we direct that the State Government shall pay the pension or other benefits which are due to the Appellants in accordance with law within a period of six months from today. Arrears of pension, if any, shall also be paid within the same period. Appeals are allowed. No order as to costs.