
(2015) 01 PAT CK 0024

In the Patna High Court

Case No : Letters Patent Appeal No. 1422 of 2014 in Civil Writ Jurisdiction Case No. 15828 of 2006

State of Bihar

APPELLANT

Vs

Pushpa Sinha

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 01 PAT CK 0024

Hon'ble Judges : Chakradhari Sharan Singh, J.;I.A. Ansari, J.

Bench : Division Bench

Advocate : Madhuresh Prasad and Ravi Verma, for the Appellant; Rajendra Prasad Singh, Senior Advocate and Kumar Shankaram, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The respondent No. 1 herein, Smt. Pushpa Singh, is widow of Dr. Vikash Kumar Srivastava (since deceased) and respondent No. 2, Vaibhav Vishal, is the minor son of the said deceased.

2. Dr. Vikash Kumar Srivastava (since deceased) filed a writ petition, under Article 226 of the Constitution of India, which gave rise to CWJC No. 15828 of 2006, the reliefs, sought for by him, being (i) "to issue appropriate writ/direction directing the State respondents to count the services of the erstwhile writ petitioner from 10.09.1987 to 25.11.1989 and to grant all consequential benefit of seniority, and (ii) to issue direction to pay salary from January, 1989 to 25th October, 1989".

3. During pendency of the writ petition, Dr. Vikash Kumar Srivastava died on 25.09.2008 and, by order, dated 02.03.2009, passed in I.A. No. 897 of 2009, filed in CWJC No. 15828 of 2006, the present respondents were substituted as the legal representatives of the said deceased. The original writ petitioner's grievance was, in brief, thus:

"(i) The original writ petitioner, who was qualified to be appointed as a Veterinary Doctor, came to be appointed, along with some others, as Veterinary Doctor, in the services of the State Government, on 10th September, 1987, for a period of three months to meet exigency of the situation caused by floods. By an order, dated 05.12.1987, issued by the Director, Animal Husbandry, Bihar, Patna, his service was extended for a period of three months awaiting approval of his appointment from Bihar Public Service Commission (hereinafter referred to as "the Commission"). Thereafter, the original writ petitioner's services were further extended, from time to time, by notifications, dated 21.06.1988, and 15.07.1988, the last extension being by notification, dated 17.01.1989, and the extension, so granted, being up to 31.12.1989. This apart, by the notification, dated 17.01.1989, aforementioned, the State Government, acknowledging the fact that the original writ petitioner had been appointed on 10.09.1987 and his appointment had been extended from time to time up to 31.12.1988, fixed 31.12.1989 as the cut off date for extension in anticipation of the approval of the Commission meaning thereby that unless the petitioner's appointment was approved by the Commission, his appointment would stand terminated with effect from 01.01.1989.

(ii) Soon after issuance of the notification, dated 17.01.1989, which had virtually terminated the services of the writ petitioner and others, with effect from 01.01.1989, the writ petitioner and others filed a writ petition, which came to be registered as CWJC No. 1305 of 1989, challenging therein the correctness and validity of the notification, dated 17.01.1989, aforementioned.

(iii) By order, dated 02.02.1989, passed in CWJC No. 1305 of 1989, status quo was directed to be maintained. Because of the interim order made on 02.02.1989, the writ petitioner and others continued to, admittedly, work and when the approval of the Commission was received on 24.10.1989, the original writ petitioner was formally appointed, in the cadre of Bihar Animal Husbandry Services Class-II, with effect from the date of assumption of charge.

(iv) After his appointment, in the cadre of Bihar Animal Husbandry Services Class-II, with effect from 24.10.1989, the writ petitioner filed another writ petition, namely, CWJC No. 2305 of 1989, with the prayers aforementioned.

(v) As the writ petitioner aforementioned died, his legal representatives, as already indicated above, have come on record and pursued the writ petition.

(vi) By order, dated 17.09.2013, a learned single Judge of this Court has allowed the writ petition with the observations and directions as given hereunder:

"The temporary appointment was made awaiting recommendation from B.P.S.C. It was extended from time to time awaiting recommendation of B.P.S.C. Once recommendation was received, it was made permanent and, thus, there was a continuity intended. That being so, the service tenure of petitioner would be counted from the date of initial temporary appointment. There being no break whatsoever in regard to the initial period of the year 1989, which is sought to be

covered by typographical mistake. All I can say is that the Court having been granted status quo, in the period of status quo petitioner was permanently appointed that period would also be treated as period in service as has been duly certified by the Regional Director vide Annexure-11. That being so, the two years period prior to petitioner's appointment in regular basis accordingly, grant of A.C.P. has to be recalculated. As petitioner died in harness and his death-cum-retiral dues including gratuity has to be counted taking into account the period aforesaid. As the writ petition is now being pursued by his widow wife, it is expected that the Department would take a sympathetic view of the matter and work out the consequences of this judgment at an early date but not later than two months from the date of production of a copy of this order before the Director, Animal Husbandry, Government of Bihar, Patna."

4. Aggrieved by the order, dated 17.09.2013, this appeal has been preferred by the respondents in the writ petition.

5. We have heard Mr. Madhuresh Prasad, learned Counsel, for the appellants, and Mr. Rajendra Prasad, learned Senior Counsel, for the respondents.

6. Assailing the impugned order, Mr. Madhuresh Kumar, learned Counsel, has submitted that the notification, dated 17.01.1989, aforementioned has been wrongly read and construed by the learned single Judge as having extended the services of the writ petitioner up to 31.12.1989; whereas the notification aforementioned clearly shows that the extension was to end on 31.12.1988 and not on 31.12.1989. This apart, points out Mr. Madhuresh Prasad, learned Counsel, the initial appointment of the original writ petitioner, namely, Dr. Vikash Kumar Srivastava, was in a given scale and not against any post and, hence, the services, rendered by him by virtue of his appointment in a pay scale, would not make his appointment permanent in nature and he could not have been given the benefit of Rule 63 of Bihar Pension Rules, 1950, inasmuch as Rule 63 of Bihar Pension Rules, 1950, clearly states that where a person is working, or has been appointed in temporary capacity, and transferred from a temporary to a permanent appointment can count his service, in the temporary post, if created, though at first, experimentally or temporarily, it eventually becomes permanent

7. Let us, first, consider the submission that the notification, dated 17.01.1989, has to be read as having extended the services of the original writ petitioner till 31.12.1988 and not till 31.12.1989 and consequently, the cut off date of extension was 31.12.1988 and not 31.12.1989.

8. As construction of the notification, dated 17.01.1989, has fallen in controversy, we reproduce hereinbelow the notification, dated 17.01.1989;

9. On a bare reading of the notification, dated 17.01.1989, what becomes transparent is that notification was issued on 17.01.1989 and if the contents of the notification, dated 17.01.1989, are literally interpreted, it would appear as if the Government, by the notification, dated 17.01.1989, had extended the services of Dr. Vikash Kumar Srivastava (since deceased) from 27.06.1988 to

31.12.1989, 31.12.1988 being the last cut off date making it clear that thereafter, no further extension would be allowed; whereas the contents of the notification, if read carefully, would clearly disclose that the notification is prospective in nature and, therefore, the learned single Judge was wholly correct in holding that the date 31.12.1988" as the cut off date has been incorrectly typed and what was intended by the notification, dated 17.01.1989, was that the cut off date would be 31.12.1989 or else, the notification carried no meaning. We completely agree with the view so taken by the learned single Judge and see no reason to construe the notification in any other manner. The construction of the notification, dated 17.01.1989, by the learned single Judge, carries the spirit of the notification and it is in this light that one was required to read the notification or else, reading of the notification would be wholly mechanical; whereas no judicial function can be performed mechanically.

10. Coupled with the above, we also find that the cut off date of 31.12.1988 was prescribed awaiting approval of the Commission and as the notification, dated 17.01.1989, had the effect, virtually, of a letter terminating the services of the deceased writ petitioner and others, they all filed the writ petition, which, as already indicated above, gave rise to CWJC No. 1305 of 1989 and by order, dated 02.02.1989, status quo was directed to be maintained and, eventually, on the concurrence received, on 24.10.1989, from the Commission, the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was formally appointed to the cadre of Bihar Animal Husbandry Services Class-II with effect from assumption of the charge of his services. The writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was, thus, appointed, in accordance with law, in the cadre of Bihar Animal Husbandry Services Class-II.

11. In effect, the legality of the appointment of Dr. Vikash Kumar Srivastava (since deceased) was neither questioned in the writ petition nor is it questioned in the present appeal.

12. The only question, therefore, is as to whether the period of service, which the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), had rendered from 10.09.1987 and 24.10.1989, can be counted for the purpose of reckoning this period to grant Assured Career Progression as well as death -cum- retiral dues. Since this question needs to be answered in the light of the provisions of Rule 63 of Bihar Pension Rules, 1950, Rule 63 is quoted below.

"63. A Government servant transferred from a temporary to a permanent appointment can count his service, in the temporary post, if though at first created experimentally or temporarily, it eventually becomes permanent." 13. On cautious reading of Rule 63 of Bihar Pension Rules, 1950, it becomes clear that a Government servant, when transferred from a temporary to a permanent appointment, the services rendered by him, on temporary appointment, will be counted as the services rendered by him on permanent appointment.

14. In the case at hand, the appointment of the writ petitioner, Dr. Vikash Kumar

Srivastava (since deceased), was in the scale of the Veterinary Doctor and, hence, though the post was not formally created, the fact remains that the nature of his appointment showed that the appointment was against a temporary post; more so, when it has nowhere been so contended in their counter affidavit, by the respondents. Far from this, what was contended by the appellants in the counter affidavit was that the appointment of the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was on ad hoc basis till 01.12.1988. The ad hoc appointment made pending approval of the Commission cannot be said to be an appointment against non-existent post.

15. We, therefore, in the facts and attending circumstances of the present case, do not see any infirmity, legal or factual, in the conclusions reached by the learned single Judge. Resultantly, appointment of the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), ought to be, in the facts and attending circumstances of the present case, treated as continuous and shall, therefore, be counted for the purpose of granting Assured Career Progression and also to make available to the present respondents, on the death of the original writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), death -cum- retiral benefits.

16. Situated thus, we see no reason to interfere with the order under appeal.

17. We may, however, hasten to add that as far as the decision, in the present case, is in the context of the facts of the present case that the appointment of Dr. Vikash Kumar Srivastava (since deceased) was never contended, in the writ petition, to have been made against non-existent or non sanctioned post. This plea could not have, in fact, been allowed to be raised in the present appeal, when there is no foundation for such a plea in the counter affidavit filed by the respondents in the writ petition.

18. With the above observations and directions, this appeal stands dismissed.

19. No order as to costs.