(2016) 03 PAT CK 0113

In the Patna High Court

Case No : Letters Patent Appeal No. 1837 of 2012

State of Bihar APPELLANT

Vs

Thakur Gajendra Prasad Sinha RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:
Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2016) 3 PLJR 544

Hon'ble Judges : Mr. Hemant Gupta and Mr. Navaniti Prasad Singh, JJ.

Bench : Division Bench

Advocate : Mr. Uma Shankar, G.P.-4 and Mr. Anil Kumar Singh, A.C. to G.P.-4, for the Appellant; Mr. P.N. Pathak, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J.(Oral)—Heard learned counsel for the appellants and the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench dated 14th of May, 2012 passed in C.W.J.C. No. 5212 of 2012, whereby the orders dated 22.09.2003, 24.06.2004 and 17.02.2010 reducing the salary of Respondent No. 1 herein were set aside.

3. Respondent No. 1 was granted increment in the year 1996. After his superannuation on 28th of February, 2003 in the pay-scale of Rs. 6500/-, the same was sought to be reduced to Rs. 4500/- on 22nd of September, 2003. The writ-petitioner challenged the said action by way of a writ application before this Court. This Court rightly set aside the recovery proceedings initiated against the writ-petitioner after his superannuation.

4. The argument raised by the appellant is that Respondent No. 1 has not passed Hindi Noting and Drafting Examination. Therefore, increment could not have been granted to him in the year 1996 and the recovery proceeding should not have been interfered with by the learned Single Bench.

5. We do not find any merit in the argument raised on behalf of the appellant. There is categorical assertion of the writ-petitioner in the writ application itself that he passed Hindi Noting and Drafting Examination more than thirty years back.

6. The stand of the appellant was that the Service-Book does not show such examination of the Respondent No. 1 having been passed but the fact remains that the benefit of the increment was granted to the writ-petitioner in the year 1996. The appellant has sought to recover the amount from the salary paid to the writ-petitioner on account of wrong payment of increments after the superannuation of the official.

7. In terms of Supreme Court judgment in the case of State of Punjab and others v. Rafiq Masih (White Washer) and others (2015) 4 SCC 334 the recovery cannot be effected on account of wrong payments made at an earlier stage. In the present case, recovery is sought to be made after attaining the age of superannuation. Such action will cause undue hardship to the writ-petitioner. Thus the recovery proceedings are not sustainable in the light of the aforesaid judgment.

8. It may be noticed that in terms of Rule 43(b) of the Bihar Pension Rules, 1950, action for any misconduct committed beyond four years of the date of retirement cannot be taken. In this case, the increment was granted to the writ-petitioner in the year 1996 i.e. more than seven years earlier than the date of superannuation of the writ-petitioner. Therefore, in terms of Rule 43(b) of the Bihar Pension Rules, 1950, no action can be taken for recovery of the alleged wrong payment of increments from the writ-petitioner as well.

9. In view of the above, there is no illegality in the order passed by the learned Single Bench which may warrant interference by this Court. The Letters Patent Appeal is, thus, dismissed.