
(1989) 02 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8437 of 1988

Sunil Kumar Choudhari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-1989

Acts Referred:

Constitution of India, 1950 — Article 225, 227

Citation : (1989) 37 BLJR 414 : (1989) 2 LLJ 308 : (1989) PLJR 603

Hon'ble Judges : Uday Sinha, J;B.K. Roy, J

Bench : Division Bench

Judgement

Uday Sinha, J.—Petitioner Sunil Kumar Choudhuri, a retired Judge of this Court, has moved us under Articles 225 and 227 of the Constitution of India for issuance of a writ of mandamus commanding the respondents to pay car allowance, house rent allowance. Prayer has also been made for direction to the State Government to extend leave travel concession facility to him and to restrain the respondents from deducting from his salary pay equivalent to gratuity (P.E.G. for short). Incidental to it is a prayer for payment of all sums deducted uptill now as P.E.G.

2. The petitioner was appointed Chairman of the Bihar State Administrative Tribunal (hereinafter to be called Tribunal) as a sitting Judge of this Court. The notification was issued on 1-12-1985 which is Annexure-2 to this application. The petitioner's stand is that in terms of Annexure-2, he is entitled to the grant of the reliefs prayed for in this application. The stand of the State is that the petitioner is not entitled. Both parties relied upon Annexure-2 as the document in support of their stand.

3. The petitioner retired as a sitting Judge on 25-6-1986. He was discharging the functions of a sitting Judge till that date as well as that of Chairman, Bihar State Administrative Tribunal.

4. Learned Standing Counsel No. II does not dispute the position that the

petitioner as Chairman of the Tribunal, after he had demitted office of a sitting Judge was and is entitled to salary of Rs. 8,000 per month plus dearness allowance admissible to him as High Court Judge. The rub is only about allowances.

5. By Annexure-1 dated 23-8-1988 the State Government in the department of Personnel and Administrative Reforms ordered that the petitioner was entitled only to such allowances as were admissible to the Officers of the State Government and as car allowance was not admissible to the Officers of the State Government, it was not admissible to the petitioner as well. In regard to the house rent allowance and medical facility, it was ordered that only such allowances would be admissible as were admissible to State Government Officers. Shocked by this firm stand of the State, the petitioner has moved this Court by the present application for quashing Annexure-1 and for issuance of appropriate writ, order or direction.

6. Since the entire claim of the petitioner in regard to the allowances hinges upon Annexure-2, it is essential to quote paragraph 2 and 3 of Annexure-2. Learned Standing Counsel No. II conceded that those paragraphs in Annexure-2 determine the rights of the parties. Paragraphs 2 and 3 of Annexure-2 read as follows :-

2. Uccha Nyayalaya, Patna ke Manniya Nyayadhish Shri Sunil Kumar Choudhri ko Bihar Prashasnik Adhikaran ke Adhyaksha ke Pad par is shart ke saath niyukta kiya jata hai ki jab tak Shri Choudhri is Adhikaran ke adhin karyarat rahenge us avadhi ko Patna Uccha Nyayalaya ke Nyayadhish ki vastavik seva men garna ki jayagi, parantoo yeh garna usi avadhi tak hogi jab tak ve Uccha Nyayalaya, Patna se seva nirvit nahi ho jayagen.

3. Manniya Nyayadhish Shri Choudhri ko vetan avam bhatta Uccha Nyayalaya ke seva men jo anoomanya hai, vahi vetan avam bhatta Adhikaran ke Adhyaksha ke pad par bhi anumanya rahega. Iske liye alag se unhe koyee remuneration deya nahi hoga. Yatra bhatta avam dainik bhatta ke roop men unhe Uccha Nyayalaya men Nyayadhish hatu Yatra-bhatta Nyamavali, 1956 ke anusar deya hoga. Parantoo Uccha Nyayalaya se seva nirvitti ke pashchat unhe antim vetan avam bhatta men se pension avam gratuity ke samtulya raashi ghatakar vetan deya hoga.

7. Paragraph 2, quoted above, lays down that while the petitioner was holding the charge of both the offices, i.e., sitting Judge and Chairman of the Tribunal, the time spent by him as the Chairman of the Tribunal would be deemed to be the time spent as a High Court Judge. So far so good, no controversy about it.

8. Paragraph 3, quoted above, contains four sentences. The first sentence lays down that Shri Justice Choudhuri would be entitled to such salary and allowances for serving as a Chairman of the Tribunal as were payable to him as a Judge of the High Court. The second sentence lays down that apart from them, he would not be entitled to any other remuneration. The third sentence lays down that in

regard to travelling allowance and daily allowance he would be entitled to such travelling allowance and daily allowance as were admissible to him as a Judge of the High Court. The fourth sentence lays down that after demitting office of a sitting Judge of the High Court, pension equivalent to gratuity-P.E.G.-would deduct-able from his salary. Thus the four ideas contained in paragraph 3 of Annexure-2 were as follows :-

(i) Justice Choudhuri would be entitled to such salary and allowances as he was entitled as a High Court Judge.

(ii) No other remuneration apart from it would be payable to him.

(iii) Travelling allowance and daily allowance as admissible to a High Court Judge in terms of High Court Judges Travelling and Daily Allowance Rules, 1956.

(iv) Deduction of pay equivalent to gratuity from his salary.

9. I shall first take up the last matter, namely, deduction of pay equivalent to gratuity.

10. A sum of Rs. 255 per month has been deducted from the salary of the petitioner. Learned Standing Counsel had difficulty in supporting this part of the stipulation in Annexure-2. Learned Standing Counsel did make an effort to support it, but he had no answer in the face of the decision of the Supreme Court in the case of Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, , in which it was laid down authoritatively that such deduction is not permissible when a High Court Judge superannuates and is employed as Chairman of any Tribunal. In my view, this stipulation was clearly erroneous, nay illegal. In my view, the stipulation in Annexure-2 in regard to P.E.G. was clearly illegal. There was no justification for such a stipulation and for deducting Rs. 255 per month from the salary of the petitioner. That stipulation in Annexure-2 is thus struck down as it does not have the sanction of any law. I regret the attitude of the State Government in directing that condition in regard to P.E.G. even after the authoritative pronouncement of the Supreme Court. The pronouncement of the Supreme Court is the law of the land. The attitude of the State Government and that of Mr. S. Mazumdar, Additional Secretary, Department of Personnel and Administrative Reforms verges on contempt of the Supreme Court. I, therefore, hereby declare that there was no occasion for deducting Rs. 255 per month from the salary of the petitioner and I, therefore, direct that the State Government will refund all sums deducted from the salary of the petitioner at the rate of Rs. 255 per month towards P.E.G. with interest. The State Government will refrain from making any further deduction of P.E.G. from the salary of the petitioner.

11. I now come to the matter of car allowance, house rent allowance, medical facility and leave travel concession facility. The stand of the State is clear that apart from the salary, nothing else would be payable to the petitioner. Mr. Jha, on behalf of the State, contended that this position emanated from the second sentence that apart from salary and allowances, the petitioner would not be

entitled to any other remuneration. Let us examine the process of reasoning. Mr. Jha submitted that the first sentence in paragraph 3 of Annexure-2, namely, that the petitioner would be entitled to such salary and allowances as were admissible to him as a High Court Judge was valid only till the petitioner was holding dual charge of the office of the sitting Judge and Chairman of the Tribunal. He submitted that the second sentence, namely, non-payment of any remuneration related to the period after the petitioner retired as a High Court Judge. The stand on behalf of the State is clearly fallacious. If the first sentence in regard to pay and allowances in paragraph 3 related only to the period while he was holding dual charge, where is the stipulation about payment of salary and allowances after he had demitted office of a High Court Judge and was holding the office only of the Chairman of the Tribunal. If the interpretations put by the State were correct, it would mean that while holding charge of a sitting Judge, Justice Choudhuri would be entitled to the salary and allowances of a High Court Judge but after demitting office of a High Court Judge, he would not be entitled to anything because there is no stipulation in paragraph 3 apart from the first sentence in that behalf: This would be a ridiculous situation and since learned Standing Counsel has conceded that the petitioner would be entitled to salary and allowances of a High Court Judge, it is difficult to find any sentence in paragraph 3 of Annexure-2 on the basis of which it can be said that he was entitled to any salary or allowance. In my view, the stand of the State is clearly untenable.

12. In regard to the period while Justice Choudhuri was a sitting Judge, there was no question of his being paid the salary of a High Court Judge. That was not a bounty conferred upon him by the State Government. That he was entitled because of his appointment as a High Court Judge under the hands and seal of the President of India. The State Government had a right to affect it. In my view, therefore, the first sentence was not relatable to the period Justice Choudhuri was holding dual charge only but it related to the period after he would demit office as a High Court Judge. Thus, there was a clear stipulation to pay salary and allowances admissible to a High Court Judge to the petitioner after his retirement as a High Court Judge. If this meaning was not given, I fail to understand what would be the import of the word "ISKE LIYE ALAG SE" and what were the terms being spelt for. In my view, it was clearly in respect of the salary and allowances as Chairman of the Tribunal after demitting office of a High Court Judge. I am, therefore, firmly of the view that the State Government bound itself to pay salary and all allowances of a High Court Judge to Justice Choudhury while he was engaged as a Chairman of the Tribunal.

13. If we proceed upon the assumption that the first sentence in paragraph 3 of Annexure-2 related only to the period while Justice Choudhury held dual charge and that there was no stipulation in regard to the salary and allowances, he would be relegated to the same position as B. D. Singh, another sitting Judge of this Court. A Division Bench of this Court in the case of Bhubneshwar Dhari Singh v. State of Bihar and Anr. 1986 PLJR 1, held that a Judge on re-employment is

entitled to identical emoluments as in his previous employment when such Judge on superannuation is re-employed un-conditionally without any specification of the terms of emoluments. The decision in the case of Bhubneshwar Dhari Singh, (supra) was followed by another Bench of this Court in the case of Umesh Chandra Sharma v. The State of Bihar and Ors. 1988 Bihar Law Judgment 168. Having regard to all the matters discussed above, I have not a shred of doubt that Mr. Justice Choudhuri, the petitioner, is entitled to the followings :-

1. Salary Rs. 8,000 per month less pension.
2. Dearness allowance as admissible to a High Court Judge.
3. Car allowance at the rate of Rs. 500 per month.
4. House rent allowance at the rate of Rs. 808 per month.
5. City compensatory allowance at the rate of Rs. 50 per month.
6. Leave travel concession facility as admissible to a High Court Judge.

14. A word must be said about the house rent allowance claimed by the petitioner at the rate of Rs. 808 per month, as a High Court Judge. He was entitled to 12 1/2 per cent of his salary where furnished accommodation, had not been provided. The petitioner had been provided with a residential quarter but not a furnished one. For that reason, till he was serving as a Judge, he was receiving Rs. 808 per month as house rent allowance. This sum, he would be entitled to receive from the day, he demitted the office of a High Court Judge and functioned as Chairman of the Tribunal.

15. I, hereby order that the State Government will pay all sums, as indicated above, within two months from today. Since, I do not appreciate the attitude of the Officers of the State Government in treating High Court Judges in this slap dash-manner and enforcing them to take recourse to litigation involving mental and financial harassment, I hereby award an exemplary cost of Rs. 3,000 (rupees three thousand) only payable by the State Government to the petitioner. All sums payable to the petitioner from the date they became due, shall carry interest at the rate of 10 per cent per annum. This application is allowed with the above directions.

16. This application was heard at length at the admission stage. Learned counsel had no objection to the application being disposed of at the admission stage itself. We have, therefore, rendered judgment at the admission stage itself.

Binod Kumar Roy, J.

The matter in controversy, as correctly pointed out by my learned brother, stands amply covered by the decisions reported in Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, and it is unfortunate that the dilly dallying of the State has made a Judge to cry for justice as the State has again chosen to misinterpret simple terms of employment this time of the petitioner as

contained in Annexure-2 to the writ application, I have had the advantage of perusing the judgment prepared by my learned brother and I fully agree with the reasons and the result.