
(2006) 06 GAU CK 0066
In the Gauhati High Court
Case No : Review Petition No. 30 of 2006

Surendra Nath Dihingia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-06-2006

Acts Referred:

Citation : (2006) GLT 901 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : D.R. Gogoi and P.D. Nair, for the Appellant; R. Chakraborty, for the Respondent

Judgement

B.K. Sharma, J.—I have heard Mr. D.R. Gogoi, learned Counsel for the writ Petitioner, who has now filed this review petition seeking review of the judgment and order dated 10.11.2005 by which the writ petition filed by the Petitioner has been dismissed. By the said judgment and order, the decision of the Government to retire the Petitioner from service with effect from February, 2003 on attaining the age of superannuation has been upheld. It has been held that the Petitioner would be deemed to have retired from service with effect from February, 2003 on attaining the age of superannuation on the basis of the recorded date of birth in the service book and that his pension and other retirement benefits shall be calculated on that basis.

2. In the present review petition, the writ Petitioner has contended that due to inadvertence, it could not be pointed out that the Petitioner continued in his service beyond the age of superannuation by virtue of the interim order passed by this Court. It is the case of the Petitioner that since he continued in his service upto 7th July, 2003, by virtue of the interim order passed by this Court, his pensionary and other retirement benefits need to be calculated on that basis. I am afraid, this contention of the Petitioner is totally misconceived.

3. While entertaining the writ petition, by order dated 31.1.2003 an interim order

was passed, by virtue of which the Petitioner continued in his service beyond February, 2003, his actual date of superannuation. The interim order was vacated by order dated 26.3.2003 holding that if the Petitioner is allowed to continue in service and eventually it is found that the Petitioner is not entitled to continue beyond 28.2.2003, it will amount to fortuitous service.

4. If the Petitioner continued in his service beyond actual date of retirement i.e. 28.2.2003, that was by virtue of the interim order passed for in the writ petition. Needless to say that the interim order passed in the writ petition is always subject to final decision. The interim order passed and the action taken subject thereto can not cloth the Petitioner with the right to raise the contention as has been raised in the review application. The decisions on which the learned Counsel for the Petitioner has placed reliance are totally misplaced. The two decisions are Smt. Raj Rani Vs. State (Delhi Administration), and (2005) 11 SCC 591 (Jay Gopal Sharma v. Punjab State Electricity Board).

5. Referring to some paragraphs and lines from a particular judgment of the Apex Court cannot help to the case of the Petitioner.

In the first case, the Petitioner was provided with dearness relief voluntarily by the Respondents. It was in such circumstances, the action for recovery of excess pension was held to be not justified on legal and equitable ground. Same is not the case in hand. The Government did not allow the Petitioner to continue in service, rather it is the Petitioner, who on the strength of the interim prayer granted by this Court continued in his service beyond actual date of superannuation.

6. In the second case, the Appellant, who was a lineman under the Respondents was wrongly appointed as such. Since he continued in his service as Lineman because of the wrong committed by the Respondents, the Apex Court provided that he would be entitled the pay scale entrusted to the post of lineman. Thus, this case is also of no help to the case of the Petitioner.

7. Apart from above, nothing has been disclosed and/or any grounds have been urged to review of the judgment and order. If the Petitioner was to retire from service on 28.2.2003, he was to retire on that basis, but he unsatisfactorily agitated that he was entitled to continue in service beyond 28.2.2003. The decision of the State Government to retire the Petitioner with effect from 28.2.2003 on the basis of the date of birth recorded in the service book having being upheld; there is no question of providing further service benefit to the Petitioner beyond 28.2.2003.

8. In the case of N. Mohanan Vs. State of Kerala and Others, the Apex Court has pointed out how the interim order is always subject to the results of outcome of the final adjudication. If the Petitioner is not successful in the final decision, interim order would stand set aside. In that case, the Petitioner was appointed by an interim order. The Apex Court observed that the appointment by an interim order did not create any right nor did the Petitioner get any right to

regularization on that basis.

9. Even in the order dated 26.3.2003 passed in Misc. Case No. 589/2003, by which the interim order was vacated, this Court observed that if in the final decision it is found that the Petitioner is not entitled to continue beyond 28.2.2003, his continuation in service beyond 28.2.2003 will amount to fortuitous service.

10. In view of the above, I do not find any merit in the review petition and accordingly, it is dismissed. It is reiterated that the pensionary and other retirement benefit to which the Petitioner is entitled to, should be calculated on the basis of the actual date of retirement i.e. 28.2.2003. At this stage, Mr. Gogoi, learned Counsel for the Petitioner prays for early settlement of pensionary and other retirement benefit as expeditiously as possible. It is hereby provided that the Respondents shall pay the admissible pensionary and other retirement benefits to the Petitioner as expeditiously as possible.

11. Review petition stands dismissed.