(2004) 06 PAT CK 0029

In the Patna High Court

Case No : C.W.J.C. No. 5051 of 2004

Syed Sarwar Ali — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:
Bihar Lokayukta (Condition of Service) Rule 1974 — Rule 10

Citation : (2004) 3 PLJR 642

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Chittaranjan Sinha, for the Appellant; A.B. Sinha, for State and L.P.K. Rajgrihar, for Accountant General, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—This is a very simple matter which should have been sorted out at the level of the State administration itself. The issue apparently has lingered for eight years because the State of Bihar has not been able to take a decision on whether the then Lokayukta, Bihar, the Hon''ble Mr. Justice Syed Sarwar Ali, also Acting Chief Justice, Patna High Court, should get dearness allowance on the additional pension as a consequence of his tenure.

2. Notice was issued on this petition on 26 April, 2004. A writ of certiorari was issued to the State of Bihar for production of the original record. After 26 April, 2004 the matter was adjourned to 19 May, 2004. It was again adjourned on 21 May, 2004 to be put up after Summer Vacations. The last adjournment, the Court was given to understand, was on behalf of the Chief Secretary, Government of Bihar, who was supposed to be looking into the matter. Today it is one month beyond the request of the last adjournment and nothing has been indicated to the Court except that another adjournment is being sought. The record eludes the Court also.

3. Normally, the Court would have granted an adjournment, but regard being had

to the circumstances that old people get yet more older and live in the hope that anything which is rightfully due to them, specially emoluments, ought to be delivered at the time when needed most and during their lifetime.

4. The Hon''ble Mr. Justice Syed Sarwar Ali retired as a Judge in 1984. This is 20 years ago. He is 82 years old today. He did his tenure as Lokayukta between 1991 and 1996. He has discharged, as public service, his assignment as a Lokayukta. The Lokayukta is appointed under the Bihar Lokayukta Act, 1973. The conditions of Service of a Lokayukta are laid out in the Bihar Lokayukta (Condition of Service) Rule 1974. The emoluments, of which pension is part, cannot become an issue so that the State government may take its time in reaching its decisions to create issues out of non-issues with the ultimate embarrassment that the incumbent who has held the high office has to seek remedies in the very Court where he presided as an Acting Chief Justice.

5. The matter relating to the payment of pension to a Lokayukta is referred to in The Bihar Lokayukta (Condition of Service) Rules, 1974, Part IV, under the head "Pension". It is Rule 10. This rule is reproduced:

Pension payable to the Lokayukta.?Subject to the provisions of these rules, the Lokayukta shall, on his retirement or ceasing to hold office, be paid a pension:

Provided that no such pension shall; be payable to the Lokayukta:

(a) unless he has completed not less than three years of service for pension, or

(b) if he has been removed from service; or

(c) if he has resigned, unless he has completed three years of service or more for pension, and such resignation is accepted by the Governor:

Provided further that if the Lokayukta, at the time of his appointment is in receipt of a service pension (other than a disability or wound pension), the pension payable under those rules shall be in lieu of and not in addition to, that pension;

Provided further that if the Lokayukta, at the time of his appointment, is in receipt of a service pension, he shall count his service as Lokayukta for pension and retirement benefits under the rules applicable to the service to which he belonged before such appointment.

6. It is an unusual argument which is being made on behalf of the State government that dearness allowance will not be paid on the additional pension which he received after discharging his service as a Lokayukta. The Court could understand if the State of Bihar had taken up a submission to confront Hon''ble Mr. Justice Syed Sarwar Ali, the then Lokayukta, to tell him that he is not entitled to additional pension. This is not the case nor can be. Additional pension has been prescribed as a condition of service.

7. Pension is payable but without dearness allowance is the submission. Merely

because dearness allowance has not been referred to, a negative inverse logic cannot be extracted that this part of the emolument, additional pension, is without it. Dearness allowance changes with inflation index. Fortunately, in government service or public service no emolument is known in India which comes without dearness allowance. In so far as the emoluments paid to the Lokayukta are concerned, the State of Bihar accepts that if the Lokayukta was in receipt of a pension he would be entitled to pension. The next corollary that regard being had to the circumstance that he was in receipt of a pension he would be entitled to an additional pension also, is also accepted.

8. The State of Bihar has not been able to answer a question why the then Lokayukta or anybody after him will not be entitled to receive a dearness allowance on the additional pension. The dearness allowance whether it is given to a Chaparasi or a Chief Secretary, a Lokayukta not excluded, is an appendage to a salary or pension. It may be merged as has happened recently, but it cannot be lost. If the salary or pension be an intestine then the clearness allowance is an appendix. It is not for the State of Bihar to do surgery and sever the appendix from the intestine. The two go together.

9. These are very small matters which should not come to the Court. Good grace should have been to have sorted out this matter within the portals of the government.

10. In the circumstances, the Petitioner, is entitled to a writ of mandamus for payment of dearness allowance on the additional pension. This be worked out and delivered within four weeks from today. For the delay which has been caused, from the day this dearness allowance was due the arrears will attract interest at the rates as stipulated, from time to time, in the Deposit Schemes For Retiring Govt. Employees, 1989 and Deposit Scheme For Retiring Employees of Public Sector Companies, 1991 so that the Petitioner does not lose any advantage if this amount is to be plied into the same scheme if he opts to do so.

11. Petition allowed.

