(2014) 08 PAT CK 0065

In the Patna High Court

Case No : Letters Patent Appeal No. 701 of 2011 in Civil Writ Jurisdiction Case No. 7228 of 2005

The State of Bihar — APPELLANT

Vs

Bhagwan Singh — RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2014 Patna 208 : (2014) 143 FLR 763 : (2014) 3 LLN 786 : (2014) 4 PLJR 229

Hon'ble Judges : Rekha M. Doshit, C.J;Jayanandan Singh, J;Ashwani Kumar Singh, J

Bench : Full Bench

Advocate : Anjani Kumar, AAG and Neetu Jha, A.C., AAG, Advocate for the Appellant; Arvind Kumar Singh, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent has been preferred by the respondent-State Government against the order dated 10th February 2010 made by the learned single Judge in C.W.J.C. No. 7228 of 2005.

2. The respondent-writ petitioner approached this Court under Article 226 of the Constitution in above C.W.J.C. No. 7228 of 2005 for redressal of his grievance in respect of the amount of pension sanctioned.

3. It appears that the petitioner joined the service under the Executive Engineer, Tubewell Division, Gaya, the appellant no. 2, in April 1973 as daily wage Choukidar. While he was discharging duty as daily wage Choukidar, with effect from 1st January 1979 he was absorbed as driver in the Work Charge Establishment. He served as driver in the Work Charge Establishment till he attained the age of 58 years, the age of superannuation. On reaching the age of superannuation, he retired from service in July 2002. Since his retirement, he has been allowed pension on the basis of his service from January 1979 to July

2002 i.e. for more than 23 years. The petitioner, however, claimed that his earlier service on daily wage from April 1973 to December 1978 was also a pensionable service and that the pension ought to have been calculated on the basis of 29 years'' service rendered by the petitioner from 1973 to 2002.

4. The claim was contested by the State Government. According to the State Government, the service rendered by the petitioner on daily wage was not pensionable and pension was rightly computed on the basis of 231/2 years'' service rendered in Work Charge Establishment.

5. The learned single Judge, under impugned order dated 10th February 2010, allowed the writ petition. The learned single Judge, following the order of the Division Bench in Letters Patent Appeal No. 1343 of 1998 arising from C.W.J.C. No. 9547 of 1997, has held that the entire service rendered by the petitioner from 1973 to 2002 was pensionable.

6. Feeling aggrieved, the State Government has preferred this Appeal.

7. In view of the binding precedent in Letters Patent Appeal No. 1343 of 1998, the Division Bench of this Court has, under order dated 9th October 2012, referred the matter to the Full Bench.

8. The matter that arises for our consideration is whether the service rendered by the government servant on daily wages followed by regularization in service will be considered pensionable under the Bihar Pension Rules 1950. Therefore, this Appeal.

9. Learned advocate Mr. Anjani Kumar has appeared for the State Government. In the submission of the Mr. Anjani Kumar, the learned single Judge and for that matter, the Division Bench in Letters Patent Appeal No. 1343 of 1998 had not considered the relevant provisions of the Bihar Pension Rules, 1950 (hereinafter referred to as the ''Pension Rules'').

10. We shall first consider the relevant provisions of the Pension Rules, 1950.

11. Rule 56 of the Pension Rules provides that ''unless it be otherwise provided by special rule or contract, the service of every government servant qualifies from the date he takes the charge of the post to which he is first appointed''. Rule 58 thereof provides that the service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-

(i) The service must be under Government.

(ii) The employment must be substantive and permanent.

(iii) The service must be paid by Government.

12. Rule 61 thereof provides, ''service does not qualify unless the Government servant holds substantively a post on a permanent establishment''. Rule 45 thereof expressly excludes certain service for computation of pension. Clause (a) thereof reads, ''when a government servant is appointed for a limited time only,

or for a specified duty, on the completion of which he is to be discharged''. Clause (b) thereof reads, ''when a person is employed temporarily on monthly wages without specified limit of time or duty''.

13. It is apparent that the above-referred provisions were not brought to the notice of the learned single Judge or before the Division Bench in the matter of State of Bihar & Ors. Vs. Chandrika Rai & Ors (Letters Patent Appeal No. 1343 of 1998).

14. Keeping in view the above provisions, we are of the opinion that the service rendered by the petitioner as daily wage Choukidar under the Executive Engineer, Tubewell Division, Gaya cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. Such service, although was followed by absorption on regular establishment, will not qualify for pension. Therefore, the service rendered by the petitioner, as daily wage employee from April 1973 to December 1978, was not a pensionable service or did not qualify for pension. On his retirement from service or his superannuation from service, he would be entitled to pension for the service rendered on a substantive post from 1st January 1979 till the date he retired from service.

15. It is not in dispute that the petitioner has indeed been paid pension for the service rendered by him from 1st January 1979 till July 2002 in the Work Charge Establishment, the petitioner is, therefore, not entitled to the relief claimed in the writ petition.

16. For the aforesaid reasons, Appeal is allowed. Impugned order dated 10th February 2010 made by the learned single Judge in C.W.J.C. No. 7228 of 2005 is set aside. C.W.J.C. No. 7228 of 2005 is dismissed.

17. The judgment in the matter of Chandrika Rai (supra) and any other judgment taking a similar view are expressly overruled.

18. Parties will bear their own cost.

