

(2020) 01 PAT CK 0343

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17443 Of 2015

Union Of India And Ors

APPELLANT

Vs

Mahesh Chand Rai

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 23

Citation : (2020) 01 PAT CK 0343

Hon'ble Judges : Shivaji Pandey, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Satyarat Verma, Chakrapani, Dipak Kumar, Sanjay Kumar Singh, Madhuresh Singh

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and learned counsel for the sole respondent.

2. A short issue has been raised with regard to increment of arrears of salary with effect from 01.02.2005 to 31.12.2005 while discharging the duty as S.A.H.S.G.1 in the Postal Department. The respondent Mahesh Chand Rai was appointed as Sorting Assistant in R.M.S., Patna on 01.09.1956. He was granted Time Bound Promotion on 30.11.1983. After completion of 26 years of service, he became eligible to the benefit under the B.C.R. Scheme, but he was not granted the financial benefit under that scheme on account of pendency of the departmental proceeding. After completion of the departmental proceeding vide order dated 22.01.2001, the punishment with stoppage of two increments with cumulative effect for two years was awarded. Apart from the aforesaid case, two more charge sheets were served upon the respondent which continued but ultimately, it was dropped vide order dated 31.06.2003. Mr. Rai has filed this application on 01.03.2004 for grant of the financial benefit under the B.C.R. (Biennial Cadre Review) Scheme. On consideration, the department has granted the financial benefit vide order dated 15.09.2004 with effect from 01.07.2003.

The respondent along with others were directed to discharge the duty as S.A.H.S.G.1 post with effect from 01.02.2005, but on his own pay scale and ultimately, he has superannuated from service with effect from 31.12.2005. After long delay of eight years, he approached the Tribunal with a limitation petition to grant the benefit of the post, which he discharged from 01.02.2005 till the date of his superannuation as S.A.H.S.G.1.

3. The Tribunal placing reliance on the judgment of Secretary-cum-Chief Engineer vs. Hari Om Sharma reported in 2008(5) SCC 87 directed to make payment of difference of salary to the respondent. The learned counsel for the petitioners has submitted that the basis on which the respondent was granted benefit placing reliance on Hari Om Sharma's case has been distinguished by the Hon'ble Supreme Court in the case of A. Francis vs. Management of Metropolitan Transport Corporation Limited, Tamil Nadu reported in (2014) 13 SCC 283 and refused to grant the relief to the employee.

4. Learned counsel for the respondent has brought to the notice the another judgment reported in State of Punjab vs. B.K. Dhir reported in (2017) 9 SCC 337 in that case, A. Francis case was also under consideration along with judgment of State of Punjab and another vs. Dharampal reported in (2017) 9 SCC 395 and has held that so far the A. Francis case is concerned, it would rest on its own fact and has approved the ratio laid down in Hari Om Sharma's case.

5. In such view of the matter, the submission of Union of India is completely misplaced and cannot be accepted as the person who has discharged the duty of higher responsibility, merely because the said letter stipulates the Respondent would discharge in its own pay scale cannot be deprived of the benefit of higher responsibility as the employer, which is Union of India, has high bargaining power and employees had no alternative but to accept the order of the authority concerned otherwise he would have been liable to another departmental proceeding. So in such circumstances, the respondent cannot be deprived higher salary otherwise it amounts to violating the Articles 21 and 23 of the Constitution of India.

6. In such view of the matter, we do not find any merit in the present application. Accordingly, the same is dismissed.