IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16009 of 2013

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1. Dharmendra Kumar Mishra Son Of Sri Braj Kishor Mishra Ex-Lower Division Clerk (Ldc) Office Of The Dy. Chief Labour Commissioner (Central), Ministry Of Labour And Employment, Government Of India, Dhanbad, Resident Of Mishra Bigha, P.O.- Chiraelee (Tekari), P.S.- Tekari, District- Gaya (Bihar)

.... Petitioner/s

Versus

1. The Union Of India Through The Chief Labour Commissioner (Central) Ministry Of Labour And Employment, Government Of India, New Delhi
2. The Deputy Chief Labour Commissioner (Central), Ministry Of Labour And Employment, Government Of India, Dhanbad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs Namrata Mishra, Advocate
Mr. Alok Ranjan, Advocate

For Union of India Mr. Anshuman Singh, C G C
With
Mr. Sriram Krishna, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

CAV JUDGMENT

(Per: HONOURABLE MRS. JUSTICE NILU AGRAWAL)
Date: 24 -07-2015

The petitioner, having failed to ensure payment of his retirement dues from the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 597/ 2011 dated 28.05.2013, has filed the instant writ before this Court for release of his pension, gratuity, balance amount of leave encashment and other retiral dues. However, his G.P.F. amount of Rs.1,45,437/- has already been paid on 23.03.2010.

The petitioner was initially appointed as Lower

Division Clerk on 02.07. 1997 in Central Government under D.G.S. & D, Ministry of Commerce, New Delhi, who subsequently on his transfer joined the office of the Deputy Chief Labour Commissioner (Central), Ministry of Labour and Employment, Government of India, Dhanbad (Respondent No. 2), where he worked up to 09.12.2009 i.e. for more than 12 years. While working as Lower Division Clerk, he applied for the post of Post Graduate Teacher/Lecturer in 10 + 2 (Higher Secondary School) under the Government of Bihar, in pursuance to employment notice dated 25.08.2008 which was accordingly intimated to his appointing authority i.e. Respondent No. 2 on 24.11.2008 (Annexure-1). Thereafter, the petitioner was selected for the post in question for which an intimation was sent to Respondent No. 2 on 15.12.2008 and he sought permission to be relieved from his present service and sought other benefits accruing from the past service be provided to him (Annexure-2). Again, the petitioner reiterated the same intimation to Respondent no. 2 on 19.01.2009 (Annexure-3).

The provisional selection/appointment letter dated 07.02.2009 issued by the then District Education Officer (D.E.O.) was then sent to Respondent No. 2 on 20.02.2009 for information (Annexure-4 and 5).

Having failed to get any response from the authorities, the petitioner sent a notice dated 27.08.2009 (Annexure-6) to relieve him to join his new service, wherein at point no. 5, he categorically claimed his pension, gratuity and other benefits on the ground that he had completed more than 12 years in Central Govt. service admitting therein, i.e. length of service could not be added to the new service as there was no provision of Pay Scale. Yet again, the petitioner sent reminder notice dated 22.10.2009 to relieve him (Annexure-7). The Respondent No. 2 then issued office order dated 22.10.2009 relieving the petitioner with effect from 09.12. 2009 to join the post of P.G.T. (Botany) at Nagar Nigam, Gaya (Gaya Town) under the Ministry of Human Resources Development Department, Government of Bihar. After relieving the petitioner, Respondent no. 2 sent a letter dated 26.02.2010 asking the petitioner to submit certain pension forms duly filled up, so that necessary action could be taken which the petitioner did.

The respondent No. 2 then sought clarification for payment of retiral benefit to the petitioner from the Chief Labour Commissioner, Central, New Delhi, with regard to the said resignation of the petitioner. However, the claim of the petitioner for retiral dues did not find favour with the authorities and on his application under RTI, the communication dated 28.06.2011 was sent to the petitioner stating therein “Government servant quitting service on resignation will not be entitled to any gratuity and pension."

It may be noted that in the meanwhile leave encashment of Rs. 31,083/- was already sanctioned, but kept pending for payment. The impugned order dated 28.06.2011,rejecting the claim for payment of retrial dues compelled the petitioner to move the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 597/2011. The Central Administrative Tribunal, dismissed the claim of the petitioner vide order dated 28.05.2013 stating therein that the provisions of Rule 26 (2) of the CCS (Pension) Rules, 1972 is not applicable to the petitioner as his claim comes under Rule 26 (1) of CCS (Pension) Rules, 1972 which postulates that resignation from a service or a post will entail forfeiture of past service. Here the authorities went wrong. The word "to relieve" which the petitioner was all along harping was mistook for "resignation simpliciter" and thus benefit denied. Why this was done and what extraneous consideration persisted with the authorities need not be discussed.

Now, we come to the relevant provisions of CCS (Pension) Rules, 1972. Rule 26 (1) of CCS (Pension) Rules, 1972 stipulates resignation from a service or a post, entails forfeiture of past service, whereas Rule 26 (2) of the said Rules envisages that such resignation shall not entail forfeiture of past service, if it is obtained with proper permission. Rule 37 is also relevant, which deals with pension on absorption in or under a Corporation, Company or a body, which postulates that a government servant who is permitted to be absorbed in a service or post in or under Corporation or Company, wholly or substantially owned or controlled by the Central Government or State Government, shall be deemed to have retired from service from the date of such absorption and be eligible to receive retirement benefits. Admittedly, the petitioner was relieved from the Central Government to join under the State Government.

It was argued by Mr. Ansuman Singh, learned counsel for the Union of India that the petitioner was not accorded proper permission before being relieved from the post of Central Government, which is simply erroneous. The petitioner had intimated the authorities at each and every juncture and finally his relieving was accepted. There is no dispute that the petitioner had taken proper permission and satisfied all conditions, yet, now the petitioner is denied his retiral dues on the pretext that the permission "to relieve" was "resignation simpliciter" and thus entailed forfeiture of past service. The authorities are not permitted to withhold retiral dues without any valid and substantial reason but owing to certain technicalities or for their own default or extraneous considerations for which the petitioner had nothing to do.

It has been held in the case of **Mangalore**

Chemicals & Fertilizers Ltd. vs. Deputy Commissioner of Commercial Taxes and others, AIR 1992, SC 152

> "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality." (See Wells v. Minister of Housing and Local Government, (1967) I WLR 1000 at p. 1007).
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> Francis Bennion in his "Statutory Interpretation", 1984 edition, says t page 683 :
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> "Unnecessary technicality: Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these can not be shown to be necessary to the fulfillment of the purpose of the legislation."

It has been further held in the case of **All India Groundnut Syndidcate Ltd. v. Commr. of Income Tax, Bombay City, A.I.R. 1954, Bombay 232**

> "A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

Thus, taking into consideration that the petitioner was relieved from service, he is entitled to retiral benefit under Rule 26 (2) of the CCS (Pension) Rules, 1972, as Rule 37 also permits eligibility of retiral benefit, if a Government servant is absorbed into a Corporation or Company, wholly and substantially owned or controlled by the Central Government or a State Government wherein the petitioner was certainly absorbed. The order of the

Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 597/2011 dt. 28.05. 2013 is accordingly set aside and the Respondent No. 2 and its authorities are directed to release the pensionary dues to the petitioner, i.e. pension, gratuity, leave encashment and any other retiral dues, expeditiously within two months of the date of production/ receipt of the copy of this order.

Accordingly, the Writ petition is allowed, however, there shall be no order as to costs.

(Nilu Agrawal, J)

I agree.

(Navaniti Prasad Singh, J)

Sudha/-

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