

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 9360 of 2012

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1. The Union of India through the Secretary, Ministry Of Labour, Shrama Shakti Bhawan, New Delhi
 2. The Central Provident Fund Commissioner, Employees Provident Fund Organization, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi
 3. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office Jharkhand, Bhagirathi Complex, Near Circuit House, Karam Toli, Ranchi

.... Petitioner/s

Versus

Shiv Sharan Ram S/O Late Ram Khelawan Ram Resident Of Village-Dhanhar,
P.O.-Ekangarsarai, District-Nalanda (Bihar Sharif)

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Prashant Sinha & Shailendra Kr Sinha, Advocates

For the Respondent/s : Mr Hemant Kumar, Karn, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 01-04-2016

The Central Provident Commissioner has filed this writ petition being aggrieved by the order dated 13.02.2012 passed in OA No 71 of 2011, as filed by the sole contesting respondent.

2 We have heard the learned counsel for the writ petitioner- Central Provident Fund Commissioner and learned counsel for the employee and perused the records.

3 The applicant, before the Tribunal and respondent herein,

was an employee of the Provident Fund Department and was apparently compulsorily retired with effect from 05.08.2003. He had preferred his statutory remedies and then come to the Tribunal challenging his compulsory retirement in OA No 317 of 2005. This OA was finally heard and disposed of on 21.07.2008 and the Tribunal, inter alia, held that the applicant be treated to be in service till his superannuation. Thereby, the order of compulsory retirement was set aside. Having said so, the Tribunal quantified the relief by stating that as petitioner had in fact not worked from 05.08.2003 to the date of his superannuation on 30.06.2008, he would be entitled only of the 75% of the remuneration. Directions were given to clear the retiral dues accordingly and if there was any delay, interests were to be paid. The applicant then filed the present OA 71 of 2011 pointing out that inspite of the Tribunal's order, he had not been granted full leave encashment, Productivity Linked Bonus (for brevity, *PL Bonus*) and interest on the delayed payments. The Tribunal noted that the order passed by it in the earlier proceedings, having attained finality, it had to be deemed that the applicant was in service right from 05.08.2003 till his superannuation on 30.06.2008. Once that is there, then he would be deemed to be a full fledged employee in that period and from that, it would follow that he would be entitled to all other benefits as a regular employee including leave encashment and PL

Bonus. This is what the Commissioner is aggrieved by.

4 Before us, it is submitted that the respondent, being the applicant before the Tribunal, had in fact not worked during the period 2003-2008 and if that he so, then he would not be entitled to any earned leave during that period. Consequently, he would not be entitled to leave encashment. Similarly, not having worked, PL Bonus, being an incidence of service, he would not be entitled to the same. We have noticed these arguments only to reject them.

5 Once the Tribunal held that he would be deemed to be in continuing in service till his date of retirement, and that order had become final, it is too late in the day for the Department to submit that he had not actually worked. The effect of the order of the Tribunal was that he was wrongly compulsorily retired. What is virtually being submitted is the principle of “no work no pay” or no work, no emolument. What we can do, we can only refer to the judgment of the Apex Court in the case of *Union of India -Versus- K V Jankiraman* since reported in *AIR 1991 Supreme Court 2010* wherein Apex Court had held as follows:

“We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is

offered to him.”

6 That being the position, all benefits, that would accrue to the applicant-employee which he would have normally be entitled had he been allowed to work, would be available to him. Consequently, both full leave encashment and PL Bonus for the period he was kept away from work, has to be paid.

7 Learned counsel for the Provident Fund Commissioner submits that the Tribunal ought not to have entertained the second original application which would be barred by principles of constructive res judicata. We are again noticing this argument only to reject the same. At the cost of repetition, the first OA was filed before the Tribunal in the year, 2005 when the applicant had been compulsorily retired. He had challenged the order of compulsory retirement. At that time, he had not yet reached the age of superannuation nor was the relief of computing retiral dues at all available to him. That position came to his benefit only upon the Tribunal passing an order for his deemed reinstatement. Thereafter, the cause of action arose when he was denied these amounts after the order of Tribunal.

8 Thus, on the facts aforesaid, there is no question of applicability of principles of constructive res judicata. This relief was not available to him when he filed the first OA before the

Tribunal because he had not superannuated at that time.

9 We, thus, find no merit in this writ petition. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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