

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14254 of 2015

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1. Union of India through the General Manager, East Central Railways, Hajipur, District-Vaishali (Bihar).
 2. The General Manager (P), East Central Railway, Hajipur, Vaishali.
 3. The Divisional Railway Manager, East Central Railway, Danapur.
 4. The Senior Divisional Commercial Manager, East Central Railway, Danapur
 5. The Senior Divisional Manager-Personnel Officer, East Central Railway, Danapur
 6. The Senior Divisional Finance Manager, East Central Railway, Danapur.

.... Petitioners

Versus

Lallan Singh, son of Late Ram Nandan Singh, Resident of village + Post Barkagaon, Via Bhagwanpur, P.S. Bhagwanpur, District- Siwan (Bihar)

.... Respondent

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Appearance:

For the Petitioners : Mr. S. D. Sanjay, ASG.
Mr. Anil Kumar Sinha, SC/Railways.
For the Respondent : Mr. Jitendra Roy, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 22-08-2016

The order dated 30.06.2015 passed by Central Administrative Tribunal, Patna Bench, Patna (for short “ The Tribunal”) is subject matter of challenge in the present writ application, whereby the Tribunal has stayed the superannuation of the respondent, the applicant before the Tribunal, till final adjudication of the application under Section 19 of the Administrative Tribunal Act, 1985.

2. The applicant claims that he is being superannuated

on the basis of date of birth 01.07.1955 but his correct date of birth is 18.01.1964. Therefore, he cannot be superannuated on 30.06.2015.

3. The learned Tribunal passed the following order:

“Since the respondents are going to retire the applicant prematurely on 30.06.1955 treating his date of birth as 01.07.1955, a judicial interference is required to restore justice. Hence, we stay superannuation of the applicant on 30.06.2015 till final adjudication of the present OA. It is further made clear that if the respondents shall file documents of the relevant school showing it to be forged or concocted, the stay matter can be revoked on the basis of more reliable/trustworthy documents. List it on 15.07.2015 for filing written statement.”

4. We find that the learned Tribunal has granted relief claimed in the main original application to the applicant by way of interim order itself that he should not be superannuated on the basis of date of birth as 01.07.1955.

5. It may be pointed out that the relief which is claimed in the main application cannot be granted at the interim stage. Therefore, the learned Tribunal should not have granted stay of superannuation of the applicant. We find that such order is wholly unjust and against the established principles of law. Reference may be made to ***Public Services Tribunal Bar Assn. v. State of U.P., (2003) 4 SCC 104***. The Court held that :-



“34. In *Delhi Cloth and General Mills Co. Ltd. Case*, AIR 1961 SC 689 : (1961) 2 SCR 590, this Court examined the point as to whether a workman could be ordered to be reinstated as an interim measure pending final adjudication by the Tribunal under the Industrial Disputes Act. In the said case the employer dismissed the workman for disobeying the orders of the managing authority. The workman filed an application before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947 contesting his dismissal on various grounds, whereupon the Tribunal passed an order to the effect that as an interim measure the workman be permitted to work and if the management failed to take him back his full wages be paid from the date he reported for duty. The employer challenged the order of the Tribunal by filing a writ petition before the High Court which was dismissed. On appeal by a certificate of the High Court it was held that the order of reinstatement could not be given as an interim relief because that would be giving the employee the very relief which he would get if the order of dismissal is not found to be justified. Order passed by the Tribunal was held to be manifestly erroneous and set aside. It was observed: (AIR p. 692, para 7)

“We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under Section 33-A. As was pointed out in *Hotel Imperial v. Hotel Workers' Union*, AIR 1959 SC 1342: (1960) 1 SCR 476, ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside.”

35. In *U.P. Rajya Krishi Utpadan Mandi Parishad case*, 1993 Supp (3) SCC 483 : 1994 SCC (L&S) 67 : (1993) 25 ATC 764 it

was held by this Court that it was desirable that an order of suspension passed by a competent authority should not be ordinarily interfered with by an interlocutory order pending the proceeding. It was observed: (SCC p. 487, para 10)

“Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.”

36. In *Suman Dutta case*, (2000) 10 SCC 311 : 2000 SCC (L&S) 834, this Court set aside the order passed by the High Court staying the order of termination as an interim measure in the pending proceeding. It was observed: (SCC p. 311, para 2)

“We are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same.”

6. The ratio of the aforesaid judgment is squarely applicable to the present case, where by way of interim order; the superannuation of the applicant has been stayed. Thus, if in the event of dismissal of the original application, the damage cannot be undone but in case, the application is allowed, the applicant shall be entitled to pay and allowance. Thus if the Tribunal decides the date of birth of the applicant as 18.01.1964, it is competent to pass an

order with regard to relief including pay and allowances for the intervening period, but the Tribunal cannot grant the relief claimed in the main application by virtue of an ad-interim order.

7. Considering the above facts, this writ application is allowed and order passed by the Tribunal is set aside. The Tribunal shall decide the Original Application filed in accordance with law.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

AFR/NAFR	N.A.F.R
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