IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1963 of 2015
IN
Civil Writ Jurisdiction Case No. 18472 of 2008

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1. Raj Deo Sharma, S/o Late Prashidh Narain Singh Resident of Mohalla Nutan Nagar Tetaria House, P.O.-G.P.O., P.S.- Civil Lines, District- Gaya.

.... Appellant

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Prime Secretary, Personnel and Administrative Reforms, Government of Bihar, Patna.
3. The Prime Secretary, OBC (Welfare) Department District Government of Bihar, Patna.
4. The Prime Secretary-cum-Commissioner, Finance Department, Government of Bihar, Patna.
5. The Deputy Finance Commissioner (Expense) Government of Bihar, Patna.
6. The Deputy Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Mrigank Mauli, Advocate
For the Respondent/s : Mr. Sandeep Kumar, G.A.-8
With Ms. Archana Sahi, AC to GA-8

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 08-03-2016

In the present appeal, preferred under Clause 10 of the Letters Patent of this Court, the appellant is aggrieved by an order, dated 13.08.2015, passed by a learned single Judge of this Court in CWJC No. 18472 of 2008, which was filed under Article 226 of the Constitution of India by the appellant.

2. Through this writ application, the appellant sought for

following directions as regards payment of pensionary and other dues:-

> *"(i) To fix and pay final pension counting service period of petitioner since 14.11.1974 when he joined Government Service as C.I.-cum-Kanungo, continuously till the date of superannuation i.e. 31.1.2008 from the post of under Secretary, O.B.C. (Welfare), Govt. of Bihar.*
> *(ii) Earned Leave amount.*
> *(iii) Gratuity.*
> *(iv) Difference of salary from 3.11.02 to 1.10.05.*
> *(v) Subsistence allowance for 2.9.98 to 30.4.99.*
> *(vi) Monetary benefits of due promotional benefits."*

3. There is no dispute about certain basic facts. The appellant was initially appointed in the State Government service as Circle Inspector-cum-Kanungo on 14.11.1974. He worked as such till 13.11.1976, whereafter he joined Bihar Administrative Service after qualifying in the competitive examination held by Bihar Public Service Commission for State services with effect from 14.11.1976. He remained in service till the date he attained the age of superannuation on 31.01.2008, while holding the post of Under Secretary, O.B.C. (Welfare), Government of Bihar. He, thus, served, under the State Government of Bihar, as Circle Inspector-cum-Kanungo for two years and in Bihar Administrative Service for 31 years, two months and 17 days.

4. While working in Bihar Administrative Service, the

appellant was made an accused in the infamous Fodder Scam case registered as CBI Case No. 34(A) of 1996. He was taken into custody and was placed under suspension for sometime. He was finally convicted and sentenced to undergo rigorous imprisonment by the trial Court for three years, for commission of offence under Section 13(1) (d) (2) of the Prevention of Corruption Act, 1988, with a fine of Rs. 2,75,000 and, further, for three years rigorous imprisonment for the offence punishable under Section 420 of the Indian Penal Code with a fine of Rs.10,000/- and, in case of default in payment of fine, to undergo further simple imprisonment for six months.

5. For the reasons best known to the respondents, no disciplinary proceeding was initiated against him. Upon his retirement in the year 2008, the appellant, raising a grievance that he was not being paid post retiral dues and other benefits, approached this Court by filing writ application under Article 226 of the Constitution of India, which gave rise to CWJC No. 18472 of 2008. In the said writ proceedings, the State Government took the stand that the Department intended to take action against the appellant in exercise of power conferred under Rule 139(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules'), since he had been convicted in a criminal case as noticed above. The State respondents took a plea before learned single Judge that the appellant having been

convicted in a criminal trial, his service could not be said to have been satisfactory and an action, under Rule 139(b) of the Bihar Pension Rules, was contemplated against him, for which notice was being issued and appropriate final order would be passed after completing the formalities within a period of three months. Learned single Judge, in view of the stand taken on behalf of the petitioner, disposed of the writ application, by the order under appeal, without issuing any further direction. We notice from the order that there was no representation on behalf of the appellant before learned single Judge on two consecutive occasions.

6. We have heard Mr. Mrigank Mouli, learned Counsel appearing on behalf of the appellant, and Ms. Archna Sahi, learned Counsel representing the respondent State of Bihar.

7. Mr. Mrigank Mouli, learned Counsel appearing on behalf of the appellant, submits that non-payment of pensionary benefits was not the only grievance, which the appellant had raised in the writ proceeding. He submits that respondent did not take into account the total period of service rendered by him under the Government of Bihar for the purpose of calculation of pension or provisional pension. According to him, the respondent ought to have considered the total period of 33 years, two months and 17 days of his service for the purpose of computation of pension/provisional pension, whereas the

respondents wrongly calculated the said period to be 28 years one month and 17 days.

8. Referring to Rule 58 of the Rules, Mr. Mauli has submitted that the appellant's service as Circle Inspector-cum-Kanungo fulfilled all the requirements of the said provision for the purpose of computing the period of qualifying service for pension. He further submits that the appellant served under the Government against substantive and permanent post during the entire period of service. He has further contended that the appellant is entitled to subsistence allowance for the period during which he had been in judicial custody from 02.09.1998 to 30.04.1999 and he was under deemed suspension. According to him, the appellant ought to have been held entitled to the difference of salary for the period from 03.11.2002 to 01.10.2005, when he was under suspension, as no departmental proceeding was initiated against him and he was allowed to retire from service with effect from 31.01.2008.

9. Mr. Mauli has pressed into Service Rules 97 of the Bihar Service Code and has submitted that since no departmental proceeding was initiated against him, his suspension was wholly unjustified and, therefore, he was entitled to full salary for the said period. He has argued that the learned single Judge has failed to take into account these aspects of the matter.

10. Mrs. Archna Sahi, learned Counsel appearing on behalf of the respondent State of Bihar, has, on the other hand, contended that the appellant was found guilty in a criminal case pertaining to misappropriation of public money and, therefore, the respondents have rightly decided to take action against him under Rule 139(b) of the Rules. She has also submitted that the appellant cannot claim, as of right, any emoluments in any form for the period during which he remained in judicial custody, as he was finally found guilty of misappropriation of public money.

11. We do not find any infirmity in the order under appeal to the extent learned single Judge has allowed the respondents to take final decision under Rule 139(b) of the Rules and decide the appellant's claim for pension. At the same time, we find substance in the submissions, made on behalf of the appellant, to the extent that the appellant had sought for various other reliefs as regards the qualifying period of service for determination of pension, difference of salary for the period from 03.11.2002 to 01.10.2005 and payment of subsistence allowance for the period from 02.09.1998 to 30.04.1999, which have not been addressed and we have no hesitation in holding that these aspects could not be dealt with because of non-representation on behalf of appellant inasmuch as there was none before learned single Judge to argue these points. However, in the interest of justice, we

have considered it proper to deal with the issues so raised.

12. Coming to the question of computation of period during which the appellant was under suspension, Rule 97 of the Bihar Service Code requires that when a Government servant, who has been dismissed, removed or suspended, is reinstated, the authority competent to order reinstatement shall consider and make specific order regarding pay and allowances to be paid to the Government servant for the period of his absence from duty and whether or not the said period shall be treated as a period spent on duty. Upon revocation of the order of suspension, the competent authority has apparently not passed any order under Rule 97(1) of the Bihar Service Code. In our opinion, it is the statutory duty of the competent authority to pass an order, invoking power under Rule 97(1) of the Bihar Service Code, in such situation.

13. Needless to say whether the period, during which the appellant remained out of service by virtue of order of suspension/ deemed suspension, shall be treated as a period spent on duty or not, will depend upon the nature of the order to be passed under Rule 97 of the Bihar Service Code.

14. We also find that the claims of the appellant that the period during which he worked against the substantive post under the State Government, before he joined Bihar Administrative Service,

should have been computed for the purpose of pension, cannot be said to baseless upon examination of Rule 58 of the Rules, which reads thus:-

> "58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-
> First- The service must be under Government.
> Second- The employment must be substantive and permanent.
> Third- the service must be paid by Government.
> These three conditions are fully explained in the following sub-sections."

15. It is necessary that the respondents take a final decision in the above aspect before passing any order under Rule 139(a) if not already passed.

16. In view of the above, we dispose of the appeal with a direction to the Principal Secretary, General Administration Department, Government of Bihar, to take a final decision and pass an appropriate order in accordance with law as required under Rule 97(1) of the Bihar Service Code and decide the appellant's claim in the light of Rule 58 of the Rules within a period of two months from the date of receipt/production of a copy of this order. The respondents shall be required to proceed accordingly in the matter of payment of subsistence allowance/salary for the period as noted above.

17. Any dues, which the appellant may be found entitled to consequent upon passing of the order under Rule 97 of the Code,

Rules 58 and 139(b) of the Rules must be cleared by the respondents within a period of two months thereafter.

18. This disposes of the appeal.

(Chakradhari Sharan Singh, J)

I.A. Ansari, ACJ:- I agree.

(I. A. Ansari, ACJ)

ArunKumar/-

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