IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1712 of 2014
IN
Civil Writ Jurisdiction Case No. 16133 of 2010

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Rajeshwar Mishra Son of Late Chotan Mishra, Resident of 302, Amitabh Kunj, Buddha Colony, P.S. - Buddha Colony, Patna-800001 (Bihar)

.... Appellant/s

Versus

1. The State of Bihar through its Chief secretary, Government of Bihar at Patna.
2. The Principal secretary, Human resource Development Department, Government of Bihar, Patna.
3. Director, Anugrah Narayan Sinha Institute of Social Studies, Opposite Golghar, Near Gandhi Maidan, Patna.
4. Registrar, Anugrah Narayan Sinha Institute of Social Studies, Opposite Golghar, Near Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik
For the Respondent/s	:	Mr. Lalit Kishore (PAAG)

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-05-2017

Heard learned counsels for the parties.

Petitioner, a Lecturer in A. N. Sinha Institute of Social Studies at Patna resigned from the post of Lecturer in Psychology. The resignation was tendered on 06.05.2002 in his own pen and signature, addressed to the Director, A. N. Sinha Institute. The same was accepted. The master-servant relationship ended and after almost 8 years of such resignation, suddenly the greed, if not lure for money, brought the present appellant before the writ court, demanding a direction upon the respondents to pay him pension, gratuity and other retrial benefits.

The Learned Single Judge took note of the submissions made on behalf of the petitioner, the appellant herein, and the various interplay of the Rules, which governed such issue. One of the submissions is that since there is no provision in the regulation or the rule, relating to the service conditions of the A. N. Sinha Institute with regard to resignation, therefore, the appellant should be entitled to pension and gratuity and his resignation should be treated as a case of voluntary retirement.

The Learned Single Judge took note of all the submissions, including the decisions, which were relied upon and then came to a considered opinion that since it is a case of resignation, then the natural corollary emerging out of the decision to resign would be forfeiture of the past service.

The contention of the appellant before the Learned Single Judge has been answered by him in following words:

> ***"9. As stated above, the Rule of Service Conditions of the A.N. Sinha Institute of Social Studies, Patna has been annexed as Annexure-8. From perusal of Clause 9 of Section II it appears that terms of termination has been provided. In terms of this clause the employee whose service has been so terminated shall be given proportionate gratuity. In clause 15, the term of resignation has been mentioned which reads as under:-***

"subject to the acceptance of the resignation by the competent authority, a permanent employee may resign his post after giving notice of three months. However, the competent authority may relax the period of notice."

10. According to the learned counsel for the petitioner since in this clause 15 there is no mention that in case of resignation the petitioner's past service shall be forfeited, the said condition regarding forfeiture cannot be imported from the Patna University Act. The learned counsel further submitted that even on termination the employee is entitled for gratuity then why not the petitioner be granted the retiral benefit because of the fact that his past service cannot be forfeited for want of any provision in the said rule.

11. It appears that only provisions have been made regarding how termination will be made and how an employee will resign. There is no provision in the rule regarding how the pensionary benefit/retiral benefit will be given to which employee. There is no provision in the Rule also that whether the person who has resigned and whose resignation has been accepted will be entitled to pension or not? In Section 1, Introductory Part regarding interpretation, it has been provided that where a doubt arises as to the interpretation or application of any of the provisions of these rules, the matter will be referred to the Board of

Control whose decision or clarification shall be final and further in connection with amendment it has been mentioned that the Board of Control may amend the provisions of these rules at any meeting by a resolution passed by a majority of members present and voting. It is admitted fact that resolution was passed by the Board as far back as on 15.02.1985 (Annexure-A) whereby the Board resolved that retirement benefits for the employees of the A.N. Sinha Institute of Social Studies, Patna be adopted as per provisions contained in the Retirement Benefits Statutes of Patna University subject to such conditions and changes as may be made by the Board of Control from time to time. In view of this resolution the provision regarding Retirement Benefit Statutes of Patna University has been adopted. As stated above in the Service Conditions Rules of the Institute there is no provision regarding payment of retiral benefits to the employee.

12. In Clause 24 of Chapter II of Procedural Instruction regarding sanction and payment of retirement benefits admissible under the statutes for the grant of retirement benefits to the employees of Patna University, it has been provided as under:

"24. Subject to the provisions of the Retirement Benefit Statutes:-

(a) The preceding rules will stand amended in event of any change to the corresponding provision in the Bihar Pension

Rules.

(b) The Bihar Pension Rules, will apply, as amended from time to time, in all matters not covered by the preceding Rules so far as procedure regarding grant/payment of pension/gratuity is concerned.

13. In view of the resolution of the Board this provision is made applicable to the employees of A.N. Sinha Institute of Social Studies. Rule 101(a) of Bihar Pension Rules reads as under:-

"101 (a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment with the approval of the appointing authority to take up another appointment, service in which counts, is not a resignation of the public service."

14. Now it becomes clear that when there is no provision in the rules of the A.N. Sinha Institute of Social Studies this provision i.e. Rule 101 of the Bihar Pension Rules is applicable. This rule speaks about the entitlement of receiving pension. Therefore, the provision of this rule will not change the service condition of the petitioner. In the Rules of the Institute how resignation will be made has been mentioned but since there is no provision regarding who is entitled to receive pension, the

Board resolved to adopt the provision of Patna University which in terms says that Rule 101 of the Bihar Pension Rules will apply.

Nothing more is required to be interpreted or added to the decision, which has been rendered by the Learned Single Judge in refusing to interfere with any decision of the respondent-A. N. Sinha Institute by refusing to grant any kind of benefit of pension, including quashing of the order passed by the Registrar, A. N. Sinha, dated 12.08.2010, on the application filed by the appellant for grant of such benefit.

The decision of the Learned Single Judge does not suffer from any kind of legal infirmity, whatsoever. Therefore, the appeal is a misplaced exercise and adventure on the part of the appellant. The decision, so taken by the appellant was a voluntary decision and merely because he is having a second thought about the same and the implication of such a decision is now downing upon him, the law cannot be altered for his advantage.

Appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

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