IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1820 of 2017
IN
Civil Writ Jurisdiction Case No. 11010 of 2015

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Onkar Nath Singh, Son of Dr. S.R. Rai, Residence of M- 3/2, Road No. 11, Rajendra Nagar, P.S.- Kadam Kuan, District- Patna.

.... Petitioenr /Appellant/s

Versus

1. The State of Bihar, through Principal Secretary, Health, Medical Education and Family Welfare, Bihar, Patna.
2. The Principal Secretary, Department of Health, Medical Education and Family Welfare, Bihar, Patna.
3. The Principal Secretary, Department of Finance, Bihar, Patna.
4. The Director, Indra Gandhi Institute of Medical Science, Sheikhpura, Patna.
5. The Finance Cum Chief Accounts Officer, Indira Gandhi Institute of Medical Science, Sheikhpura, Patna.

.... Respondents/Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Tej Bahadur Singh, Sr, Advocate
For the State	:	Mr. S D Yadav, AAG 8
For IGIMS	:	Mr. Sunil Kumar Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-01-2018

Seeking exception to an order dated 21.09.2017 in CWJC No. 11010 of 2015 this appeal has been filed under Clause 10 of the

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Letters Patent.

The writ petition was filed by the petitioner seeking a direction to the Director of Indira Gandhi Institute of Medical Science (IGIMS in short), Patna, to pay pension to the petitioner after his superannuation. Fact that have brought on record goes to show that the petitioner was an employee of Hindustan Steel Constructions Limited, a public sector undertaking. He was working in the Regional Office as a Zonal Engineer. Vide order passed on 04.09.1991 he was sent on deputation to the IGIMS, Patna. However, while so working on deputation it seems that a proposal was made by the IGIMS for his absorption and finally certain orders were passed for his absorption. He was absorbed also on certain terms and conditions. However, after his superannuation when pensionary benefits of superannuation were not given, the writ petition was filed and the learned Writ court finding that as per the terms and conditions of absorption and the rules applicable the petitioner is not entitled for pension rejected his claim for pension and, therefore, this appeal.

From the facts that have come on record primarily it is the case of the petitioner that under the rules governing grant of pension. i.e. Rule 18 of the Indira Gandhi Institute of Medical

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Science Act, 1984 an employee of the Institute shall be entitled to the benefits, such as General Provident Fund, Gratuity and as per rules of the State Government for similar categories of the employees of the State Government. The petitioner argued that once he was absorbed in the service of the IGIMS and when the statutory rules provide for grant of pension the same could not be denied to the petitioner.

However, having heard learned counsel for the parties at length, and on going through the terms and conditions of the pension of the petitioner as it contained in Annexure-D dated 29.02.2005 brought on record by the petitioner as Annexure-4 series, the terms and conditions of the petitioner clearly stipulates that on his absorption the petitioner will be entitled Contributory Provident fund (CPF) and pension shall not be payable. Once the terms and conditions of the absorption clearly stipulates that the employee cannot be entitled to pension we fail to understand as to how the petitioner claim pension.

Learned counsel argues that the petitioner accepted the terms and conditions with reservation and objection and, therefore, contrary to the statutory provisions, he cannot be denied pension. Even though the petitioner may have some substance in saying so

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but on a perusal of the second part of Rule 18, we find that an employee of the Institute who opts for CPF after giving declaration in writing within two years of joining of the Institute is disentitled from seeking pension and if the conduct of the petitioner in this regard is taken note of we find that immediately after his absorption in the service of the IGIMS, the petitioner filld the CPF Form submitted on 17.11.2005 and CPF was deducted from time to time after and after giving option of the CPF scheme he also withdrew the advances from the fund from time to time. Documents evidencing of those facts have been filed by the respondents in their counter affidavit Annexures-D and E.

From the aforesaid it is clear that while before his retirement on 31.7.2008 apart from the fact that the terms and condition of the absorption stipulated that appellant will not be entitled to pension but only to CPF the appellant by his own conduct and action opted for going under the CPF scheme deposited his contribution and even took the advances from the provident fund account. Once an employee who opted for CPF is held not entitled for pension as Rule 18 itself, we see no reason as to how the appellant can claim pension and rejecting the claim of the petitioner for pension after taking note of all these circumstances, the learned

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Writ Court has not committed any error and we see no reason to make any indulgence into the matter.

The appeal is accordingly dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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CAV DATE	N.A.
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