

Shambhu Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-22-2007

Judge : Barin Ghosh and Navaniti Prasad Singh, JJ.

Appellant : Shambhu Kumar

Respondent : State of Bihar and ors.

Disposition : Appeal dismissed

Prior history : Barin Ghosh and Navaniti Prasad Singh, JJ. 1. After having had served in the Government of Bihar for a considerable period of time, the petitioner was permanently absorbed in a Government of India Undertaking, namely, Indian Oil Corporation, with effect from 23rd August, 1976. At that stage, the Rules pertaining to such absorption was governed by the provisions contained in a circular dated 18th February, 1974. It provided, amongst others, that a Government servant, who has been permanently ab

Judgement :

Barin Ghosh and Navaniti Prasad Singh, JJ.

1. After having had served in the Government of Bihar for a considerable period of time, the petitioner was permanently absorbed in a Government of India Undertaking, namely, Indian Oil Corporation, with effect from 23rd August, 1976. At that stage, the Rules pertaining to such absorption was governed by the

provisions contained in a circular dated 18th February, 1974. It provided, amongst others, that a Government servant, who has been permanently absorbed in a public sector undertaking, would be deemed to have retired from the Government service and such Government servant would have option either to take monthly pension and death-cum-retirement gratuity to be worked out under the usual Government Pension Rules or a lump sum amount in lieu of pension to be worked out with reference to commutation tables obtaining on the date from which the pro rata pension, gratuity etc were disbursable. The said circular made it abundantly clear that subsequent liberalisation of the Pension Rules by the Government would not be extended to such a permanently absorbed Government servant. In terms of the provisions contained in the said circular, the petitioner exercised option to accept lump sum payment of 100% of the commuted value of his pension as was then admissible to him. On 08th March, 1983, the Government liberalised the Pension Rules applicable to its employees and decided to restore payment of pension after completion of ten years period to be counted from the date when the commuted part was deducted from the pension.

2. The petitioner, in view of the said decision of the Government taken on 08th March, 1983, filed a writ petition in the year, 1994, that is after about eleven years from the date of the said decision and eight years after expiry of ten years from the date of his retirement, and thereby applied to the writ Court for issue of a mandamus directing the Government to restore payment of his pension. Such claim of the petitioner was purportedly founded on the judgment of the Supreme Court rendered in the cases of D.S. Nakara v. Union of India reported in : (1983)ILLJ104SC and Welfare Association of Absorbed Central Government Employees in Public Enterprises and Ors. v. Union of India and Ors. reported in : AIR 1996 SC1201 . It does not appear that the petitioner can lend support to his claim from the judgment rendered in Nakara's case. In the case of Welfare Association, the Supreme Court held that if after expiry of fifteen years, pensioners who have opted for one-third commutation would become entitled to restoration of pension on the ground that the lump sum amount as paid has got adjusted before the said period, there is no good reason for not applying the same to the petitioners who had commuted their one-third portion of the pension under Rule 37A of the Pension Rules, 1972 without any commitment for the said portion of the

commutation, which the respondents in the said judgment realising the fallacy withdrew the scheme of permitting commutation of full pension. Therefore, the question and facts involved in the said case were completely different and, accordingly, that has no application in relation to the claim in the instant case.

3. In the instant case, in accordance with Rules then holding the fort, the petitioner by accepting lump sum amount in lieu of pension accepted, as was provided in the circular dated 18th February, 1974, that he would not be entitled to the benefits of future liberalisation of the Pension Rules as may be made by the Government. Petitioner, therefore, could not claim anything based on the decision taken on 08th March, 1983 by the Government.

4. For these reasons, the learned Single, while dealing with the writ petition, had no other option but to dismiss the writ petition, which the learned Judge, according to us, correctly did. The appeal, accordingly, fails and the same is dismissed.

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