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Radhakrishna Paswan Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-17-1999

Judge : J.N. Dubey, J.

Appeal No. : C.W.J.C. No. 4791/1998

Appellant : Radhakrishna Paswan

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Prior history : J.N. Dubey, J. 1. Petitioner has approached this Court for issuing a writ of mandamus commanding the respondents to pay his arrears of salary and retiral benefits. 2. It appears that the petitioner was working as a Peon in the office of respondent No. 6, the officer-in-charge, Majorganj P.S., Sitamarhi. Since his date of birth was February 10, 1940, he was due to retire on February 28, 1998 but was wrongly retired on December 31, 1989. He filed representation to the respondent No. 2, the Distr

Judgement :

J.N. Dubey, J.

1. Petitioner has approached this Court for issuing a writ of mandamus commanding the respondents to pay his arrears of salary and retiral benefits.

2. It appears that the petitioner was working as a Peon in the office of respondent No. 6, the officer-in-charge, Majorganj P.S., Sitamarhi. Since his date of birth was February 10, 1940, he was due to retire on February 28, 1998 but was wrongly retired on December 31, 1989. He filed representation to the respondent No. 2, the District Magistrate, Sitamarhi, which was allowed on March 31, 1994 and he was directed to continue in the office till February 28, 1998. He again joined the post and retired on completion of his age of superannuation on February 28, 1998. The respondents have neither paid him salary for the period January 1, 1990 to March 31, 1994 nor his retiral benefits.

3. On the other hand, the case of the respondents is that the petitioners did not work from January 1, 1990 to March 31, 1994 and as such, he was not entitled for the salary for the period.

4. Heard the learned Counsel for the parties and perused the records.

5. Learned Counsel for the petitioner contended that the petitioner continued to work on the post of Peon inspite of his formal retirement in view of his filing representation to the respondent No. 2 and, therefore, he was entitled for the salary for that period. He further contended that even assuming that the petitioner did not work from January 1, 1990 to March 31, 1994, he was entitled for salary as he did not absent himself from duty but was retired illegally before completion of his age of superannuation.

6. I find substance in the argument of the learned Counsel for the petitioner. Firstly from Annexures 2 and 3 of the writ petition, it appears that the petitioner continued working inspite of his formal retirement during pendency of the representation before the respondent No. 2. But even assuming that he did not work, he is entitled for salary for that period as he was prevented from discharging his duty illegally. In other words, the date of birth of the petitioner was February 10, 1940 as held by the respondent No. 2 and, therefore, he should have retired on February 28, 1998 but he was wrongly retired on December 31, 1989. The respondents cannot take advantage of their own wrong. Nothing has been said in the counter-affidavit for non-payment of the retiral benefits of the petitioner and therefore, he is entitled for all the retiral benefits treating him to have retired on

February 28, 1998.

7. In the result, the writ petition succeeds and is allowed. The respondents are directed to pay arrears of salary of the petitioner for the period from January 1, 1990 to March 31, 1994 and all retiral benefits treating him to have retired on February 28, 1998 with statutory interest within three months from the date of production of a certified copy of this order on the respondent No. 2. The petitioner will be entitled for Rs. 2,000/- (Two thousand) as costs.

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