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Court : Patna

Decided On : Dec-11-2007

Judge : Chandramauli Kr. Prasad and Mihir Kumar Jha, JJ.

Appellant : The State of Bihar and ors.

Respondent : Dr. Narendra Prasad Mishra

Disposition : Appeal dismissed

Judgement :

1. State of Bihar and its Officers being, aggrieved by the order dated 11.9.2006 passed by a learned single Judge of this Court in CWJC No. 442 of 2006, disposing of the writ application and directing them to accord similar- benefit to the writ-petitioner-respondent herein given to the petitioner of CWJC No. 1458 of 1990 (1991(1) PLJR 330), has preferred this appeal under Clause X of the Letters Patent.

2. Facts which are not in disputes that the writ petitioner was appointed as Medical Officer in the year 1973 by the District Board, Sitamarhi. His services was taken over by the State Government by notification dated 16.3.1981. The concurrence of the Bihar Public Service Commission was obtained for that purpose. He superannuated from service on 31.12.2003. Later on the State Government took decision that the services rendered by the Teachers, Sanitary Inspectors and Compounders in the District Board shall be counted as pensionable service. Other

categories of the employees, viz; Dresser, Health Inspector, District Engineer, Male Attendant and Overseer appointed by the District Board and whose services were taken over by the State Government, when denied this benefit filed writ application praying for the same benefit. A Division Bench of this Court by order dated 3rd of July, 1989 passed in CWJC No. 5869 of 1986 (Ramphal Prasad v. State of Bihar and Ors.) and analogous case disposed of those petitions directing the State Government to apply the decision taken in respect of the Teachers, Sanitary Inspectors and Compounders to other categories of employees whose services were taken over on the following premise:

In our opinion, denying the benefits which have been extended to the teachers, Sanitary Inspectors and Compounders, to the petitioners in the matter of fixation of their pension will amount to a discrimination within the meaning of Article 14 of the Constitution.

3. As stated earlier the writ petitioner was a Medical Officer whose service was taken over by the State Government. One of such Medical Officers filed writ application before this Court, inter alia contending that the services rendered by him in the District Board is fit to be counted as a pensionable service.

4. A learned Single Judge of this Court in the case of Dr. Suryakant Thakur v. State of Bihar 1991 (1) PLJR 330 accepted the said contention and observed that denial of such benefits to Medical Officers which has been extended to teachers, Sanitary Inspectors and Compounders shall amount to discrimination. The relevant portion of the judgment of the learned Single Judge reads as follows:

In this connection, he has drawn my attention to the letter of the Government dated 19.1.1988 (Annexure-6) wherein it has been stated that the services of the petitioner were taken over with effect from 1.2.1981 as non-gazetted Officer and he continued as such till 31.1.1985, the date of his retirement. Therefore, there was no question of getting concurrence from the Bihar Public Service Commission in the case of the petitioner and his services rendered in the district Board cannot be taken into consideration for the purpose of fixation of pensionary benefits. However, learned Counsel for the State could not point out as to how different employees appointed initially by the District Board, whose services have been

taken over by the State Government, could be given a different treatment. However, this controversy as to whether the Medical Officer can be given same treatment who were erstwhile employees of the District Board, has been settled in the two writ applications which I have mentioned above. The State Government, pursuant to the said judgment, has decided to extend all benefits which have been given to the employees who had filed CWJC No. 5869 of 1986 and its analogous cases.

(Underlining ours)

5. It is not in dispute that the judgments rendered by this Court in the aforesaid cases hold the field and infact have been given effect to.

6. The learned Single Judge following the decisions of the Division Bench in the case of Ramphal Prasad v. State of Bihar and Ors. (supra) as also Dr. Suryakant Thakur v. State of Bihar and Ors. (Supra) had directed for giving the same benefit to the writ petitioner-respondent herein.

7. Mrs. Nivedita Nirvikar, Government Pleader No. 16 appearing on behalf of the appellant contends that while passing the impugned judgment the learned Single Judge has not referred to the decision of this Court dated 24.6.2002 passed in CWJC No. 1277 of 2002 (Mahendra Ram v. State of Bihar and Ors.) and this itself vitiates the impugned order.

8. We do not find any substance in the submission of the learned Counsel. A Division Bench of this Court in the case of Ramphal (Supra) has found action of the State in denying the benefit to other categories of employees to be highly discriminatory. In the case of Dr. Suryakant Thakur (supra), a Medical Officer as that of the writ-petitioner similar view has been taken. Thus the case of the writ petitioner is squarely covered by those decisions.

9. Now reverting to the decision of the learned Single Judge of this Court in the case of Mahendra Ram (supra) same is clearly distinguishable. Said case related to a Choukidar appointed initially in the Inspection Bungalow by the District Board, whose services was ultimately taken over by the State Government. He filed the

writ application to treat the period spent by him in the District Board as pensionable service. Said plea was negated on the ground that Zila Parishad being a body corporate, services rendered to it shall not qualify as pensionable service. In the said case neither the attention of the Court was drawn that services rendered by other categories of employee in the District Board have been counted as pensionable service nor discrimination was pleaded. Further the attention of the Court was not drawn to the earlier decision of this Court rendered by the Division Bench in the case of Ramphal(supra) and Dr. Surya Kant Thakur (Supra).

10. It is agonizing to note that the State Government, instead of following the decision of this Court squarely on the point, has chosen to file this appeal on an specious plea that the judgment of this Court in the case of Mahendra Ram (supra) has not been considered.

11. We do not find any merit in the appeal and it is dismissed with cost of Rs. 5,000/- (Rupees Five thousand_) to be paid by the appellant to the writ petitioner-respondent.

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