

Shankar Kumar and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Mar-31-2005

Judge : Barin Ghosh, J.

Acts : [Contract Act, 1872](#) - Sections 72

Appeal No. : CWJC No. 13259 of 2004

Appellant : Shankar Kumar and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Alok Kumar, Adv.

Advocate for Pet/Ap. : M.P. Shukla, Adv.P.K. Rajgrihar, Adv.

Disposition : Petition allowed

Judgement :

Barin Ghosh, J.

1. Late Chhabi Lal Prasad was the Headmaster of Middle School, Siswadharhi in Ghoghardiha Block of Madhubani District. There is no dispute that on 31st December, 1974, late Chhabi Lal Prasad was appointed as the Headmaster of the said school. While in service, late Chhabi Lal Prasad died leaving him surviving his sons, being the petitioners Nos. 1 and 2 and his widow, being the petitioner No. 3.

The petitioners thus applied for grant of retiral/terminal dues due to late Chhabi Lal Prasad, as his heirs, and also family pension due to the petitioner No. 3. By Annexure 1 to the writ petition dated 10th April, 2002, the Accountant General, Bihar raised an objection to the effect that late Chhabi Lal Prasad was not entitled to the remuneration as was given to him on 31st December, 1974, and accordingly returned the papers of the petitioners to the appropriate department of the State for effecting necessary corrections in the service book of late Chhabi Lal Prasad as well as for fixing his salaries in the correct scale with a direction for recovery of excess drawn by late Chhabi Lal Prasad during his lifetime. This letter dated 10th April, 2002 has resulted in filing, of the present writ petition.

2. In the service book of late Chhabi Lal Prasad it has been recorded that by an order dated 13th June, 1979, the District Superintendent of Education, Madhubani authorised payment of the salaries of late Chhabi Lal Prasad in the scale of Selection Grade with effect from 1st April, 1979. This part of the service book is Annexure 16 to the writ petition. It appears from the said entry in the service book that late Chhabi Lal Prasad was paid salaries in the Selection Grade with effect from 1st April, 1979 on the authority of the District Superintendent of Education, Madhubani.

3. Despite affidavits having been filed by the Accountant General as well as by the District Superintendent of Education, it has not been pointed out by referring to any evidence of any nature that on any date prior to 1st April, 1979, late Chhabi Lal Prasad was permitted to draw salary in the scale of Selection Grade. How the Accountant General invented that late Chhabi Lal Prasad was drawing salaries in the scale of Selection Grade with effect from 31st December, 1974, as appears to be the case in Annexure 1 to the writ petition, has not been explained at all. It is not the contention that late Chhabi Lal Prasad was not entitled to Selection Grade with effect from 1st April, 1979. The contention was that he was not entitled to the same with effect from 31st December, 1974; factually from 31st December, 1974 to 31st March, 1979, late Chhabi Lal Prasad was paid salaries in the scale of Selection Grade has not been attempted to be established at all. Only on that score itself, the objection contained in the impugned letter dated 10th April, 2002 is liable to be struck down.

4. Be that as it may, although a contract of employment is a contract and though Section 72 of the Contract Act specifically authorises recovery of payment made by mistake and accordingly any payment made by the employer to the employee by mistake is recoverable, but when such payment is made by the employer to the employee on account of salaries payable by the employer to the employee, having regard to the relationship of master and servant existing between the employer and the employee, in law, it must be deemed that the master has made a specific representation to the servant while paying his salaries that he is entitled to the same and accordingly such payment, even if more than what the employee is entitled to in terms of the contract, is not recoverable. However, an employee in the government or in a public authority is not an ordinary employee. Accordingly it is permissible for the employer to hold out at any point of time that the employee is entitled to receive salary in terms of the contract at the rate at which it has been held out that the employee is entitled to receive the same and thereupon to pay the salaries to the employee at the same rate. But salaries paid in excess, prior to such holding out, is not recoverable from the employee for the reason of such representation, but is recoverable from that person, who incorrectly held out something which was factually not correct.

5. For the reasons, as aforesaid, the writ petition is allowed. Annexure 1 to the writ petition is quashed with a direction upon each of the respondents to see to it that the entire terminal dues of late Chhabi Lal Prasad is released and paid to the petitioners and the family, pension of the petitioner No. 3 is settled and paid to her together with interest, as provided by the Government of Bihar, within a period of four weeks from the date of service of a copy of this order upon respondents Nos. 4 and 5. In default, the rate of interest shall stand increased to 10% per annum and shall be paid by the State to the petitioners with an obligation to recover the difference from that officer of the State at whose neglect there shall be delay in release of the aforementioned lawful dues of the petitioners. There shall be no order as to costs.