

Mohan Prasad Srivastava Vs. the State of Bihar and ors.

Mohan Prasad Srivastava Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/137900

Court : Patna

Decided On : Feb-14-2003

Judge : P.K. Deb, J.

Acts : Bihar Pension Rules, 1950

Appeal No. : C.W.J.C. No. 12665 of 2001 with M.J.C. No. 739 of 2002

Appellant : Mohan Prasad Srivastava

Respondent : The State of Bihar and ors.

Advocate for Def. : Rajeshwar Prasad, G.P. VI

Advocate for Pet/Ap. : Rejendra Kumar Jain, Adv.

Judgement :

P.K. Deb, J.

1. Both the cases are taken up together as they relate the same grievance of retired benefits of the petitioner.

2. Admittedly, the petitioner was appointed by the Industries Department of the State of Bihar on purely temporary basis in the month of October, 1961 in the post of Store Keeper under Bicycle Sanjojana Scheme vide Annexure-1 and immediately after appointment in the month of October, 1961 when Bihar State

Small Industries Corporation Limited (hereinafter to be referred as the 'Corporation') was set up then all the Sanjojana Scheme so were amalgamated with the Corporation and vide Annexure-3 all the employees both temporary and permanent of the Industries Department being appointed under various Schemes had been transferred to the Corporation. Regarding the temporary staff as that of the petitioner following term was imposed during the course of transfer as per Annexure-3 itself dated 22-1-1962:

Temporary Staff.--The services of all temporary staff of the Industries Department employed in the Scheme transferred to the Corporation will be placed at the disposal of the Corporation with effect from the 1st February, 1962 for appointment against posts similar to the one held by them under Government and they shall be entitled under the Corporation to count towards increment and level the services tendered by them under Government upto the 31 st January, 1962. They shall be Corporation's servants with effect from the 1st February, 1962. The transfer from Government to the Corporation shall not constitute a break in their service.'

3. After such transfer to the Corporation the petitioner alongwith others employed in the Industries Department had continued as an employee of the Corporation and also got promotions from time to time under the Corporation itself without having any approval etc. from the State Government and ultimately the petitioner retired on superannuation on 30-6-1999. It appears that after retirement the petitioner had taken some benefits occrued to him as post retiral benefits from the Corporation. But now the present writ petiton has been filed making both the Industries Department, State of Bihar and the Managing Director of the Corporation as parties for the purpose of getting retiral benefits such as Gratuity, Leave Encashment fixation of Pension, G.P.F. etc.

4. In the Corporation there its no provision of pension and Bihar Pension Rules are not applicable, G.P.F. is also not there rather contributory Provient Fund is there. In that way, it is the stand of State of Bihar and that of the Corporation that the petitioner is not entitled to the benefits as claimed as Pensional benefits as per Bihar Pension Rules either from the State of Bihar or from the Corporation.

5. The petitioner has based his claim practically on a decision being given by a Division Bench of this Court in C.W.J.C. No. 1887/87 in Shivadhar Mishra's case. In that case it was held in some special circumstances that Shivadhar Mishra being employed under the State of Bihar cannot be terminated illegally by the Corporation as his services remained as a State Government employee. It does not appear that the transfer of the employees as per Annexure-3 in the presents case was considered in respect of temporary staff rather Shivadhar Mishra was a permanent staff, that too challenge was in respect of termination only and there was an observation to the effect that the writ petitioner Shivadhar Mishra would be entitled to the retiral benefits also and ultimately on his retirement he filed Contempt petition before this Courts for getting his retiral benefits against the State of Bihar.

6. The case of Shivadhar Mishra was considered by a Single Bench of this Court in Birendra Kumar Sinha v. The State of Bihar, in C.W.J.C. No. 2293/99 and the case of Birendra Kumar Sinha was held to be distinguishable from that of Shivadhar Mishra on two grounds that there was no challenge regarding the transfer of the employees like that of the petitioner and that of Shivadhar Mishra to the Corporation long back in the year 1962 and that the question of termination was not there in case of the present petitioner. Birendra Kumar Sinha was denied al the retrial benefits as per Bihar Pension Rules as he was held to be an employee of the Corporation only. The case of Birendra Kumar Sinha was challenged before the L.P.A. Bench being L.P.A. No. 1639/2000. The order of the Single Bench was upheld by the Division Bench in L.P.A. reported in 2001 (1) PUR, 630, Birendra Kumar Sinha v. The State of Bihar.

7. It has been strenuously by the learned Counsel for the petitioner that the case of the petitioner stands on the same footing as that of Shivadhar Mishra's case and is not life that of Birendra Kumar Sinha. I do not find any force in his submission. Rather, the case of the petitioner is totally covered like that of Birendra Kumar Binod Sinha. Some other have also been referred to by the learned Counsel for the petitioner passed in C.W.J. C. No. 5092/91 and C.W.J. No. 8418/91. Those cases relate to North Bihar Industrial Development Authorities and the challenged was, in respect of the orders, passed whereby the previous

orders passed by the Single Bench of his Court confirming the services of the writ petitioners had been cancelled by the Corporation. Upto the date of transfer as per Annexure-3 the petitioner was construed to be a Government servant under the Industries Department. That was very much clear from the issuance of Annexure-3 itself that from 1-2-1962 the petitioner became the servant of the Corporation and all his relations with the Government has been served from the cut off date i.e. 1 - 2-1962. That transfer order and making the petitioner an employee of the Corporation had never been challenged during the service period of the petitioner and he has taken the unusual benefits of promotion etc. under the Corporation itself which he might not have got while remaining under the State Government. Now, after taking some benefits after his retirement from the Corporation the petitioner has come up before this Court to get all benefits under Bihar Pension Rules considering himself to be a State Government employee.

8. Thus, I find that the petitioners case is totally covered by the case of Birendra Kumar Sinha and as such the petitioner is not entitled to get retiral benefits under Bihar Pension Rules. Rather whatever benefits the petitioner is to get from the Corporation if ail the benefits had not been given to him as per his entitlement then the petitioner should be given so by the Respondent No. within a period of four months from the date of presentation of a copy of this order from the vide of the petitioner and for delay in making payment of the retrial benefits by the Corporation the petitioner is entitled to interest @ 6% per annum from the date of due till the date of realisation. It the payment is not made within the time frame then the petitioner shall be entitled to enhanced interest @ 18% per annum from the date of due till the date of realisation, with this observation this writ petition is disposed of accordingly. The M. J.C. was filed on an interim order passed by this Court at the very first date of putting up of the case before the Bench. In views of the order passed as mentioned above in the writ petition, the M.J.C. is also disposed of.