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Court : Jharkhand

Decided On : Apr-27-2001

Reported in : 2001(49)BLJR1807

Judge : S.J. Mukhopadhaya, J.

Acts : Service Law

Appeal No. : CWJC No. 2427 of 1999

Appellant : Arvind Kumar Dubey and anr.

Respondent : State of Bihar and ors.

Advocate for Def. : K.K. Singh,; Indrani Sen Choudhary and; A.K. Jha, Ad

Advocate for Pet/Ap. : B.K. Dubey and; B.N. Tiwari, Advs.

Disposition : Petition disposed of

Judgement :

S.J. Mukhopadhaya, J.

1. The writ petition relates to death-cum-retiral benefits to which heirs of late Tapeswar Dubey are entitled under the law.

2. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one as stated hereunder :

The father of petitioners late Tapeswar Dubey was initially appointed as Food-cum-Sanitary Inspector in the District Board and subsequently taken in the services of respon-dent-Mines Board, Hazaribagh. In normal course, he was to superannuate from services of Mines Board on 31.1.1992 but the Board allowed extension and he continued upto 31.3.1993 (for another two years). Since February, 1993. no extension was granted by the Mines Board but late Tapeswar Dubey was given engagement on daily wage till February, 1996.

After retirement, total benefits were not paid and certain amounts were ordered to be recovered. In the meantime, the employee, Tapeswar Dubey died which was the reason for the heirs (petitioners) to move this Court for benefits.

It appears that during life time of late Tapeswar Dubey, the respondents released 90% of pension, counting the period of service rendered under the District Board. Hazaribagh. Subsequently, it was reduced as the period of service rendered by late Tapeswar Dubey in the District Board, Hazaribagh was excluded and the period of service rendered under the Mines Board was taken into consideration and calculated the pension.

The petitioners while claimed that the period of service rendered by late Tapeswar Dubey in the District Board, Hazaribagh to be counted for calculation of pension, the respondents have opposed such prayer.

3. From the counter-affidavit, it will be evident that late Dubey was holding a post of Paramedical Asstt. in the lower scale of Rs. 160--280/- under the District Board, Hazaribagh. He applied for appointment under the Mines Board and provided appointment vide letter No. 1103 dated 28.9.1972 to the post of Sanitary Inspector, a post with higher scale of Rs. 160--400/- by direct recruitment. In the aforesaid background, the claim as made by the petitioners in the present case that the period rendered by late Dubey in the District Board should be counted, cannot be accepted.

So far as other grievance relating to recovery is concerned, the stand of the respondents is that the Urban Department of the State of Bihar by its letter No. 151 dated 17.3.1992 refused to grant approval for extension of service of late Dubey and was rejected.

It has not been disputed that after the due date of superannuation of late Dubey (31.1.1991), the Board extended his service for another two years till 31.1.1993 and he worked and received salary. During the subsequent period, he was engaged on daily wage and payment was made. There is nothing on the record to suggest that late Dubey continued in the services of Mines Board beyond the period of superannuation on suppression of fact and material. In the aforesaid background, the respondents cannot recover any amount from the death-cum-retiral benefit of late Dubey in the ground that he worked beyond the period of superannuation.

In this context, one may refer the decisions of the Patna High Court in *Mubarak Hussain v. State of Bihar* 1996 (2) PLJR 166 and *Dr. Bhagwan Das v. V.C. Magadh University*. 1997 (1) PLJR 876, wherein the Court held that if a person continued in service even beyond the period of retirement, the salary so paid for such period cannot be recovered from the post-retiral benefits.

4. The respondents in their counter-affidavit has taken plea that a sum of Rs. 69,648/- was paid to late Dubey during the extension of service which has been ordered to be recovered from the benefits. Further statement made that the amount of wages paid to him as Rs. 35,490/- was also suggested to recover from such death benefits in view of audit objection. The respondents are directed not to make any recovery from the death-cum-retiral benefits of late Tapeswar Dubey in respect to the period he continued in service on extension and/or was given appointment on daily wage.

However, the respondents will be entitled to recalculate the pension and other retiral benefits taking into consideration the service rendered by petitioner in the Mines Board, Hazaribagh excluding the period of service as was rendered in the District Board, Hazaribagh. If such calculation has already been made and further amount is found payable in terms with the finding as given above, such admitted

dues, if any, be paid to the heirs of late Tapeswar Dubey, on an early date, preferably within two months from the date of receipt/production of a copy of this judgment.

5. The writ petition stands disposed of, with the aforesaid observations/directions.

However, in the facts and circumstances, there shall be no order as to costs.

6. Petition disposed of.

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