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Court : Jharkhand

Decided On : Jun-17-2005

Reported in : 2005(3)BLJR1701; [2006(108)FLR476]; [2005(3)JCR191(Jhr)]

Judge : Altamas Kabir, C.J. and; R.K. Merathia, J.

Acts : Bihar Pension Rules, 1950 - Rules 101 and 105

Appeal No. : LPA No. 741 of 2004

Appellant : Ranendra Nath Sarkar

Respondent : Bihar State Electricity Board Through Its Chairman and ors.

Advocate for Def. : Mihir Kumar Jha and; Ajit Kumar, Adv.

Advocate for Pet/Ap. : Indrajeet Sinha, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

I.A. No. 1542 of 2005

1. Having considered the submissions made on behalf, of the respective parties, we are satisfied that sufficient ground has been made out for condoning the delay in filing the appeal.

The application for condonation of delay is, accordingly, allowed and the delay of 14 days in filing the appeal is condoned.

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2. Since learned counsel is present on behalf of the respondents, the appeal is taken up on merit.

3. As would appear from the order, passed by the learned Single Judge, the appellant/writ petitioner retired from service on 31st December, 2003. We find that the writ petitioner has prayed that he must be deemed to have continued in service from 31st May, 1966 and his retiral benefits shall be calculated on such basis. Admittedly, the appellant-writ petitioner was appointed to the post of Assistant Controller on 31st May, 1966. On 30th March, 1972, he tendered his resignation and was relieved from his services w.e.f. 6th April, 1972. Thereafter, the appellant-writ petitioner was reappointed by the respondent-Board and he submitted his joining report on, 15th January, 1973. The case of the appellant-writ petitioner is that the period in between the date of his resignation and the date of his re-joining the service on 15th January, 1973 should not be treated as a break in service and having regard to the provisions of Rule 101 of the Bihar Pension Rules, the said break should not effect his continuity in service for the purpose of calculation of retiral benefits from 1966.

4. The learned Single Judge, while taking note of the provisions of Rule 101 of the Bihar Pension Rules, was of the view that since, according to the records, the writ petitioner had been appointed afresh in 1973, the question of continuity in service did not arise. The learned Single Judge treated the subsequent appointment of the writ petitioner as a fresh appointment w.e.f 1973 which did not entail him to get the benefit of the earlier period of service, as claimed by the writ petitioner. On such finding, the learned Single Judge dismissed the writ petition.

5. This appeal has been preferred by the writ petitioner-appellant mainly on the ground that the learned Single Judge had misconstrued the provisions of Rules 101 of the Bihar Pension Rules, which fell for consideration before the Patna High Court in the case of Tapan Kumar Chatterjee v. State of Bihar and Ors., reported in 1998 (1) PLJR at page 707, wherein, the learned Single Judge while deciding the said matter, had occasion to consider the provisions of Article 12(i) of the Statute relating to the 'General Conditions of Service' involving service under the Patna University. The said provision is similar to the provisions of Rule 101(a) of the Bihar Pension Rules, 1950. While considering the said provision, the learned Single Judge also took note of Article 14 (i) and (vii) of the Statute relating to Retirement Benefits, wherein, the question of 'qualifying service' had been defined and it had been categorically indicated that dismissal or removal from service would entail forfeiture of all past service for the purpose of grant of pension/gratuity. On an interpretation of the two provisions, the learned Single Judge came to the conclusion that since in Article 14 (i) and (vii) resignation from service had been simplicitor, such resignation would not be counted for the purpose of forfeiture of past service. The learned Single Judge then drew a parallel with the provisions of Rule 101(b) of the Bihar Pension Rules, 1950 which indicates that resignation of an appointment (with the approval of the appointing authority) to take up another appointment, service in which counts, is not a resignation of the service. On consideration of the said provision, the learned Single Judge came to the further conclusion that the resignation rendered under Rule 101(a) of the Bihar Pension Rules, 1950 would involve resignation in certain given circumstances, as indicated in Clause (a) of Rule 101.

6. As would appear from the observations made hereinabove, the facts of the case decided by the learned Single Judge, in the case of Tapan Kumar Chatterjee (supra), are completely different from those of the present 'case. In the said case, In Article 14 (i) and (vii) of the Statute relating to retirement benefits, the question of resignation from service had been omitted for the purpose of forfeiture about past service in granting pension/gratuity. That is not the fact in the instant case. Even if we accept the interpretation, sought to be given to resignation, as indicated in Clause (a) of Rule 101 of the Bihar Pension Rules, the provisions of Clause (b) indicate that such resignation of an appointment (with the approval of the

appointing authority) to take up another appointment, service in which counts, is not resignation from service. In other words, when resignation would be for the purpose of taking up another appointment, continuity of service would be accepted.

7. In the instant case, that is not so. Since the writ petitioner- appellant had not resigned from service with the approval of the appointing authority to take up another appointment, notwithstanding the submissions made on his behalf, the appointment has been, in no uncertain words, treated to be a fresh appointment. Apart from the above, if the appellant had retained a lien to his post for the purpose of taking up another appointment, possibly the same could also have gone towards his continuance in service. The appellant-writ petitioner has not also taken recourse to the provisions of Rule 105 of the Bihar Pension Rules, 1950, which have to be construed strictly.

8. In the circumstances aforesaid, we are unable to convince ourselves that the order under appeal requires and/or warrants any interference. The appeal is, accordingly, dismissed, but without any order as to costs.