

Devaki Nandan Prasad

Vs

State of Bihar and Others

Writ Petition No. 3053 of 1980

(D. A. Desai, O. Chinnappa Reddy JJ)

22.04.1983

ORDER

1. A pensioner since 16 years is knocking at the doors of the court of justice and the executive in search of his hard earned pension and is being rebuffed by those who would meet the same fate by the passage of time and yet with his meagre resources, he has been dragged to the apex court for the second time after a lapse of 12 years during which abominable long period the mandamus of this court has been treated as a scrap of paper. What a pity, and what helplessness !

2. The facts relevant to the disposal of this petition under Article 32 of the Constitution are set out in details in Deokinandan Prasad v. State of Bihar [1971 Supp SCR 634 : (1971) 2 SCC 330 : AIR 1971 SC 1409 : (1971) 1 LLJ 557 : 1971 Lab IC 881] and therefore, need not be recapitulated here. A Constitution Bench presided over by the then Chief Justice Mr. Sikri issued a mandamus in the writ petition filed by the present petitioner which reads as under : (SCC p. 344, para 34)

The order, dated August 5, 1966, declaring under Rule 76 of the Service Code that the petitioner has ceased to be in Government employ is set aside and quashed. The order, dated June 12, 1968, stating that under Rule 46 of the Pension Rules, the Department is unable to grant the petitioner pension is also set aside and quashed. As the petitioner himself claims that he has been retired from service on superannuation, a writ of mandamus will be issued to the respondents directing them to consider the claim of the petitioner for payment of pension according to law.

The opinion of the court was rendered on May 4, 1971 and since then petitioner is being pushed from pillar to post by various departments of the State of Bihar ultimately compelling him to knock at the doors of this court.

3. It may be mentioned in passing that the petitioner joined service on September 1, 1928 and admittedly he has retired on superannuation on January 10, 1967. He is entitled to pension under the Bihar Pension Rules, 1950. The dispute is whether the petitioner is a member of the Bihar Education Service and what ought to be the method of computation of his pension ? On the first point, the matter is no more res integra because the Constitution Bench held that a reference to Rule 5 of the Pension Rules shows that the officers mentioned therein are entitled to pension. It was further held that there is no controversy that the petitioner is an officer in the Education Department of the Bihar Education Service, and this department is shown at Item 3 of the Schedule to Rule 5. Therefore, the controversy is concluded by decision between the parties that the petitioner is a member of Bihar Education Service and that under Rule 5 of the Pension Rules, he is entitled to pension.

4. After the mandamus was issued by this court, the petitioner approached amongst others the then Chief Minister of Bihar late Shri Kedar Pandey for implementing and giving effect to the mandamus, issued by the Supreme Court. The Chief Minister directed that even though more than two years have elapsed since the issuance of the mandamus and the Chief Minister himself directed 10 months prior to June 25, 1973 for payment of the claim of the petitioner as soon as possible and had insisted upon a weekly progress report on the processing of the file to be submitted to him, yet even the Chief Minister recorded his helplessness that he neither received the weekly report nor the mandamus has been implemented nor even the file was submitted to the Chief Minister for his perusal. If this be plight of the Chief Minister of a popularly elected government what to talk of the lesser fly and what tears can be shed for a man in position of the petitioner who having rendered service for nearly 40 years was chasing the mirage for a paltry pension. The Chief Minister apprehended that it is quite likely that not only the officers responsible for this mess but even the State Government may be called upon by the Supreme Court to explain the disregard of the mandamus. He then made a peremptory order that the file be submitted to him for order.

5. Nothing moved as is the sad experience that nothing moves unless like the law of inertia some outside force acts upon it and puts the file in motion. What that outside force is we need not dilate. Ultimately, the file reached the Chief Minister in 1974 on being called by him. There is the long preamble setting out the history of litigation, the injustice done to the petitioner, the utter lethargy and apathy of the officers concerned and then the Chief Minister proceeded to dispose of the claim of the petitioner consistent with the mandamus issued by this court.

6. The material portion which would help us in disposing of the present petition recites that the petitioner shall be treated in Class II post of Bihar Education Service since his promotion and since January 1, 1952 he should be deemed to belong to Class I post of Selection Grade according to his seniority or from the date of direct appointment which deprived the petitioner of equal opportunity, he was fully entitled to. But the note is overflowing with the courtesy of the Chief Minister in that he proceeded to request the Education Minister that for the ends of justice, a phraseology to which the courts are accustomed, the petitioner should be paid off his claim within a month for which any senior officer of the Education Department be made responsible. Undue delay has been made in the implementation of the direction of the Hon'ble Supreme Court and I would never like that Shri Prasad be compelled again to go to court. What a wishful thinking ! In that Mr. Prasad has been forced to come back to this court and since then the then Chief Minister has left this world.

7. To resume the narration, petitioner received a letter dated February 6, 1976 - three years after the direction given by the Chief Minister - that his pension case has been finalised and pension payment order of Rs. 156.55 p.m. and gratuity payment order of Rs. 5850 are under issue. It would appear at a glance that officers dealing with the pension case appears to have scant regard for the decision of the Supreme Court in that both the promotion to Class II and further promotion to Class I from deemed dates were ignored and pension was computed on the basis as if petitioner retired in Class III. All the representation of the petitioner thereafter failed to evoke both a sympathetic response and a just decision and therefore the petitioner is back to square one.

8. The respondent-State and all its officers are bound to compute pension of the petitioner not only on the footing that he is a member of the Bihar Education Service but also on the footing that he was promoted to Class II by the date mentioned in the earlier judgment and from January 1, 1952 to Class I as rightly held by the Chief Minister. Nothing was pointed out to us by Mr. Goburdhan to hold to the contrary nor can the State be permitted to play ducks and drakes with a solemn decision of the Constitution Bench of this court.

9. To give effect to the mandamus of this court, the respondent-State shall proceed to compute the salary payable to the petitioner from the date he was promoted to Class II service and on the assumption that he was functioning in Class II in the salary scale then admissible to him equivalent to Class II grade in Bihar Education Service. This must commence from the date from which he was promoted as set out in the earlier judgment as Deputy Inspector of Schools at Seraikela. In computing the salary for the purpose of computation Class II salary scale then prevalent for the post shall be taken up and the petitioner is deemed to have been put in that scale. Yearly increments are added till January 1, 1952 when he must be deemed to have been promoted as admitted by the Chief Minister to Class I post in Bihar Education Service. Same process is to be repeated by the respondent-State in that the then prevalent Class I scale must be held admissible to the petitioner from January 1, 1952. He must be deemed to have been put in the scale and his annual increments to be worked out. If in the process he is entitled to Selection Grade, the same must be worked out and this computation must be brought down to January 10, 1967 when the petitioner retired on superannuation from service. On this computation of salary his pension shall be computed under the relevant rules of the Bihar Pension Rules as liberalised from time to time till 1967 and his pension must be determined as on January 10, 1967 on the aforementioned computation chart.

10. The State and the subordinate officers responsible for this work are directed by a writ of mandamus to complete this computation by July 31, 1983 and by that date pension payment order correct and consistent with the direction herein given shall be issued without fail to the petitioner. The State is also directed by a mandamus of this court to pay the arrears of pension on the aforementioned computation within the same period with interest at 6 per cent from January 10, 1967. As the officers of the State have harassed the petitioner which we feel is intentional, deliberate and motivated, therefore, we are constrained to award exemplary costs quantified at Rs. 25,000 to be paid to the petitioner before July 31, 1983.

11. We propose to leave no one in doubt that the slightest failure or deviation in the time schedule in carrying out this mandamus will be unquestionably visited with contempt action.

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