

Baij Nath Gupta

Vs

State of Bihar and Others

Civil Appeal No. 10914 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

12.08.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. The appellant was appointed on temporary basis as Assistant Master on 9-2-1955 in the Directorate of Industries, Government of U.P. and was posted at Kanpur. After working for four years he was selected by Bihar Public Service Commission by direct recruitment and was appointed in the Government polytechnic under the Department of Science and Technology on 6-1-1959 and he resigned from the U.P. Service w.e.f. 7-1-1959. He was appointed, thereafter, in the services of the Government of Bihar. He retired w.e.f. 1-12-1982 while working in the workshop as Superintendent of the Government Polytechnic at Patna. A dispute arose as regards his entitlement for pension and proportionate distribution of pension between the State of U.P. and the Government of Bihar. He wrote a letter to the Chief Justice of the Patna High Court on 28-11-1993 on the basis of a judgment rendered by that Court on 4-8-1992 stating that he would be entitled to interest on the delayed payment of pension and gratuity. The High Court instead of treating that letter as a writ petition directed the appellant to make a representation to the Government and the Government would consider and dispose of the claim for payment in that behalf. When the interest was not paid on pension quantified, the appellant filed the present writ petition in the High Court claiming proportionate pension from the U.P. Government and also for interest. In CWJC No. 11563 of 1993 by judgment dated 11-7-1995 the High Court dismissed the writ petition. Thus this appeal by special leave.
4. As regards the entitlement for proportionate pension from the State of U.P. for the period he served between 9-12-1955 to 7-1-1959, Shri R.K. Jain, the learned Senior Counsel for the appellant, placing reliance on the letter written by the Union of India dated 31-3-1982 (at p. 39 of the paper-book), contended that the appellant is entitled to the proportionate pension even for temporary service rendered by him. Shri A.B. Rohtagi, the learned Senior Counsel for the respondent-State of U.P., contended that prior to 1-7-1989 the temporary government servants were not eligible for any pension under the provisions of Rule 368 of the Civil Service Pension Rules. The Government have considered and decided on the said date that proportionate pension would be granted if the government servant has put in qualifying temporary service of at least 10 years. Since the appellant had not put in qualifying service, he is not eligible for the pension. Shri Jain contends that this rule has no application for the reason that it has come into force with effect from 1-7-1989. In view of the circular of the Government of India referred to earlier, the government servant will be entitled to proportionate pension for the service rendered as a temporary government servant under the State

Government. The State of U.P. was a party to the above resolution and, therefore, they are bound by the same.

5. Having considered the respective contentions, the question arises whether a government servant who was on temporary service is entitled to the proportionate pension, after his regular employment in another State Government service in terms of the circular dated 31-3-1982 ? It is seen that the above circular refers to Rule 14 under Chapter 3 regarding the qualifying service of the Government of India employees. Therein, it is envisaged that the counting of temporary service of the government servant either in the Central Government or the State Government prior to securing a post on permanent basis either under the State Government or the Central Government on his own employment or on the advertisement of a circular or recruitment through public service commission, he is entitled to proportionate pension. It envisages as under :

"The government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories :

(1) Those who having been retrenched from the service of Central/ State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and the date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments."

6. In either event the benefit was allowed to such a government servant provided that the eligibility in respect of temporary service rendered under the Central Government or the State Government to the extent of such temporary service would be counted for computation of the qualifying period for grant of pension under the rules of the respective Central or State Government, on a service-sharing basis, so that the government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Government concerned for grant of pension by the Government from where they eventually retire. The paying Government would get reimbursement from the other Government. But it does not apply to two State Governments unless there is such reciprocal rule and subject to eligibility.

7. It is seen that in U.P. State prior to 1-7-1989, no government servant who rendered temporary service was eligible for pensionary benefits. Therefore, the Government decided as on the said date to grant pensionary benefits to such of the temporary employees who had put in qualifying service of minimum of 10 years for being eligible for pension. Under those circumstances, since the appellant has not rendered 10 years of qualifying service, he is not eligible for proportionate pension from the State of U.P. even if we assume, without deciding whether Central rule would apply to a government servant under two State Governments, one on temporary basis and the other as permanent employee.

8. The next question is whether the appellant is entitled to payment of interest on the delayed fixation of pension by the State of Bihar ? The State of Bihar in their counter-affidavit has mentioned that the pension was in correspondence between various departments etc. The payment of the pension of the appellant and the revised pension and arrears were detailed in para 10 of the

SLP filed by the appellant himself at pp. 16-17 as under :

"(x) That the pension of petitioner was fixed or revised and the arrears thereof paid as per details given below :

#-----S.No. Pension fixed or revised vide Amount
of Month and letter No. and date pension year of fixed payment of pension/arrears-----
-----1. P.P.No. 120257 dated 16-3-1985 Rs 466.00 May, 19852.
P.P.No. 1581 dated 30-11-1990 Rs 501.00 Dec., 19903. No. 1598 dated 15-12-1990 Rs 608.00 Dec.,
19904. No. 3963 dated 9-10-1991 Rs 674.00 Dec., 19915. No. 4231 dated 30-10-1991 Rs 691.00
Dec., 19916. No. 4974 dated 30-12-1991 Rs 742.00 Feb., 19927. No. 94 dated 19-4-1994 Rs 942.00
July, 1994."-----##

9. Admittedly, the appellant had represented to the Chief Justice of the High Court of Patna for interest on account of the delay in payment and the matter was referred to the Government for consideration and the Government after consideration has revised the pension and fixed the pension as enumerated above. But there was no explanation as to the grounds on which the delay had occasioned and why they had not paid the pension earlier to the appellant. Under these circumstances, we think that the appropriate course would be that the appellant should file a petition within one month from today and the Government of Bihar should decide as to why the pension could not be settled to the appellant. If they find that the pension was not determined to the appellant in accordance with the rules on account of any laches or grounds on the part of the appellant, the appellant obviously would not be entitled for payment of interest for the delayed payment of pension. On the other hand, if the Government was responsible for the delay, necessarily the appellant would be entitled to the payment of interest on the delayed payment. The Government is directed to consider and dispose of his petition within three months from the date of the petition.

10. The appeal is accordingly disposed of. No costs.