

State of J&K

Vs

Pirzada Ghulam Nabi

Civil Appeal No. 4923 of 1997

(Sujata V. Manohar, D. P. Wadhwa JJ)

17.07.1997

ORDER

1. Leave granted.

2. The respondent was retired on superannuation with effect from 31-5-1984. The order of his retirement was issued on 4-5-1984. He, however, immediately filed a writ petition before the High Court and obtained an interim order staying retirement on 21-5-1984. In the writ petition, an order was passed on 26-12-1984 directing the appellant to hold a departmental enquiry for the purpose of determining the respondent's date of birth. The High Court directed the respondent to serve till the finalisation of the enquiry. On 9-5-1986, the departmental enquiry gave its findings against the respondent holding that the correct date of birth had been entered in the service records.

3. The appellants have not paid any salary to the respondent from 26-12-1984 to 9-5-1986. The respondent filed another writ petition in which the impugned order has been passed by the High Court, directing payment of salary for the period 26-12-1984 to 9-5-1986. In the earlier petition, under the order dated 26-12-1984, the direction given to hold a fresh enquiry regarding the date of birth of the respondent was by consent of the parties. The prayer of the respondent for his salary for services rendered after the date of superannuation, however, was opposed by the appellant and the Court had left this point to be settled by the competent authority. A letters patent appeal filed by the appellant was dismissed.

4. When the correct date of birth has been found as 4-5-1929, and the respondent was rightly superannuated w.e.f. 31-5-1984, we fail to see how a direction can be given directing payment of any salary subsequent to the date of superannuation. The respondent has drawn our attention to the decision of this Court in *Collector of Madras v. K. Rajamanickam* ((1995) 2 SCC 98 : 1995 SCC (L&S) 414 : (1995) 29 ATC 198). In that case, the respondent had already been paid for the period of service rendered by him after the date of superannuation. The department sought recovery of the amount so paid. This Court did not permit recovery of the amount which had already been paid for the service rendered by the employee after the date of superannuation. It, however, directed that his retiral benefit should be computed on the basis of his correct date of superannuation. A similar order has been passed by this Court in *State of J&K v. R. C. Choudhary* (CAs Nos. 3331-32 of 1997 decided on 5-5-1997). In the present case, however, no amount has been paid by the appellant to the respondent for the service rendered by the respondent after the date of superannuation. The department was throughout contesting the claim of the respondent. It agreed to hold a fresh inquiry regarding his date of birth, but did not agree to payment of any salary after the respondent's superannuation as per their records. We fail to see how we can direct any payment for any service rendered during the period of this inquiry after the date of superannuation. When salary is already

paid under any misapprehension, the court may be reluctant to order recovery from a retired employee who may be put to hardship if he has to repay the amount. But these considerations do not operate in the present situation. Hence the appeal is allowed and the impugned order is set aside. The writ petition is dismissed.