
(2005) 01 JH CK 0011
Jharkhand High Court
Case No: None

Sukra Kujur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Jan. 4, 2005

Hon'ble Judges: S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal has been preferred by the appellant against the order dated 16th September, 2003 passed in W.P. (S) No. 4647 of 2003 whereby the learned single Judge, without asking the respondents to file affidavit, rejected his claim for salary for the period from 7th January, 1998 till the period he attained the age of superannuation. It was held that the question whether the appellant completed 60 years of age on 7th of January, 1998 or October. 1998 cannot be decided in a case under writ jurisdiction.

2. We allowed the respondent-State to file counter affidavit, stating as to how the appellant was made to retire with effect from 6th January, 1998, if his date of birth recorded in his service book is 10th October, 1938 and if he was entitled to continue till the age of 60 years i.e. the age fixed for superannuation.

3. A counter-affidavit has been filed on behalf of the 3rd respondent. At paragraph 15 of the said counter-affidavit, the respondents have accepted that the date of birth of the appellant as recorded in his service book is 30th October. 1938. It is also not in dispute that the age of superannuation being 60 years, he was to continue in service till 31st October, 1998, He is also accepted by the respondents that the appellant was wrongly made to retire from service with effect from 6th January, 1998 i.e. about ten months prior to his actual date of retirement, because of letter No. 1624 dated 23rd November, 1997, illegally issued by the Regional Deputy

Director of Education, Ranchi. In the present case, the only stand taken by the respondents is that the appellant having not protested at that time and that he having not worked after 6th January, 1998, is not entitled for salary for the period from 7th January, 1998 to 31st October, 1998.

4. The learned Counsel for the respondent State submitted that the appellant having not worked after 6th January, 1998 cannot claim salary for the period after 6th of January, 1998. It is stated that the pension of the appellant has now been fixed by the Accountant General in the revised pay scale, treating the date of retirement as 31st October, 1998 and, therefore, no monetary loss has been caused to the appellant, so far as fixation of pension is concerned.

5. Having heard learned Counsel for the appellant and in view of the fact that the respondents have accepted, their mistake, we declare the premature retirement of appellant with effect from 6th January, 1998 as illegal. In the effect, he will be treated to have retired with effect from 31st October, 1998. The appellant having been prevented from not performing his duty, he cannot be deprived of the benefit of salary. The respondents are bound to pay him the arrear of (full) salary for the period from 7th January, 1998 to 31st October, 1998 to which he was otherwise entitled. He will also be entitled for fixation of salary accordingly in the revised scale of pay, as allowed to other Government employees.

6. The respondents are accordingly directed to pay the appellant all the consequential benefits, i.e. arrear of salary and difference of pensionary benefits to which he is entitled as per the observations made above, within a period of three months from the date of receipt/production of a copy of this order, failing which they will be liable to pay interest at the rate of 5% on such dues from the date he should have retired from service till the amount is paid.

7. The order passed by learned single Judge is set aside. This appeal is allowed with the aforesaid observations and directions. Appeal allowed.