

(1999) 11 PAT CK 0115

Patna High Court

Case No: C.W.J.C. No. 1020 of 1997

Dr. Anant Mohan Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Nov. 19, 1999

Citation: (2000) 1 PLJR 765

Hon'ble Judges: Aftab Alam, J

Bench: Single Bench

Advocate: Dr. Sadanand Jha and Asim Jha, for the Appellant; Rameshwar Prasad and Ranjan Kumar for the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Aftab Alam, J.

The main relief sought by the petitioner in this case is as follows:

Issuance of a writ in the nature of mandamus or an appropriate writ, order or direction commanding the respondents to make payment of compound interest @ 15% per annum on the delayed payments (salary for the period of suspension and retiral dues) as detailed in paragraph no. 23 and Annexure 7 to this writ application.

The petitioner faced a long controversy in connection with his absorption as a teaching staff in the S.K. Medical College, Muzaffarpur following the take over of the college by the Government. For the realisation of his claim the petitioner came to this court on a number of occasions, some times with writ petitions and some times with M.J.C. petitions, making a prayer to initiate contempt proceedings against the respondent authorities for their failure to comply with the directions of this court. In course of this long controversy he was also put under suspension from which he was released just two days prior to his superannuation on 31.12.1987. Directions were finally given by this court on his claim for absorption as a teaching staff in the college as also for payment of his retiral dues in the judgment and order, dated 1.7.1991 passed in CWJC No. 7813 of 1990. As the final judgment came after his

superannuation from service, the only relief that could be given to the petitioner was regarding payment of differential salary in case he was found eligible for promotion to the higher post and payment of his retiral dues. Necessary directions in that regard were accordingly given in the judgment and order passed in CWJC No. 7813 of 1990. On the basis of the directions given by this court, the differential salary and retiral dues have been paid to the petitioner. According to the petitioner, however, payments were made after great delay. And he is, therefore, once again before this court, claiming compound interest @ 15% on the amounts paid to him under different heads.

2. Initially the case of the petitioner was not put up before the screening committee for his absorption as a teaching staff, as, according to the respondent authorities, he did not hold a teaching post in the college. He then came to this court and on a direction issued by the court, his teaching experience in that college was re-determined. The authorities held that the petitioner had a teaching experience of two years five months and thirteen days. The teaching experience allowed to the petitioner being less than the required three years, he was once again held not entitled to absorption on any teaching post in that college. The petitioner once again came to this court challenging the computation of his teaching experience. The challenge was upheld and the authorities were once again asked to re-determine the total period of his teaching experience. This time, on a reconsideration, the competent authority issued an order dated 28.11.1987 giving the petitioner a total period of nine years eleven months and seven days as teaching experience in the college. Shortly after the issuance of the order the petitioner superannuated from service on 31.12.1987. Taking advantage of this fact the concerned authority did not pass the consequential order on the issue of his absorption as a teaching staff in the college. The petitioner then once again came to this court in CWJC No. 7813 of 1990 which, as noted above, was disposed of by judgment and order dated 1.7.1991 (Annexure 6). In para 7 of that judgment the following direction was given to the concerned authority on the issue of the petitioner's absorption as a teaching staff in the college :

I, therefore, direct respondent no. 2, the Secretary, Department of Health, Medical Education, Government of Bihar, Patna to consider the claim of the petitioner for absorption on a teaching post in that college on the basis of his having 9 years 11 months and 7 days teaching experience in that college as acknowledged in the order, dated 28.11.1987 (Annexure 9). A final order in this regard must be passed within six weeks from the date of receipt of a copy of this order. In case, for any reason, the petitioner's claim is turned down the order must contain the reasons. In case, however, the petitioner's claim is allowed then the authorities must also consider the allied issue relating to the date with effect from which he was to be so absorbed and the fixing of his salary etc. Further, in case the petitioner is entitled on that basis to a higher salary, then the differences of his emoluments must be paid to him within 3 months from the date of that order.

3. Then coming to the question of payment of his retiral dues, the following directions were given in paras 11 and 12 of the judgment :

11. In view of the directions of the Division Bench I direct that the petitioner must be paid 75 per cent of his admitted retirement benefits within a period of two months from the date of receipt of this order. The rest shall have to await the decision on the first controversy, i.e., regarding his claim for absorption on a teaching post in the medical college. Accordingly, the remainder of the pensionary benefits must be paid to the petitioner within three months from the final decision taken on the above question.

12. In the meanwhile, if the authorities are so advised they may conclude the departmental proceeding said to have been pending against the petitioner which may have a bearing on the question of his pensionary benefits.

4. It appears that the directions given in the aforesaid judgment were not complied with by the concerned authorities within the specified time and the petitioner was, therefore, made to come to this court yet again in M.J.C. No. 73 of 1992. However, during the pendency of the contempt petition, the directions of this court given in C.W.J.C. No. 7813 of 1990 were fully implemented by the respondent authorities. By notification, dated 19.2.1994 issued by the State Government the petitioner was given promotion with effect from 1.9.1981 in the super time scale of pay against 2-1/2% posts available in that scale. By another order issued by the State Government on 23.2.1994 the period of suspension of the petitioner from 17.10.1984 to 28.12.1987 was also directed to be treated as being on duty. On all the due payments having been made to the petitioner, the M.J.C. case was finally closed by order, dated 26.6.1995. The petitioner then filed the present writ petition on 30.1.1997 claiming interest on the payments made to him on the ground that those payments were made after inordinate delay.

5. The dates on which payments were made to the petitioner under different heads, the delay in making those payments and the amounts of interest claimed on those payments on the ground of delay are given in a tabular form in the representation at Annexure 7 and it will be convenient to re-produce the table here-in-below :

Sr. No.	Nature of Dues	Date of Retirement	Date of payment or Authorisation of payment	Period of delay	Amount paid Rs.	Interest claimed by petitioner Rs.
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1.	Provisional part pension	31.12.87	16.2.92	31/2 Yrs.	90,905.00	1,52,220.00
2.	Gratuity	31.12.87	28.3.92	31/2 Yrs.	34,253.00	57,357.00
3.	Remaining prior pension	31.12.87	1.8.95	7 Yrs.	41,498.00	1,16.340.00
4.	Remaining Gratuity	31.12.87	1.8.95	7 Yrs.	11,147.00	31,251.00
5.	Leave encashment	31.12.87	18.8.93	5 Yrs.	22,840.00	47.701.00
6.	Leave encashment (on decision of suspension revocation with full salary and promotion to higher grade)		1.8.95	7 Yrs.	4,328.75	12,134.00
7.	Remaining amount of pension (on recalculation after due promotion)		1.8.95	7 Yrs.	33,234.00	93,172.00
8.	Due salary for the suspension period		20.11.95	7 1/3 Yrs.	78.511.00	2,28.349.00
Total					3,16,716.75	7,38,524.00

6. From the aforesaid table it is evident that the petitioner has calculated compound interest @ 15% per annum, from the dates of his retirement when the claims accrued to him.

7. It is important to note here that in the judgment in C.W.J.C. No. 7813 of 1990 given by this court on 1.7.1991, that is to say, 4-1/2 years after his retirement there was no direction for payment of any interests till that date. Thereafter the claim for interest for the period between the date of his retirement (31.12.1987) and the date of the judgment (1.7.1991) must be held to be concluded by the judgment of this court in the aforesaid case. If the petitioner was aggrieved by the omission of this court to allow him any interest on the payments due to him, it was open to him to agitate the matter at that stage by taking an appeal from that judgment. Not having done so at that stage, the petitioner, in my view, cannot be allowed to reopen the matter and claim interest for the period prior to 1.7.1991, the date of the judgment. However, that judgment directed the authorities to make payments to the petitioner under different heads within specified periods of time. On the issue of his absorption on a teaching post it was directed that in case the claim of the petitioner was upheld by the authorities, the differential salary must be paid to him within three months from the date of the order. Similarly in the case of retiral dues it was directed that 75% of his admitted retiral dues must be paid within two months from the date of the receipt of the order and the balance within three months from the final decision taken on the disciplinary proceeding then pending against him. It is an admitted position that the payments were not made to the petitioner within the periods specified in that order. The petitioner must, therefore, be held to be entitled to interest for the period of delay in terms of the judgment of this Court in CWJC No. 7813 of 1990. The interest would be payable @ 12% per annum non-compoundable.

8. It will be open to the petitioner to make a fresh claim for interest in accordance with this order and in case such a claim is made, the respondent authorities will be bound to pay the amount of interests to the petitioner in the light of this order within two months from the receipt of the claim. In the result, this writ petition is partially allowed to the extent indicated above.