

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9750 OF 2010

State of Bihar & Ors.

..... Appellants

Versus

Meera Tiwary & Anr.

..... Respondents

J U D G M E N T

Indira Banerjee, J.

This appeal, filed by the State of Bihar & Others, is against the judgment and order dated 30.5.2007 passed by the High Court of Judicature at Patna, disposing of the Contempt Application being MJC No. 2194 of 2005, filed by the respondent no.1 with a direction to the competent authority to finalise the family pension due and payable to the respondent no.1, taking into account the notional salary, which was payable to her husband on the date of his retirement, that is, 30.6.1995, as early as possible and in any case within three weeks from the date of receipt of a copy of the said order.

2. Shri Amardeo Tiwari, since deceased, husband of the respondent no.1, was appointed Junior Engineer in the Public Works Department on or about 1.8.1958. He was promoted to the post of Temporary Assistant Engineer on ad hoc basis, vide departmental

notification no. 5973 dated 2.9.1981, which provided that the promotion would be effective from the date on which he would take charge in the promoted post.

3. By notification no. 9744 dated 20.12.1994, Sh. Amardeo Tiwari, since deceased, was given regular promotion to the post of Assistant Engineer w.e.f. 28.11.1979, with the approval of the Bihar Public Service Commission.

4. Sh. Amardeo Tiwari, since deceased, retired from service on or about 30.6.1995, on attaining the age of retirement. Sh. Amardeo Tiwari died on 30.5.2004. It appears that till his death, his retiral benefits had not been determined or released.

5. On or about 20.09.2004, the respondent no.1, filed a writ petition being CWJC No. 11497 of 2004 in the High Court praying for a direction on the concerned authorities to fix and pay the post-retiral benefits of her late husband. Apart from the writ petition being CWJC No. 11497 of 2004, many other similar writ petitions were filed praying for similar reliefs.

6. By a common judgment and order dated 21.9.2004, the High Court disposed of the writ petition being CJWC No. 11497 of 2004 filed by the respondent no.1, along with 20 other similar cases. The order dated 21.9.2004 is set out herein below for convenience: -

“In all these writ petitions, the grievance of the Petitioners relates to retrial *sic* retiral due/death-cum-retiral dues, which have not been redressed even after filing of the writ petition.

However, having regard to the order dated 19.09.2003 disposing of several writ petitions, bearing C.W.J.C No. 7054 of 2003 and analogous cases by common order, this Court considers it expedient to dispose of these writ petitions also in terms of the directions given in the said order, with only modification that two paragraphs affidavit personally sworn by the concerned authority must be filed by 9th November, 2004. Parties will be bound by the said direction and they should proceed in the matter accordingly.”

7. Pursuant to the order dated 21.9.2004 in the writ petition CWJC No. 11497 of 2004 filed by the respondent no.1, whereby the concerned authorities were directed to fully redress the grievances of the petitioner, provisional pension and provisional gratuity were sanctioned to the respondent no.1 vide memo nos. 1167 and 1168 dated 6.11.2004 issued by the Executive Engineer, National Highway Division, Chapra, Bihar. The memos reveal that provisional pension and gratuity were sanctioned on the basis that Sh. Amardeo Tiwari continued to be a Junior Engineer.

8. By a letter no. Pra-3/M-01/03-253E dated 10.2.2005, the Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Patna, Bihar sanctioned cash payment of unutilised earned leave of late Sh. Amardeo Tiwari. The said memo also showed the designation of Sh. Amardeo Tiwari as retired Junior Engineer.

9. On or about 29.8.2005, the respondent no.1 filed an application for contempt being MJC No. 2194 of 2005 for non-compliance by the alleged contemnors of the order dated 21.9.2004 in CWJC No. 11497 of 2004. After the aforesaid application for contempt was filed, the Commissioner and Secretary, Road Works Department, Patna, Bihar passed an order

being Memo no. ..3/M-01/03-1908 (3) Patna dated 24.2.2006. The relevant parts of the said memo are extracted hereinbelow: -

“Late Shri Amardev Tiwari was in government service at the post of junior engineer since 01.08.1958. As per service rules, his service in the form of junior engineer is verified till 29.02.1980. He was promoted to the post of Assistant Engineer in the year 1980. It has been informed by Executive Engineer, National High Road Sub-division Chapra that late Shri Tivari did not contribute at the post of Assistant Engineer despite the order/direction in this regard and remained absent in office, from 16.04.1980 to the date of his retirement i.e. 30.06.1995, without prior permission from the office. After the retirement, he died on 30.05.2004.

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Since late Tivari, after his promotion to the post of Assistant Engineer, has remained absent continuously from the office, without permission, for the period from 16.04.1980 to the date of his retirement i.e. 30.06.95, therefore, service period of late Tivari was under the salary of Junior Engineer. Hence, his pension shall be fixed on the basis of the same. The question of pay fixation for him in terms of salary for Assistant Engineer does not arise since he has not contributed at the post of Assistant Engineer.”

10. On or about 15.01.2007, the respondent no. 1 filed the contempt petition being MJC No. 93/2007 complaining that the appellants had wilfully disobeyed the directions contained in the judgment and order dated 21.9.2004 of the High Court. In the proceedings initiated by the respondent no.1, the alleged contemnners contended that the directions issued by the High Court on 21.9.2004 had duly been complied with. The High Court, however, passed the judgment and order impugned in this appeal, directing the authorities concerned to finalise the family pension of the respondent no.1 taking into account the notional salary which was payable to her husband on the date of his retirement i.e. 30.6.1995.

11. The appellants contend that by directing the alleged contemnors to finalise the family pension payable to the respondent no.1, on the basis of the notional salary payable to the deceased husband of the respondent no.1 on the date of his retirement, the High Court modified the original judgment and order in the writ petition, for violation of which contempt proceedings were initiated. The appellants also contended that, in terms of the provision of Rule 58(a) of the Bihar Service Code, subject to any exception specifically made in those rules and subject to the provisions of clause (b) of Rule 58(a), a government servant is entitled to draw pay and allowances attached to his post w.e.f. the date on which he assumes duty in that post and ceases to draw such pay and allowances as soon as he ceases to discharge those duties.

12. Mr. Vikramjeet Banerjee, ASG submitted that the High Court had clearly erred in law by expanding the scope of the original order in contempt proceedings and also by overlooking Rule 58 as also Rule 76 of the Bihar Service Code. Rule 58 provides that a government servant, after five years of continuous absence from duty, would cease to be in government employment.

13. Significantly, no show cause notice was ever issued to Sh. Amardeo Tiwari, since deceased, during his lifetime alleging that he had not joined the duties pertaining to the post of Assistant Engineer or had remained absent for a continuous period of five years. Continuous absence of five

years would most certainly have attracted disciplinary proceedings. There were no disciplinary proceedings.

14. We are unable to accept the argument of the learned ASG that the High Court modified or expanded the scope of the original order in the writ proceedings in contempt. The concerned authorities were directed to fully redress the grievances of the petitioner, and/or in other words, to release the retiral dues of late Sh. Amardeo Tiwari in full. The dues necessarily had to be computed having regard to the salary and allowances pertaining to the post which Sh. Amardeo Tiwari, since deceased, had held at the time of his retirement.

15. After the disposal of the writ petition, in the absence of any disciplinary proceedings or show cause notice or other material, it is not open to the authorities concerned to deny the respondent no.1 the benefits pertaining to the post to which her husband had been promoted, on the purported ground that he had failed to join the post and had allegedly remained absent from duties for a period of 13 years and 10 months. We cannot, but take notice of the fact that there were two orders of promotion, the first ad hoc, and the second, a regular promotion order, as per the list of dates filed by the appellants along with the appeal. The ad hoc promotion has inadvertently and/or erroneously been referred to as substantive promotion in the list of dates.

16. It is preposterous that a second order would have been issued confirming the promotion to the post of Assistant Engineer, if late Amardeo

Tiwari had not joined the post pursuant to the earlier order and had remained absent. Significantly, there is not a whisper of the exact date from which late Amardeo Tiwari allegedly stopped attending to his duties and remained absent. It seems quite absurd that a person promoted on ad hoc basis, who had not been attending to his duties should be promoted on regular basis. It is equally difficult to accept that a person who had been attending to his duties would suddenly stop attending to his duties upon his promotion to a higher post.

17. In proceedings for contempt, the High Court is entitled to pass orders for effective enforcement of an order of which violation is alleged. By the order dated 21.9.2004, the High Court directed the authorities to finalise the retiral dues on account of Shri Amardeo Tiwari, since deceased. The High Court directed release of the retiral dues of Shri Amardeo Tiwari, since deceased, in entirety and not in part.

18. As observed above, the authorities concerned did not finalise the dues, but only sanctioned and/or released provisional gratuity and provisional pension and that too on the basis that Shri Amardeo Tiwari, since deceased, had continued to be a Junior Engineer as on the date of his retirement.

19. It was not open to the appellants to circumvent the order passed by the High Court and release provisional pension and gratuity and that too calculated in relation to the salary and emoluments of a lower post.

20. The High Court, in effect and substance, found that the dues on account of Shri Amardeo Tiwari, since deceased, should be computed on the basis of the salary pertaining to the post of Assistant Engineer to which Shri Amardeo Tiwari, since deceased, had admittedly been promoted. Unable to accept the belated plea of the contemner-respondents that Shri Amardeo Tiwari, since deceased, had remained absent, the High Court directed that the family pension be computed taking into account the notional salary payable to an Assistant Engineer on the date of retirement, which was 30.6.1995.

21. Words and/or phrases in a judgment cannot be read as “Euclid’s Theorems” and in any case not out of context to hold that the High Court modified its earlier order by directing the alleged contemner to take into account the notional salary payable to the respondent no.1’s husband on the date of his retirement. The High Court merely directed the alleged contemner to finalise the dues payable to the respondent no.1 having regard to the salary that should have been payable to her husband on the date of his retirement as Assistant Engineer, the post to which he was admittedly promoted.

22. In our view, the High Court did not modify any earlier order. Nor did the High Court expand the scope of any earlier order. The High Court only effectively enforced its earlier order, which it was entitled in law to do.

23. In view of the above, we find no ground at all to interfere with the judgment and order of the High Court under appeal. Accordingly, the appeal is dismissed with no order as to costs.

....., J.
[Indira Banerjee]

....., J.
[Ajay Rastogi]

NEW DELHI
JUNE 11, 2019