

A STATE OF BIHAR AND ORS. ETC. ETC.
v.
B.S. MATHUR AND ORS. ETC. ETC.

AUGUST 24, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Rajendra Agricultural University Act, 1971 : Sections 39(19)—Scope of.

Bihar Pension Rules, 1950 : Rule 161(b)—Scope of.

C *Service Law.*

Pension—State Government Employees—Deputation to University—Absorption—Resignation from Government service—State liability to pay proportionate pension under section 39(19)—Held, confined to last drawn pay and sum total as envisaged in proviso to sub-rule (b) of Rule 161.

D Respondents, while working as Government servant in the appellant-State, went on deputation to the Rajendra Agricultural University. After their absorption in the University they resigned from Government service. On their retirement from the University, the Government disowned the liability to pay pension on the ground that (i) under section 39(20) of the Rajendra Agricultural University Act, 1971 the State was not liable to pay any pension since the respondents had resigned and were re-employed in the University; (ii) in view of Rule 161(b) of the Bihar Pension Rules, 1950 the respondents were not entitled to any pension in excess of the pension calculable on the last substantive pay drawn by them. The High Court, relying on section 39(19) of the 1971 Act held that Government was liable to pay proportionate pension to the respondents. The State preferred appeals before this Court.

Allowing the appeals, this Court

G HELD : 1. Section 39(19) of the Rajendra Agricultural University Act, 1971 clearly indicates that if a Government servant, while on deputation to the University, had chosen to resign from Government service and was absorbed in the University service the State shall bear proportionate pension/compensation payable to such a former Government servant. At what rate, the University and the Government would proportionately bear

the compensation/proportionate pension has not been dealt with under the Act. Therefore, necessarily the Government has to fall back upon Rule 161(b) of the Bihar Pension Rules, 1950. [51-C-D] A

2. A reading of Rule 161(b) clearly indicates that by a fiction it would apply to the University employees of the erstwhile Government servant deeming them to be re-employed in the University. The Proviso makes it clear that the sum total of pay plus pension would not exceed the substantive pay last drawn by him before discharge. In other words, if a Government servant opts for absorption in University service after resignation from Government service he is entitled to the sum total of pay plus pension which would not exceed the substantive pay last drawn by him before he had tendered his resignation and was discharged by the Government. The proportionate pension of such Government employee should be calculated with reference to the last drawn pay of the Government employee at the time of acceptance of his resignation by the Government. The rest of the benefits, which such an employee would get with reference to the last drawn pay on his retirement from the University service on attaining superannuation would not be borne by the Government. [52-A-D] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7874 of 1995 Etc.

From the Judgment and Order dated 18.12.91 of the Patna High Court in C.W.J.C. 911 of 1991 (R). E

B.B. Singh for the Appellants.

D.P. Mukherjee, Sanjoy Kr. Ghosh and B.K. Gupta for the Respondents. F

The following Order of the Court was delivered :

Leave granted.

We have heard the counsel for the parties. These appeals by special leave arise from the order dated December 18, 1991 of the Division Bench of Patna High Court at Ranchi in C.W.J.C. No. 911/91. G

The facts are not in dispute. Respondent No. 1 was appointed as a Government servant on April 13, 1955 and at the relevant time when he H

- A went on deputation he was Senior Research Assistant working in the Agriculture Department. He was transferred i.e. sent on deputation to the Rajendra Agricultural University. He tendered his resignation in 1977 and was absorbed as an employee of the University. Similarly, respondents 2-9, while working as Government servants, went on deputation to the Rajendra University and they resigned in 1981 and were absorbed as University employees. On their retirement, a question arose whether the Government is liable to pay pension and if so, to what extent. Since the Government was disowning the liability to pay pension, they approached the High Court under Article 226 of the Constitution. The stand taken by the Government was that under s.39(20) of the Rajendra Agricultural University Act, 1971 (for short, 'the Act'), they must be deemed to be re-employed and, therefore, the State was not liable to pay any pension since they resigned and were re-employed in the University. The Government also relied upon letter bearing No. 1/A. P.G.O. 30/85 Agri. Patna dated 11.5.1990 and contended that rule 161(b) of Bihar Pension Rules, 1950 (for short, 'the Rules') would stand attracted to the respondents and, therefore, the respondents are not entitled to any pension in excess of the pension calculable on the last substantive pay drawn by them.

- The High Court, relying upon s.39(19) of the Act, which is *pari materia* with the provisions of the Bihar Agricultural University Act, held that the Government's liability to pay pension still subsists. Therefore, the Government is liable to pay the compensation/proportionate pension to the respondents. Accordingly allowed the writ petition.

- Mr. B.B. Singh, learned counsel for the State, contended that since the respondents had resigned and were re-employed by the University, by operation of the instructions issued in letter dated 11.5.1990, they must be deemed to have been re-employed. Therefore, they are not entitled to pension higher than what they would have got, had they remained as Government servants by operation of Rule 161(b) of the Rules. Though he contended that the Government does not bear the proportionate pension, we do not think that the stand taken by the Government is at all tenable.

Section 39(19) of the Act reads thus :

- "Such Government servants who choose to resign government service and enter the service of the University shall be considered for compensation, proportionate pension, provided that no such

compensation, proportionate pension shall be allowed to any employee, who resigns in spite of being required by Government to serve on some other post, under the Government carrying emoluments not less than his pay at the time of such resignation." A

The first part of section clearly indicates that such Government servants while on deputation with the University service who choose to resign from Government service and enter the service of the University, shall be considered for compensation/proportionate pension. The other part is not material for the purpose of this case. Hence, it is not necessary to consider the same. Therefore, it is clear that if a Government servant, while on deputation in the University, had chosen to resign from Government service and was absorbed in the University service, by operation of s.39(19) the State bears proportionate pension/compensation payable to such a former Government servant. B C

At what rate, the University and the Government would proportionately bear the compensation/proportionate pension has not been dealt with under the Act. Therefore, necessarily the Government has to fall back upon the Rule 161(b), which envisages thus : D

"161. (b) A Government servant on re-employment should draw the initial pay of the post unless Government sanction advance increments under Rule 83 of the Bihar Service Code, provided always that the sum total of pay plus pension does not exceed the substantive pay last drawn by him before discharge. Where the sum total exceeds the last substantive pay only so much of the pension may be allowed to be drawn as not to make the total of pension plus the initial pay of the post exceed the substantive pay last drawn. E F

Note 1 - In cases of re-employment of pensioners part of whose pension is recoverable from other Government - provincial or central - If the sum total of pay plus pension exceeds the substantive pay drawn at the time of discharge, the pay on re-employment should not be fixed by keeping the pension in abeyance either in full or in part i.e., the reduction in such cases should be made in the pay itself instead of keeping the pension in abeyance. G

Note 2 - These restrictions do not apply to ex- policemen whose H

A pension does not exceed Rs. 10 a month."

B A reading of the Rule clearly indicates that by a fiction it would apply to the University employees of the erstwhile Government servant deeming them to be re-employed in the University. Such Government servant should draw his initial pay of the post unless the Government sanctions advance increments under rule 83 of the Bihar Service Code. The proviso makes it clear that the sum total of pay plus pension would not exceed the substantive pay last drawn by him before discharge. In other words, if a Government servant opts for absorption in University service after resignation from Government service, he is entitled to the sum total of pay plus pension which would not exceed the substantive pay last drawn by him before he had tendered his resignation and was discharged by the Government. In other words, the proportionate pension of such Government employee should be calculated with reference to the last drawn pay of the Government employee at the time of acceptance of his resignation by the Government. The rest of the benefits, which such an employee would get with reference to the last drawn pay on his retirement from the University service on attaining superannuation, would not be borne by the Government. The proportionate liability which the Government is required to bear, by operation of section 39(19) would be with reference to the last drawn pay and the sum total as envisaged in proviso to sub-rule (b) of Rule E 161.

The appeals are accordingly allowed. The matter is clarified and the Government and the University shall accordingly calculate the pension and make payment within three months from the date of the receipt of the order. No costs.

T.N.A.

Appeals allowed.