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(1999) 07 PAT CK 0080

In the Patna High Court

Case No : C.W.J.C. No''s. 6453 and 7560 of 1998

Andrika Prasad Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:
Bihar Pension Rules, 1950 — Rule 139, 43
Central Civil Services (Pension) Rules, 1972 — Rule 9(2)

Citation : (1999) 3 PLJR 500

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Anjana Mishra, for the Appellant; V. Jain, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—As in both the writ petitions the question involved is common, with consent of the parties, they have been heard together and are being disposed of by this common order.

2. The grievance of the Petitioner is that he has been kept denied of the pensionary benefits except 90% of his pension which was provisionally granted despite his retirement on 30th November, 1997 while posted as Junior Selection Grade Assistant in Patna Collectorate, The other grievance of the Petitioner is that the so-called departmental proceeding initiated against him while he was in service be not permitted to continue any further.

3. In short, the relevant facts are that on 16.8.1993 a show cause was asked for from the Petitioner with respect to the charges relating to the year 1990 while he was posted as Nazir at Masaurhi Anchal as certain discrepancies were found in the Bank account of the Anchal. The Petitioner filed his show cause in which he asserted that the said discrepancies were during the period of his predecessor in office and that he had no connection with the same. Thereafter his predecessor was also served with a show cause notice and finally after holding preliminary

enquiry charges were framed against both in the year 1995. The departmental enquiry was held and a report was submitted in the year 1996 i.e., much before the superannuation of the Petitioner, yet no final order was passed. It is submitted that the final order could not be passed as the enquiry officer has found that in the absence of audit report it was difficult to hold any person responsible for the discrepancies. However, admittedly, no final Order was passed till the Petitioner was allowed to superannuate on 31.11.1997.

4. Mrs. Mishra, learned Counsel appearing for the Petitioner submitted that in the absence of any specific order continuing the said proceeding after the retirement of the Petitioner in terms of Rule 43(b) of the Bihar Pension Rules, the Respondents authorities were not legally justified in withholding the pensionary benefits. In this regard she relied upon the decision of the Court in the case of Ram Ekbal Sharma v. State of Bihar, reported in 1997 (1) All P.L.R. 61.

5. On the other hand, Mr. Jain, learned Government Pleader No. VI submitted that the principle decided in the said decision will not apply to the facts of the present case as in the case of Ram Ekbal Sharma (supra) this Court was dealing with the question as to whether an order passed in terms of Rule 43(b) after the superannuation of a Government servant was sustainable. It was further submitted by him that the scope of Rule 43(b) gone into in the said case is in the nature of obiter and was gone into in the context of that case. According to him, Rule 43(b) of the Bihar Pension Rules deals with the recovery part and Rule 139 of the Bihar Pension Rules which was also considered in the said case, deals with the power of the State Government to decide about deduction of pension on account of non-satisfactory service of a Government servant. According to him the present case is covered by Rule 43(b) which does not require passing of specific order for continuing a proceeding which had been started While a Government servant was in service.

6. I am unable to accept the said submission of the learned Counsel for the State. The scope of Rules 43(b) and 139 was elaborately dealt with in the case of Ram Ekbal Sharma (supra) with reference to various decisions of the Supreme Court and this Court and it was held that the enquiry or proceeding initiated can continue even after the retirement of a Government servant in accordance with the procedure laid down in Rule 43(b), but there must be specific order passed continuing such proceeding just before retirement. This Court relying upon the decisions of the Supreme Court in the case of D.V. Kapoor Vs. Union of India and others, , and in the case of High Court of Punjab and Haryana v. Amrik Singh, reported in 1995 Supp. (1) SCC 221, in which cases the Supreme Court while dealing with the scope of Rule 9(2) of the Central Civil Services (Pension) Rules, 1972 held that the departmental proceeding shall, to deemed to be proceedings under the said Rules and shall to continued and concluded by the authority by which the proceedings had been commenced in the same manner as if the Government servant had been continued in service.

7. The said principle was applied by this Court in the case of Ram Ekbal Sharma

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(supra) as the proceeding which had been commenced was continued by issuance of specific order in terms of Rule 43(b) of the Bihar Pension Rules. This Court held that the authority after completion of the proceedings under Rule 43(b) can pass appropriate order either under Rule 43(b) or under Rule 139(b) with respect to making such reduction in the amount of pension as it thinks proper while finalishing the pension of the Government servant.

8. Thus, this Court finds it difficult to hold that the said law decided by this Court was in the nature of obiter. It is true that Rule 43(b) deals with the recovery part, but there is no provision contained therein from which it can be even inferred that in the absence of similar rule like the one contained in Rule 9(2) of Central Civil Services (Pension) Rules, the proceeding initiated before retirement of a Government servant can be deemed to be continuing and order can be passed in the said proceeding imposing punishment against the employee concerned even after his retirement.

9. It is by now well settled that after a person is allowed to superannuate, the relationship of master and servant ceased and no order to the detriment of the employee concerned can be passed unless the rule specifically provides for it or vests power in the authority. (See Kirti Bhushan Singh Vs. State of Bihar and Others,)

10. Rule 43(b) certainly vests power in the State Government for withholding or withdrawing a pension or any part of it and also for ordering for recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement, and under its proviso, for passing such an order, the Government has been vested with the power to initiate departmental proceeding if not instituted prior to the retirement of a Government servant or during his re-employment. Certain conditions have been further enumerated under which a proceeding can be instituted in terms of Rule 43(b). One of the conditions is that such proceedings cannot be instituted in respect of an event which took place not more than four years before the Institution of such proceedings. Rule 43(b) does not provide for any similar provisions as provided for in Rule 9(2) of the C.C.S. (Pension) Rules, 1972 that the departmental proceeding initiated while in service against a Government servant shall be deemed to be continuing even after his retirement and it shall be concluded by the authority in same manner as if the Government servant had been continued in service.

11. Plain reading of Rule 43(b) shows that it has to be exercised by the State Government strictly in terms thereof by passing specific order either immediately before retirement of a Government servant in a case where the enquiry is already instituted allowing the said proceeding to continue or by passing final order instituting a proceeding in terms of Sub-rule (a) of Rule 43(b). There

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cannot be any question of automatic continuance of the proceeding in the absence of specific provision like the one contained in Rule 9(2) of C.C.S. (Pension) Rules, 1972 dealing with State Government employees after the relationship of master and servant ceases after the retirement.

12. Moreover, in the present case, the charges admittedly relates to the year 1990 and the Petitioner superannuated on 31.11.1997. Till date admittedly no order in terms of Rule 43(b) instituting departmental proceeding against the Petitioner has been passed. Under such circumstances, in my opinion, the pensionary benefits of the Petitioner cannot be withheld for the charges of the year 1990 which is much beyond four years by now.

13. Accordingly, these writ petitions are allowed. The Respondent District Magistrate, Patna is directed to release full pensionary benefits, including the provident fund of the Petitioner by issuing the necessary sanction order within two weeks of the receipt/production of a copy of this order.

14. It is needless to say that the Petitioner will also be entitled for statutory interest besides interest as provided for in the Government circular on delayed payment of such dues for which also the Respondents shall issue necessary sanction order within the aforesaid time.

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