

(2003) 04 PAT CK 0148
In the Patna High Court
Case No : C.W.J.C. No. 12512 of 1999

Awadh Behari Chaudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Bihar Pension Rules, 1950 — Rule 139, 139B, 43B

Citation : (2003) 3 PLJR 458

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : R.K. Sinha, for the Appellant; M.K. Jha, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition is directed against order No. 1492, dated 9.9.1999 (Annexure-1), issued by the Respondent authorities, whereby the Petitioner's pension has been reduced to 90 per cent on a provisional basis.

2. According to the writ petition, the Petitioner had joined the services of the Bihar State Electricity Board (hereinafter referred to be as the "Board") on 9.9.1963 as Engineer Assistant. While on service, he was subjected to a departmental proceeding by resolution No. 2813, dated 27.11.1997 (Annexure-3), whereby it was alleged against him that he had failed to verify the load factor of the consumer while he was posted as Electrical Executive Engineer, Electric Supply Division, Samastipur. After conclusion of the departmental proceeding, the Petitioner was visited with the punishment of censure, tide order dated 4.8.1999 (Annexure-5). Not having been challenged, this order has become final.

3. It further appears from the pleadings on record that the Petitioner superannuated from the services of the Electricity Board with effect from 31.1.1998, while posted as Electrical Executive Engineer. He was not being paid his post-retirement benefits presumably on the ground that the departmental

proceeding was still pending against him. The Petitioner had preferred C.W.J.C. No. 4040 of 1998 (Awadh Bihari Choudhary v. State of Bihar and Ors.), which was disposed of by this Court vide order dated 21.6.1999 (Annexure-4) whereby the Respondent authorities were directed to conclude the proceeding within a period of six weeks, failing which the same will automatically be deemed to have been quashed and will be followed by payment of the lawful and admissible claims of the Petitioner consequent upon his retirement from the services of the Board. It further appears from the pleadings on record that the entire post retrieval benefits of the Petitioner were sanctioned and were being paid to him, whereafter he has been visited with the impugned order whereby his pension has been provisionally reduced to 90 percent.

4. The Respondent authorities have placed on record their counter-affidavit, wherein it is stated that the impugned order is provisional in nature, and is in view of the decision that the Petitioner is a named accused in vigilance P.S. case No. 6 of 1997.

5. While assailing the validity of the impugned order, learned Counsel for the Petitioner submits that the same is bad in law. He relies on the judgments of this Court reported in Bali Ram Thakur Vs. Bihar State Electricity Board and Another, and Bajrang Deo Narain Sinha Vs. The State of Bihar and Others,

6. Learned Counsel for the Respondents had supported the impugned order and submits that the same is provisional in nature and shall abide the conclusion of the vigilance case. He relies on the Division Bench judgment of this Court reported in The State of Bihar and Others Vs. Ganga Bishun Mahto and Others .

7. I have perused the pleadings on record and considered the submissions of learned Counsel for the parties. I observe that the counter-affidavit was sworn in on 3.3.2003 and no statement has been made about the present position of vigilance P.S. Case No. 6/1997, wherein the Petitioner is a named accused as per the statement made in the counter affidavit. No attempt has been made to explain as to how the six years that have elapsed since institution of the case been utilized, and the progress made in the investigation of the case. The Board has not thought it fit to inform this Court of the present stage of the Vigilance Case and has instead on fronted this Court with the conclusion of payment of provisional pension. The Board has also not informed this Court of the Petitioner's involvement in the criminal case. Learned Counsel for the Petitioner has rightly relied on the judgments of this Court in Baliram Thakur v. Bihar State Electricity Board (supra) and Bajrangdeo Narain Sinha v. State of Bihar and Ors. (supra). The latter is a Division Bench judgment of this Court. It has been held in both the judgments that the State can not withhold pension or any part thereof till such time an order is passed under Rule 43(b) of the Bihar Pension Rules and only in cases of proved misconduct that a part or whole of pension can be withheld. Even if it is taken to mean that such an order withholding part or full of the pension does not take within its sweep a provisionally withheld pension, yet the same cannot be withheld on a provisional basis for an unduly long time. In

the present case, as stated hereinabove, not the slightest of indication is to be found in the counter affidavit as to how six to seven years have been utilized, the present stage of the vigilance case, and the extent of the Petitioner's involvement. The Respondent should have filed a more responsible counter affidavit placing all the relevant materials before this Court to come to its conclusions, rather than confronting it with its conclusion.

8. The Division Bench judgment of this Court in the State of Bihar v. Ganga Buishun Mahto (supra) is not applicable to the facts and circumstances of the present case, wherein it has, inter alia, been held that the right to pension flows to an employee not because an order of payment is passed, but by virtue of the rules governing grant of pension. The pension can be withheld or reduced in terms of Rule 43(B) and/or Rule 139(B) of the Bihar Pension rules, if the service of a government servant is not found thoroughly satisfactory or there is proof of grave misconduct during his service tenure, proof of misconduct has to be determined by taking recourse to the provisions contained in Rule 43(B). There can not be any dispute with this proposition, but the same is inapplicable to the facts and circumstances of the present case because no action has been taken in terms of Rule 43(b) or Rule 139 of the Bihar Pension Rules. The question raised here is covered by the judgments relied upon by learned Counsel for the Petitioner.

9. In the result, this writ petition is allowed. The impugned order dated 9.9.1999 (Annexure-1) is hereby quashed. It will be open to the Respondent authorities to take steps for reduction in whole or part of the pension of the Petitioner on conclusion of the Vigilance P.S. Case No. 6 of 1997.