(2001) 06 PAT CK 0021

In the Patna High Court

Case No : C.W.J.C. No. 4159 of 2001

Baikunth Tiwari APPELLANT

Vs

Bihar State Road Transport Corportion and Others RESPONDENT

Date of Decision : 26-06-2001

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)
Road Transport Corporations Act, 1950 — Section 45(2)(c), 45(2)(e)

Citation : (2001) 2 BLJR 1539

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. This writ application was originally filed to challenge a departmental proceeding pending against the petitioner even after his retirement from service under the Bihar State Road Transport Corporation on 31-1-2001. While the writ application was pending before this Court final orders of punishment have been passed in the pending proceeding and those orders have been annexed as Annexure-5 to an amendment petition wherein petitioner has prayed for quashing of the order of punishment on the ground that after petitioner''s retirement the Corporation had no jurisdiction to continue with the departmental proceeding and hence, the final order of punishment is also without jurisdiction.

3. It is well-settled in law that after superannuation the relationship of employer and employee comes to an end. Any departmental proceeding thereafter can be continued against an ex-employee only if provisions to that effect are contained in the service rules. On behalf of the respondent-Corporation a stand has been taken that in the case of the employees of the State of Bihar, departmental proceeding is permissible even after superannustion under Rule 43(b) of the Bihar Pension Rules and similar power must be deemed to have vested in the Corporation with regard to its employees in view of resolution contained in

proceeding of the Corporation dated 2nd May, 1959, a copy whereof has been annexed as Annexure-B to the counter-affidavit. A perusal of the resolutions contained in Annexure-B shows that the members of the Corporation resolved that until the Corporation frames its regulations u/s 45(2)(c) of the State Road Transport Corporation Act, 1950, the Rules of Bihar Service Code, the Bihar Travelling Allowance Rules etc. as well as similar other rules, as normally apply to the Bihar State Government servants shall apply mutatis-mutandis to all categories of officers and staff of the Corporation. Resolution 4 contains a similar decision with regard to all financial rules and other procedural rules of the State Government such as PWD Code etc.

4. It is not in dispute that the employees of the Bihar State Road Transport Corporation do not receive pension as provided in the Bihar Pension Rules. It is also admitted that subsequent to framing of regulations for grant of gratuity in the year 1970 the employees of the Corporation are entitled to receive gratuity as per regulations framed u/s 45(2)(e) of the Bihar State Road Transport Corporation Act, 1950. In such circumstances, it is not possible to accept the contention that Rule 43(b) of the Bihar Pension Rules continues to govern the employees of the Bihar State Road Transport Corporation. It is also not in dispute that the regulations providing for gratuity framed by the Corporation in the year 1970 do not contain any provisions for continuing a departmental proceeding against a retired employee of the Corporation.

5. Thus, considering all the materials placed before this Court, this Court finds substance in the submission advanced on behalf of the petitioner that there is no jurisdiction or power available with the respondent-Corporation to proceed with a departmental proceeding against the petitioner who retired from service in January 2001. It may be mentioned here that petitioner has placed reliance upon a similar observation in a judgment of this Court dated 19th October, 1995 passed in CWJC No. 5377/1990 (Shatrughan Prasad Singh v. Bihar State Road Transport Corporation), a copy whereof has been annexed as Annexure-6.

6. In the result, this writ application is allowed and the impugned order of punishment contained in Annexure-5 is also quashed. It is, however, made clear that the Corporation will be at liberty to take an independent decision whether to pay to the petitioner any salary for the period he was on unauthorised absence. For this propose, the departmental proceeding will not be necessary. So far as allegations of misappropriation or causing loss to the Corporation is concerned, no deduction can be made by the Corporation unless and until it succeeds in obtaining judgment and . decree to that effect from a competent Court.

