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(2010) 08 PAT CK 0010

In the Patna High Court

Baleshwar Pandey APPELLANT

Vs

The Bihar School Exam. Board RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:
Bihar Pension Rules, 1950 — Rule 43

Citation : (2010) 08 PAT CK 0010

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Judgement

Shailesh Kumar Sinha, J.—The petitioner is aggrieved by order dated 21.02.2004 vide annexure- 16 whereby the representation of the petitioner against deduction of 25 per cent from the pension as also recovery of Rs. 44,000/- and odd from the amount payable against the leave encashment and a few other claims were rejected.

2. The short fact is that by order dated 25.01.2003 vide Annexure- 12, petitioner was sanctioned payment of pension with deduction of 25 per cent as a measure of punishment. Besides the above, the challenge was against non-adjustment of the bills against traveling allowances submitted by the petitioner and non-payment of certain arrears of salary. Petitioner assailed the above action of the Board by filing a writ petition vide C.W.J.C. No. 417 of 2004 which was disposed of by order dated 14.01.2004 passed in C.W.J.C. No. 280 of 2004 Mrs. Shanti Devi v. State of Bihar and Ors. along with a batch of cases whereby claim of the writ petitioners was directed to be considered in terms of the previous order of this Court vide order dated 19.09.2003 passed in C.W.J.C. No. 7054 of 2003. Pursuant to the above order, the impugned order, vide Memo No. 2786 dated 21.02.2004, was issued which is under challenge.

3. Learned Counsel for the petitioner has mainly confined his submissions against the deduction of 25 per cent from admissible pension and also the deduction of Rs. 45,389.75/- from the leave encashment amount. It is submitted that the charges against the petitioner are mainly of sending the certificates of the

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students with some delay and some other papers remained in the Almirah of the petitioner causing avoidable delay. The other charge was that the bill of traveling allowances for going to different examination centres carrying the question papers and answer sheets were not accounted for. It is further submitted that both the charges against the petitioner were not correct. The authority did not hold regular departmental enquiry before passing the order deducting 25 per cent of his pension, as required under Rule 43(b) of the Bihar Pension Rules. The departmental proceeding initiated against the petitioner was converted into the proceeding under the aforesaid provision after his superannuation. It was vehemently submitted that after serving the charge- sheet no enquiry proceedings fixing any date for enquiry was held as required under the aforesaid Rule 43(b). Neither any witnesses were examined nor documents were brought on the record to prove the charges, as well as, no opportunity was given to the petitioner to adduce his evidence. The enquiry officer submitted the enquiry report merely on considering the show cause of the petitioner which, according to the Enquiry Officer, was found not satisfactory. It has also submitted that admittedly no enquiry report was sent to the petitioner at any point of time before passing the final order due to which petitioner suffered serious prejudice to his defence. As regards the advances given to him as traveling allowances, it is submitted that although petitioner submitted the T.A. bills, however, without verifying the record, the authorities instead of adjusting the bills have recovered the entire advance amount without providing any opportunity to explain the discrepancy, if any, detected by the authorities. Lastly, it is submitted that notwithstanding the above, even if there was any delay on the part of the petitioner, the same was due to pressure of work moreover it is not the case of the Board that it suffered any pecuniary loss due to such delay, if any. The only charge found against the petitioner is of negligence without causing any pecuniary loss and for that deduction of 25 percent of pension causing serious financial hardship to the petitioner is not justified even though in whole of his career no serious lapses were found on his part. It is accordingly submitted that the order contained in Annexure- 16, whereby the payment of pension has been deducted by 25 per cent and the claim against recovery of Rs. 45,000/- and odd have been rejected, be quashed.

4. Learned Counsel appearing on behalf of the respondent - Board, on the other hand, submits that the departmental enquiry was held. The Enquiry Officer was satisfied that the charges against the petitioner were proved on perusal of the documents and the show cause submitted by the petitioner and, as such, non-submission of list of documents and witnesses or their examination is of no consequence. It is further submitted that even though the enquiry report could not be given to the petitioner but in absence of any prejudice suffered by the petitioner for such non-supply the impugned order cannot vitiate in law. As regards the traveling allowance in question it has been submitted that upon due consideration the order for recovery of the T.A. advances was passed for its recovery from the leave encashment amount assigning valid reason in the

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impugned order as such, the same is valid and justified.

5. Upon considering the rival submissions of the parties and their pleadings as also their affidavits it is not in dispute that after service of the charge-sheet neither the documents brought on the record of enquiry and exhibited nor the witnesses were examined in the departmental enquiry. It appears that petitioner appeared pursuant to the show cause notice and filed reply to the show cause on which date certain papers were shown to the petitioner in the enquiry. Except that no other formalities were observed in the same manner as required to be followed while passing the which order of dismissal from services in terms of the proviso (a) (iii) to the Rule 43(b). The submission of the petitioner in this regard that no order withholding of pension under the aforesaid provisions Rule 43(b) of the Bihar Pension Rules could be passed without observing the procedure prescribed under the aforesaid rules, cannot be said to be meritless. With regard to the order of recovery of Rs. 45,000/- and odd on account of traveling allowance advances the impugned order does not mention as to what amount and on what date the T.A. advances were given to the petitioner and the corresponding bills submitted by the petitioner and, as such, in absence of such consideration the order of recovery from the amount of leave encashment is not justified. In the counter affidavit also no details of advance and submission of the bills have been explained in view of the assertion of the petitioner that the bills were submitted at the material time but those are not being verified from the records for its adjustment.

6. In the result in the above facts and circumstances, Court could have remitted back to the authority concerned for holding the departmental enquiry from the stage of submission of reply to charge-sheet and pass fresh order , however how since the petitioner retired several years back the court is not inclined to remit the matter at this stage. This Court is of opinion that in view of the nature of allegations, as well as, non-observance of the required procedures in the department proceeding for holding the charges the impugned order as contained in Annexure- 16 to the extent affirming the order of deduction of 25 per cent pension cannot be sustained in law and accordingly quashed. The concerned authority of the respondent - Board is hereby directed to pay the pension to the petitioner as admissible to him under the rules without any deduction. The deducted amount be refunded back preferably, within a period of two months, however, petitioner is not entitled to interest on such amount in the facts and circumstances of the case. As regards the deduction of amount of Rs. 45,000/- and odd from the leave encashment amount, it will be open for the petitioner to file a representation before the Secretary of the respondent - Board stating distinctly datewise amount T.A. advances given to him and the corresponding bills submitted by him along with copy of such bills within a period of six weeks. The representation of the petitioner be considered in accordance with law expeditiously, preferably within a period of four months on receipt of such representation which may be disposed of by a reasoned order in respect of each of the T.A. advances given to the petitioner.

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7. The writ application stands disposed of with the above observations/directions.

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