
(1963) 03 PAT CK 0012

In the Patna High Court

Case No : Misc. Judicial Case No. 277 of 1961

Bhagwan Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-03-1963

Acts Referred:

Bihar Pension Rules, 1950 — Rule 252, 253, 254, 256, 259
Pensions Act, 1871 — Section 10, 14

Citation : AIR 1963 Patna 317

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Shambhu Nath, No. 2, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the petitioner Shri Bhagwan Prasad has moved the High Court for grant of a writ in the nature of certiorari under Article 226 of the Constitution for the purpose of calling up and quashing the order of the State Government dated, the 1st July, 1959, cancelling its previous order dated the 30th September, 1958, allowing the cancellation of an order of commutation of pension dated the 5th February, 1958.

2. Cause has been shown by the learned Additional Standing counsel on behalf of the State of Bihar to whom notice of the rule was ordered to be given.

3. The petitioner retired from his post as Additional District Judge of Monghyr on the 1st April, 1956. Soon after he applied for commutation of a portion of his pension, and on the 5th February, 1958, the State Government made an order commuting a portion of the petitioner's pension, i.e. a sum of Rs. 174/- per month. On the 4th May, 1958, the petitioner again applied to the State Government for cancelling the order sanctioning commutation of pension. The request of the petitioner was allowed by the State Government on the 30th September, 1958, and on that date the State Government made an order

cancelling its previous order of commutation of pension. Subsequently the State Government reconsidered the legal position, and on the 1st July, 1959 wrote to the petitioner to say that the petitioner was not entitled to withdraw his application for commutation and, therefore, the State Government was cancelling its previous order dated the 30th September, 1958. The letter of the State Government dated the 1st July, 1959, is annexure D to the writ application and reads as follows :

"I am directed to refer to your letter No. Pen 221 P-3532, dated the 24th February, 1959, on the above subject and to say that the State Govern-men have since decided in consultation with the Law Department that the right of Shri Bhagwan Prasad to withdraw the application for commutation was forfeited with effect from the date the commutation became absolute as contemplated in Rule 253 read with Rule 259 of the Bihar Pension Rules. Therefore, the sanction accorded in G. O. No. 1814F, dated the 5th February, 1958, may now be given effect to immediately. The Government orders contained in Finance Department Memo. No. 14948, dated the 30th September, 1958, may be treated as cancelled."

4. On behalf of the petitioner the argument put forward by learned Counsel is that under Rule 259 of the Pension Rules the State Government had power to rescind the order of commutation even if it became absolute under Rule 253 of the Pension Rules. In our opinion there is no substance in this argument and it must be rejected. Rule 251 provides that before any commutation administratively sanctioned becomes absolute, the applicant must be examined by the proper medical authority hereinafter prescribed. Rule 252 states that the administrative sanction accorded under Rule 249 shall lapse if the medical examination does not take place within the period prescribed in the sanctioning order. The rule further provides that the applicant may withdraw his application by written notice despatched at any time before medical examination is due to take place, but this option shall expire on his appearance before the medical authority. Rule 253 is important and provides as follows :

"253. Subject to the provisions contained in this rule the commutation shall become absolute, that is, the title to receive the commuted portion of the pension shall cease and the title to receive the commuted value shall accrue in the case of an unimpaired life on the date on which the medical authority signs the medical certificate; and in case of an impaired life, on the date of written acceptance of the commutation, or the date on which the option of withdrawing the application expires, whichever is earlier."

It appears from the counter-affidavit filed in the present case that the petitioner appeared before the Medical Board on the 19th March, 1958, and on the same day the Medical Board had signed a medical certificate certifying the petitioner to be in a state of good boddly health. It is, therefore, manifest in the present case that the order of commutation became absolute on the 19th March, 1958, and on that date the title of the petitioner to receive the commuted portion of the

pension had ceased to have legal effect. In these circumstances we are of opinion that the petitioner had forfeited his right to withdraw his application for commutation, and the order of the State Government dated the 1st July, 1959, cancelling its previous order dated the 30th September, 1958, is, therefore, legally correct. It was, however, submitted on behalf of the petitioner that there was ample power in the State Government to rescind the order of commutation even after the order of commutation had become absolute under Rule 253 of the Pension Rules. Learned Counsel referred in this connection to Rule 259 of the Pension Rules which states as follows :

"259. A commutation once applied for, sanctioned and given effect to, cannot be rescinded, i.e. the portion of a pension commuted cannot be restored on refund of its capitalised value."

We do not think that the submission of learned counsel for the petitioner is warranted. We do not think that Rule 259 of the Pension Rules confers any power upon the State Government to cancel an order of commutation after it became absolute under Rule 253 of the Pension Rules. The language of Rule 259 must be read in the context of Rule 256 which is to the following effect :

"256. Payment of commuted value shall be made as expeditiously as possible but whatever the date of actual payment, the amount paid and the effect upon the pension shall be the same as if the commuted value were paid on the date on which commutation became absolute. If the commuted portion of the pension has been drawn after the date on which the commutation became absolute, the amount drawn shall be deducted from the amount payable in commutation."

Reading both these rules together it is manifest that whatever be the date of actual payment of the commuted value, the effect upon the pension will be the same as if the commuted value had been paid on the date on which the commutation became absolute. We, therefore, reject the argument of learned Counsel on this point and hold that the State Government has correctly held as a matter of law that there is no power in it to rescind the order of commutation after it had become absolute under Rule 253 of the Pension Rules, except as provided under Rule 254 of the Pension Rules, and, therefore, its previous order dated the 30th September, 1958, should be treated as cancelled.

5. For these reasons we hold that the petitioner has made out no case for grant of a writ under Article 226 of the Constitution. We accordingly dismiss this writ application but there will be no order as to costs.