
(1999) 10 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 1173 of 1995

Bhuneshwar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-10-1999

Acts Referred:

Citation : (2000) 1 PLJR 435

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh, Manoj Priyadarshi, Amaresh Kumar Sinha and Arun Kumar Singh, for the Appellant; V.N. Sinha, S.C. Jha and R.K. Sinha 2 for the State and Mr. Anil Kumar Jha for the Accountant General, for the Respondent

Judgement

Dr. J.N. Dubey, J.—Petitioner has claimed following reliefs in the writ petition: (i) To quash order as contained in Memo No. 4-127/79-695 dated 23.2.1985 of Joint Secretary, Irrigation Department, now Water Resources Development Department, by which certain punishment has been awarded to the petitioner.

(ii) To quash adverse remark entered into the Service record of petitioner for the years 78-79, 80-81 and 81-82 which have been communicated to petitioner on 11.11.1980, 22.5.81, 22.4.82 and 31.3.1983 respectively.

(iii) To order promotion on the post of Superintending Engineer from the date Juniors to petitioner have been promoted i.e. w.e.f. 29.1.1966 and then to promote to the post of Chief Engineer and Engineer in Chief on that basis with all benefit of service including payment on promotional post.

(iv) To quash order as contained in Memo No. 4-2-2-241/92-2148 dated 26.7.92 of Deputy Secretary, Water Resource Development Department, Government of Bihar, by which leave without pay for the period of 23.5.1983 to 31.1.1989 has been granted to petitioner.

(v) To quash gradation list dated 3.8.1983 as contained in Memo No. 2/R-3-

302/78 (Part-2) Irrigation 3233/Pat of Special Secretary of this Irrigation Department, Government of Bihar, Patna.

(vi) To quash order dated 14.9.92 as contained in Memo No. 2901 of Deputy Secretary, Water Resource Development Department, Govt. of Bihar, Patna by which 10 percent pension of petitioner has been deducted.

(vii) To order consequential relief of promotion like salary and also salary of the period of 23.5.1983 to 31.1.1989.

(viii) To order fixation of pension on the basis of scale entitlement of petitioner at the date of retirement that is 31.1.1989 and also order payment of difference of pension, gratuity, leave salary and interest thereupon including interest on all delayed payment made.

(ix) To quash warning order dated 12.11.82 (Annexure 2) censure order dated 15.2.1985 (Annexure 3) and also punishment order dated 30.8.85 (Annexure 6) and order of fixation of pension vide Annexure 16 of the writ petition.

The case of the petitioner is that he joined the Irrigation Department of the Government of Bihar in 1954 and retired from there on 31.1.1989. According to him, he has not been fairly treated by the respondents throughout his service career. Not only they went on giving him one adverse entry after another without any basis they also did not decide his representation and appeals filed against those entries. He was also not granted promotions on different posts on due dates. According to him, while the respondents went on granting promotions to other similarly situated persons, he was denied the same for no valid reason. Neither they promoted him to the post of Chief Engineer nor fixed his pension in the pay scale admissible to that post. He retired from the post of Superintending Engineer on 31.1.1989 but his pension was fixed treating him retired in 1983 out of which 10% has now been reduced by the impugned order.

2. On the other hand, the case of the respondents is that the service record of the petitioner has not been satisfactory throughout his career and, therefore, the respondents have rightly reduced his 10% pension under rule 139 (b) of Bihar Pension Rules. The petitioner was temporarily promoted on the post of Chief Engineer and was reverted to his substantive post of Superintending Engineer on 19.5.1983.

He did not join at the new place of his posting and remained absent without any leave till the date of his retirement. However, the State Government taking lenient view treated his absence from duty from 23.5.1983 to 31.1.1989, as extraordinary leave without pay. On 22.7.1990, he was granted pension on the basis of pay scale admissible to the post of Superintending Engineer on the date of his retirement.

3. Heard the learned counsel for the parties and perused the record.

4. The writ petition suffers from laches which have not been properly explained.

The petitioner is not entitled for any relief so far the quashing of adverse entries and granting of promotion etc. is concerned after such an inordinate delay. However, taking lenient view, I am not rejecting his claim for grant of retiral benefits on the ground of laches.

5. Since I am not inclined to interfere regarding other reliefs claimed by the petitioner, it is not necessary for me to give the facts relating to that aspect of the case. Now, it has to be seen whether the order dated 14.9.1992 passed by the State Government reducing the pension of the petitioner on the ground of his unsatisfactory service record suffers from any error. As stated above, the petitioner retired from service on 31.1.1989 and he was granted provisional pension on 28.12.1990. On 19.8.1991, the petitioner was served with a notice to explain as to why his pension may not be reduced by 10%. The respondents reduced his pension by 10% on the ground that his service record was not satisfactory.

6. Learned counsel for the petitioner has invited my attention to the resolution no. 3014 dated 31.7.1980 of the State Government by which Bihar Pension Rules, Bihar Treasury Code and Bihar Service Code were amended. Clause (viii) of the resolution provides that after expiry of two years from the date of retirement, provisional pension will be converted into final pension. Admittedly, the notice for reducing the pension under rule 139(b) was served on the petitioner after expiry of two years from the date of his retirement. Since provisional pension of the petitioner stood converted into final pension on the expiry of two years from the date of his retirement under clause (viii) of the resolution, no reduction could legally be made from his pension under rule 139(b) of Bihar Pension Rules.

7. The impugned order reducing the pension of the petitioner by 10% under Rule 139(b) suffers from an error apparent on the face of record and is liable to be quashed. In the result, the writ petition succeeds and is allowed in part. The order dated 14.9.1992 of the State Government reducing the pension of the petitioner by 10% is quashed. The petitioner will be entitled for Rs. 2000/- as costs.