

(2003) 09 PAT CK 0136
In the Patna High Court
Case No : L.P.A. No. 397 of 2002

Bihar State Electricity Board and Others	APPELLANT
Vs	
Shubhendra Sharma	RESPONDENT

Date of Decision : 08-09-2003

Acts Referred:

Bihar Pension Rules, 1950 — Rule 139, 43

Citation : (2004) 1 PLJR 209

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Mihir Kr. Jha and Mohit Kr. Shah, for the Appellant; Rajendra Pd. Singh, Amaresh Kr. Sinha and Rajen Sahay, for the Respondent

Final Decision : Dismissed

Judgement

1. The appeal is barred by limitation. Having heard learned Counsel for the Appellants and perused the averments made in the limitation petition (I.A. No. 1635 of 2002) we are of the view that sufficient grounds have been made out to condone the delay in filing the appeal. Accordingly the aforesaid I.A. is allowed and the delay in filing the appeal is condoned.

2. Heard learned Counsel for the parties.

3. This appeal is directed against the order dated 29.1.2002 passed by the learned Single Judge whereby he has set aside the order dated 6.5.2000 passed by the Bihar State Electricity Board (in short "the Board") withholding 2 per cent of the pension of the writ Petitioner-Respondent for retaining the official quarters for about two years after his Superannuation. The learned Single Judge has taken the view that no power is vested in the Board to withhold pension for unauthorised occupation of the quarters after the retirement of the employee of the Board.

4. The admitted position is that the writ Petitioner-Respondent was appointed as Assistant Teacher in 1969. He superannuated on 31.1.1998. While he was in

service he was allotted a quarter but he did not vacate the same after his superannuation and ultimately vacated the same on 31.1.2000.

5. A notice was issued to him to show cause as to why the pension be not withheld and after consideration of the show cause the 2% pension has been withheld.

6. Learned Counsel for the Appellant Board Submitted that the writ Petitioner-Respondent was a workman and as such the Board's standing orders will apply and in that view of the matter the Board was competent to withhold the pension on the ground that the act of the writ Petitioner-Respondent amounted to dishonesty with the property of the Board and thus the case of the writ Petitioner-Respondent was covered by the provisions of the Industrial Employee (Standing Orders) Act, 1946 and the Standing Orders issued by the Board from time to time. In this connection, learned Counsel for the Board has relied upon a Division Bench judgment of this Court dated 11.2.2003 passed in L.P.A. No. 1035, of 2002 wherein, this Court upheld the decision of the Board to withhold the pension by treating the said act of the workman as a misconduct. Learned Counsel for the writ Petitioner-Respondent, however, submitted that a teacher is not a workman and as such he will not be covered by the Standing orders issued by the Board. In this connection he drew our attention to the decision of the Supreme Court in the case of Miss A. Sundarambal v. Govt. of Daman and Diu and Ors. AIR 1998 SC 1700. In view of the aforesaid judgment now the writ Petitioner-Respondent cannot be treated as a workman and once he is not treated as a Workman then the provisions of the aforesaid Act and the standing orders, as, mentioned above, will not apply in his case and as such the said provisions cannot apply for the purpose of deciding the question as to whether the act of the writ Petitioner-Respondent to remain in unauthorised occupation of the government quarters amounted to a misconduct or not.

7. Learned Counsel for the Board submitted that even if it is assumed that the writ Petitioner-Respondent was not a workman, the Board has the authority to withhold the pension in view of the provisions contained under the Bihar Pension Rules which has been adopted by the Board. So far as the provisions of the Bihar Pension Rules are concerned, it is an admitted position that the Board has adopted the same. Rule 43(b) as well as Rule 139 of the Bihar Pension Rules deal with regard to misconduct while the government servant is in employment. Rule 43(a) of the Pension Rules provides that good conduct is a condition precedent for payment of pension and the same can be withheld, if the person is convicted by any Court or is held to be guilty of grave misconduct. This apart even it is found that the said act of the Respondent amounted to grave misconduct, a full-fledged enquiry has to be held before the finding of grave misconduct is arrived at. The same has not been done in this case.

8. Annexure-A to the counter affidavit filed by the Board contains a provision with regard to the situations arising out of unauthorised occupation of the government quarters. It provides for payment of market rent, penal rent etc. In

case the employees do not vacate the quarters while in service provisions have been made under Clause (e) for initiation of departmental proceeding but the said provision is silent as to the steps to be taken with regard to the employee having been superannuated.

9. Taking into consideration the aforesaid provisions as well as the Bihar Pension Rules and the standing orders, as noticed above, we are of the view that no grounds have been made out to justify the action of withholding the pension of the writ Petitioner-Respondent by the Respondent No. 7. Accordingly we agree with the view taken by the learned Single Judge. The Letters Patent Appeal is dismissed.

10. However, if the penal rent has not been charged and recovered in terms of the aforesaid circulars, as contained in Annexure-A, then the Board will take steps and recover the aforesaid amount from the pension of the writ Petitioner-Respondent.