(2014) 02 PAT CK 0126

In the Patna High Court

Case No : Letters Patent Appeal No.197 of 2012 in Civil Writ Jurisdiction Case No. 704 of 2004

Bihar State Electricity Board APPELLANT

Vs

Deo Lagna Devi RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Citation : (2014) 2 BBCJ 55 : (2014) 2 BLJud 116

Hon'ble Judges : R.M. Doshit, CJ. and Ashwani Kumar, J.

Bench : Division Bench

Advocate : Mr. Vinay Kirti Singh, Advocate, for the Appellants; None, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.(Oral)—This Appeal under Clause 10 of the Letters Patent has been preferred by the respondent-Bihar State Electricity Board, (now South Bihar Power Distribution Company Limited) (hereinafter referred to as ''the Board'') against the judgment and order dated 29th October 2010 passed by the learned Single Judge in CWJC No. 704 of 2004.

2. The above CWJC No. 704 of 2004 was filed by one Paras Nath Dubey, a retired employee of the Board, against the order dated 5th May 2003 made by the Board withholding 5% of the pension, and the order dated 28th August 2003 made by the Financial Controller to recover a sum of Rs.80,600.00 being the amount of advance received by the petitioner for distribution and maintenance work while he was in service and had not accounted for and a sum of Rs.6,663.70 being the amount of excess pay. According to the petitioner, the order of withholding the pension as well as the order of recovery was vitiated having been made in contravention of the rules. Although the enquiry officer had recorded finding in favour of the petitioner, the disciplinary authority did not afford opportunity of hearing in respect of finding of guilt recorded by it. The order of withholding of 5% of pension was not commensurate to the guilt proved

against the petitioner.

3. The Writ Petition was contested by the Board. The Board filed counter affidavit. According to the Board, the Board has adopted the Bihar Pension Rules, 1950 (hereinafter referred to as the ''Pension Rules'') for application to its employees. In view of rule 43(b) of the Pension Rules, the Board has the authority to withhold the pension of a pensioner if he is found guilty of misconduct in a disciplinary proceeding. The Board also has the power to recover the amount of loss suffered by the Board from the terminal dues of a pensioner.

4. Pending the Petition, the petitioner passed away in 2007. Since his death the Petition was pursued by his heir and legal representative - his wife Deo Lagna Devi, the present respondent.

5. Learned Single Judge has allowed the Writ Petition on the premise that the Board had failed to follow the procedure of departmental proceeding scrupulously. Although the enquiry officer had recorded finding in favour of the petitioner, the Board was required to record its own reasons for differing with the finding of the enquiry officer and was required to give notice to the petitioner to show cause why the finding of the enquiry officer be not accepted and why the petitioner be not held guilty of the charges levelled against him. After receiving the reply and holding the petitioner guilty of the charges, the Board was obliged to give notice to show cause why the petitioner should not be punished for the guilt established against the petitioner. In the present case, the Board gave a composite notice recording its own reasons for not accepting the enquiry officer''s findings and for holding the petitioner guilty and also calling upon the petitioner to show cause why 50% of the pension should not be withheld. According to the learned Single Judge, procedure adopted by the Board was contrary to the principles of service jurisprudence. The order of punishment and recovery were, therefore, vitiated.

6. Feeling aggrieved the Board has preferred this Appeal.

7. Learned advocate Mr. Vinay Kirti Singh has appeared for the Board. Mr. Singh has, with a view to satisfying the Court, produced the Resolution of the Board dated 2nd December 1987. It appears that the Board had, under its resolution dated 6th September 1966, adopted the provisions contained in Bihar Pension Rules for admissibility of pension to its employees born in pensionable establishment. Under the said resolution dated 2nd December 1987 the Board has affirmed that the Pension Rules and the Government Resolution dated 31st July 1980 as well as the circular, resolution, order of the Bihar Government issued in connection with simplifying the procedure would automatically apply to the employees of the Board. In the submission of Mr. Singh, Rule 43(b) of the Pension Rules enables the State Government to proceed against the retired employees to withhold the pension by way of punishment and also to recover the loss suffered by the Government on account of the action of the delinquent employee. The said Rule shall also apply to the employees of the Board. He has

submitted that the writ petitioner had received certain advance from Board for operation and maintenance expenditure. He, however, did not account for the entire sum of advance received by him. The Board was, therefore, constrained to recover the said amount from the petitioner. As the petitioner had by then retired, it was ordered to be recovered from his pension. He has submitted that the action of the Board was within its jurisdiction, legal and valid. The learned Single Judge ought not to have interfered with the same.

8. The above referred Resolution dated 2nd December 1987 records the earlier resolution of 2nd September 1966. It says, "According to the said Resolution, amendments made to the Pension rules from time to time are also applicable mutatis mutandis." Rule 43 of the Pension Rules does empower the State Government to withhold pension or part of it of a retired government servant. If such pension is withheld by disciplinary measure proviso to sub-clause (b) of rule 43 enjoins, inter alia, that the action may not be instituted save with the permission of the State Government and that the Bihar Public Service Commission shall be consulted before the final orders are passed. If we read the Resolution of the Board in its literary meaning, the above referred conditions should also apply to the employees of the Board. Apparently, while passing the aforesaid resolution dated 6th September 1966 or 2nd December 1987 the authorities of the Board have not given due attention to the above referred conditions. Evidently, the said conditions are designed for the employees in the Civil Service of the State. Though the provisions are adopted by the Board mutatis mutandis, the said conditions cannot apply to the employees of the Board. Suffice it to record that the Board has the power or authority to proceed against its retired employees.

9. Coming to the merits of the case, the petitioner was charged with misconduct for not submitting the accounts for the amount received by him in advance for distribution and maintenance work. Thus the action was two fold; one for recovery of the money the petitioner had failed to account for and, second, disciplinary proceeding for not submitting the accounts for the money received by the petitioner. There is no gainsaying that the enquiry officer did opine that the aforesaid charges against the petitioner were not proved. The Board, however, differed with the finding of the enquiry officer. Under its resolution dated 14th February 2003 the Board did record reasons for not agreeing with the enquiry officer and for holding the petitioner guilty. Pursuant to the said finding the petitioner had been given notice recording the reasons for differing with the findings of the enquiry officer and calling upon the petitioner to show cause why he should not be held guilty of the charges levelled against him. The petitioner was also called upon to show cause why 50% of the pension should not be withheld. After receiving the reply from the petitioner, impugned orders have been made to withhold 5% of the pension and to recover the amount of loss suffered by the Board.

10. In our opinion, the procedure adopted by the Board is in consonance with the

principles of natural justice and the disciplinary rules. We may note here that the Board has not framed the disciplinary rules either, but has adopted the disciplinary rules framed by the State Government for its employees under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. We do not see any infirmity in the procedure adopted by the Board; nor the impugned orders are made by the Board without jurisdiction; nor the order of withholding of 5% of the pension can be held to be unconscionably excessive so as to warrant interference by this Court.

11. In our opinion, the learned Single Judge has manifestly erred in holding that the Board was required to give two separate show cause notices ? one for holding the petitioner guilty and another on quantum of punishment. A composite notice is not contemplated under the Service Rules. No such procedure is envisaged either under the disciplinary rules or by the rulings of the Hon''ble Supreme Court or the High Court.

12. For the aforesaid reasons, Appeal is allowed. The impugned judgment and order dated 29th October 2010 in CWJC No. 704 of 2004 is set aside. CWJC No. 704 of 2004 is dismissed.