(2010) 04 PAT CK 0049

In the Patna High Court

Bihar State Electricity Board thought its Secretary, The Joint Secretary, Bihar State Electricity Board and The Financial Controller (Pension), Bihar State Electricity Board	APPELLANT
Vs	
Shri Naresh Mohan Tiwary, Superintending Engineer (Civil), retired, The General Manager cum Chief Engineer, Patratu Thermal Power Station and The Dy. Director of Accounts, Bihar State Electricity Board	RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0049

Hon'ble Judges : Navin Sinha, J;Dinesh Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Navin Sinha and Dinesh Kumar Singh, JJ.—Heard learned Counsel for the appellant Board and learned Counsel appearing for the respondents.

2. The appellant is aggrieved by the judgment and order dated 25.5.2000 in C.W.J.C. No. 9742 of 1998. The aforesaid judgment held that the action initiated against the respondents under Rule 43(a) of the Bihar Pension Rules, 1950 (hereinafter called the Pension Rules) was vitiated being impermissible in law. The show cause notice dated 3.8.1998, the order dated 23.10.1998, stopping the pension and the order dated 9.3.1999 directing recovery of a sum of Rs. 1,19,160/- from the pension of the respondent was accordingly quashed.

3. The respondent retired as a Superintending Engineer (Civil) on 31.1.1993. He was paid his final pension by order dated 28.1.1993 and was receiving the same. After his superannuation, certain clarifications were sought from him on 25.1.1997 with regard to certain payments made to a Contractor, M/s Azad Builders, duly replied by him. The show cause notice dated 3.8.1998 was then issued to him under Rule 43(a) of the Pension Rules to which he also replied.

4. The petitioner-respondent being the Technical Secretary to the Chief Engineer (Civil) is stated to have played a vital role in execution of the agreement, issued a certified copy of the agreement and had certified the agreement sent to the field for execution purpose. An error in the agreement resulted in differential rate for the contract as awarded to M/s Azad Buinders and M/s BHEL, resulting in excess payment of eight times to M/s Azad Builders. The respondent took the defence that the event took place more than ten years before his retirement an issue properly raised in his reply but which has not been considered. No show cause notice much less any proceedings were initiated or even contemplated before his superannuation. The letter dated 13.12.1988 bearing No. 840 of the Chief Secretary (Civil) clearly established that the matter came to the notice of the Board as far back as in 1987, when the petitioner also intimated the General Manager that the order for refund of the security has already been cancelled and the Director of Accounts had been requested not to make any refund of sales tax. M/s Azad Builders had also filed Money Suit No. 191 of 1988 in the Court of Sub Judge, Civil Court, Patna. All these made it apparent that the irregularities were committed before 1988 and came to the knowledge of the Board when the money suit was filed in 1988 itself. Therefore, it could not be contended that the matters came to the knowledge of the Board on 27.2.1998, when the excess payment was adjusted from the final bill and dues of M/s Azad Builders.

5. The appellant contesting the writ proceeding urged that under Rule 43(b) of the Pension Rules the rider contained for initiation of a proceeding within a period of four years was to be computed from the date of the cause of action for initiation of an appropriate action which arose on 28.10.1996 when the irregularities of excess payment came to the knowledge of the Board leading to the adjustment of excess payment by order dated 27.2.1998. Interpreting the period of four years to be reckoned under Rule 43(b) of the Pension Rules, it was urged that the event leading to the misconduct has to be computed from the date it come to the notice of the employer and when the event took place was not relevant. The award in the arbitration proceedings pursuant to Arbitration Title Suit No. 74 of 1991 having been filed on 14.6.1995 made the rule of the Court on 5.12.1995, shall be the date for the cause of action well within four years from the date of the impugned resolution i.e., 3.8.1998.

6. Learned Counsel for the appellant before us urged that the exercise of power under Rule 43(a) of the Pension Rules was not hedged by any limitation of a time period of four years. The factual foundation for its invocation arises the moment the satisfaction of a grave misconduct on part of the delinquent arises. A show cause notice had been issued and the reply considered to arrive at a finding of grave misconduct of having approved an agreement with excessive rates as compared to a similar contract executed with another. Strong reliance was placed on a Bench decision of this Court in Serajuddin Ahmad Vs. The State of Bihar and Others, . Rule 43(a) of the Pension Rules related to the past conduct of the delinquent and not with regard to the future conduct as held in the judgment impugned. No other point has been urged before us in support of the Memo of

Appeal. Counsel for the respondent urged that the basic foundation for invocation of Rule 43(a) of the Pension Rules was wanting in as much as there had been no conviction of the respondent of any serious crime and neither was he guilty of grave misconduct. It was emphasized that no proceedings had been initiated during his service tenure much less any show cause notice issued even in contemplation of any alleged proceeding.

7. Rule 43(a) of the Pension Rules reads as follows:

Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

8. It is apparent that pension can be withheld under the aforesaid rule only in case of conviction of a serious crime. This obviously relates to the realm of criminal law. The situation may arise where a criminal prosecution was initiated during the service tenure of the delinquent but leads to a judgment subsequently after his superannuation. Another possible scenario may be that a criminal prosecution is initiated after the superannuation but in which the delinquent features after superannuation with regard to certain acts committed while he was in service and a possible conviction on that ground with regard to the acts done by him while he was in service. In the present case admittedly there has been no criminal prosecution against the respondent. The consequence of the words grave misconduct cannot be lost sight of. The term grave misconduct connotes a misconduct beyond the ordinary inviting a more serious major punishment than what may be given in the case of a minor omission. If the misconduct is grave, the punishment shall have to be major. If it is a major punishment to be imposed, a full fledged departmental proceeding has to be held in accordance with law. It is not in dispute that in the present case, there has been no departmental proceedings whatsoever against the petitioner before his superannuation or after his superannuation. On the facts of the present case, it is an admitted position that even the show cause notice given to the petitioner, even if it be construed as a commencement of a proceeding, was after his superannuation. No loss has been caused to the Appellant which has adjusted the excess payment made to the contractor when dues of approximately Rs. 70 lacs still remain payable.

9. The case of Serajuddin Ahmad (supra) relied upon by the respondent is completely distinguishable on its facts. In that case the show cause notice was issued while the delinquent was in service. He asked for certain documents to enable him to file his reply. The issue of inspection was sought to be disputed. His action allegedly caused financial loss to the Government. He superannuated in the meantime. The defence of the respondent was that a proceeding under Rule 55 (A) of the Civil Services (Classification, Control and Appeal) Rules had

been initiated during his service period and remained inconclusive due to unavoidable reasons and therefore after his superannuation the department had proceeded under the pension rules withholding 10% of his pension contending that the service record of the petitioner was found to be unsatisfactory and the order impugned was passed under Rule 139(a) and (b) of the Bihar Pension Rules. It was in this factual background, the Court held that it was not necessary that only in the case of proven guilt of a misconduct in a departmental proceeding or judicial proceedings that pension be reduced only. This Court finds it difficult to appreciate the applicability of the judgment to the facts of the present case.

10. In conclusion it is held that in the absence of any conviction of the petitioner of a serious crime under the criminal laws of the land and in absence of any departmental proceedings against the petitioner arriving at a finding of grave misconduct either before superannuation or thereafter in accordance with law, the provisions of Rule 43(a) have no application. No ground has been made out to interfere with the judgment under appeal.

11. The appeal is dismissed.

