(2003) 02 PAT CK 0086

In the Patna High Court

Case No : L.P.A. No. 1035 of 2002

Binda Prasad APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:
Bihar Pension Rules, 1950 — Rule 43

Citation : (2003) 3 PLJR 23

Hon'ble Judges : Rajendra Prasad, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh and Pramod Kumar, for the Appellant; R.K. Dutta, for the Respondent

Final Decision : Allowed

Judgement

1. The appeal is barred by limitation.

2. After having heard learned Counsel for the parties and taking into consideration the averments made in the limitation petition, we are satisied that sufficient ground has been made out to condone the delay in filing this appeal. Accordingly, the delay in filing this appeal is condoned.

3. This appeal is directed against the order dated 15.7.2002 passed in CWJC No. 1075 of 2002 [reported in Bindra Prasad Vs. The State of Bihar and Others,] by a learned Single Judge of this Court dismissing the said writ application filed by the Appellant challenging the order dated 5.7.2001 passed by the Bihar State Electricity Board (hereinafter referred to as the Board) forfeiting his entire pension with effect from 5.7.2001 after conclusion of a proceeding under Rule 43(b) of the Bihar Pension Rules which has been adopted by the Board.

4. The necessary facts leading to the filing of the present appeal are that the Appellant was an employee of the Board and was working as Store Keeper. In 1993 he was posted at Bettiah and thereafter he was transferred to Khagaul in Grid Maintenance Sub-division. The Appellant retired on 30th November, 1997.

Thereafter his 10% pension, full gratuity and unutilised leave salary was withheld by the Board. The Appellant came to this Court in CWJC No. 2970 of 1999 and challenged the aforesaid decision of the Board. The Board took the stand that the Appellant was in unauthorised occupation of the land of the Board. This Court having taken note of the fact that no proceeding at that time was pending against the Appellant directed for payment of retiral dues and that order was upheld in Letters Patent Appeal being LPA No. 1472 of 1999 which was dismissed on 31.7.2000. Thereafter, the Board initiated a proceeding under Rule 43(b) of the Bihar Pension Rules, which as stated above has been adopted by the Board, on the allegation that the Appellant was in unauthorised occupation of 0.50 Acres of land of the Board in the town of Bettiah which is misconduct in terms of the standing order of the Board. The inquiry was entrusted to the officer other than the disciplinary authority. Notice was issued to the Appellant by the Inquiry officer but he did not appear. The Inquiry Officer submitted his report that the charges have been proved and thereafter second show cause notice was issued proposing withholding of pension. Even then the Appellant did not reply to the notice and thereafter the Board passed the impugned order fixing his pension as a NIL with effect from 5.7.2001.

5. During pendency of the writ application to verify the fact as to whether the Appellant was in unauthorised occupation of the land of the Board or not, learned Single Judge appointed Additional District Judge, West Champaran at Bettiah to hold inquiry who after holding a detailed inquiry submitted a report that the Appellant was in unauthorised occupation of the property of the Board and thereafter the learned Single Judge having taken note of the said fact dismissed the writ application. Hence the present appeal.

6. Learned Counsel appearing for the Appellant submitted that even if the Appellant was found in unauthorised occupation of the land belonging to the employer, i.e. the Board, on that ground, his pension cannot be withheld. In support of the said submission he relied upon a judgment of the Apex Court in the case of Union of India and Ors. v. Madan Mohan Prasad, reported in 2002 (6) SCC 415 Supreme Court of India.

7. Learned Counsel appearing on behalf of the Board on the other hand submitted that Rule 43(b) of the Bihar Pension Rules empowers the Board to initiate a proceeding even after superannuation with regard to misconduct. The Standing Order issued under the Industrial Employment (Standing Orders) Act, 1946 has defined misconduct and according to Clause 29B(c) theft, fraud, or dishonesty in connection with the Board''s property or business is misconduct. The Appellant was in unauthorised occupation of 0.50 Acre of land of the Board. Thus, the Appellant dishonestly remained in the property of the Board and his conduct amounts to misconduct and for the same proceeding has been proved and in terms of the Rule 43(b) of the Bihar Pension Rules, the Board rightly withheld the entire pension of the Appellant.

8. The decision in the case of Union of India (supra) relied upon by the learned

Counsel appearing for the Appellant has no application in the present case. There their Lordships have held that in terms of the Rule, the Railway has no authority to withhold death-cum retirement gratuity and leave encashment of railway employee on the ground of not vacated the railway quarter which he continued to occupy after retirement. Here misconduct has been defined under the Standing Order and theft, fraud or dishonesty in connection with Board''s property or business is a misconduct. Occupying the land of the Board in unauthorised manner and not vacating the same even after being asked to vacate the same is a dishonest act on the part of the Appellant with regard to the property of the Board and as such his conduct amounts to misconduct. Full opportunity was given to the Appellant in departmental proceeding but he did not appear. Thus, the misconduct has been proved. In that view of the matter the Board was fully empowered to pass appropriate order with regard to witholding of the pension in terms of Rule 43(b) of the Bihar Pension Rules. Thus, the action taken by the Board against the Appellant is fully justified.

9. The other submission on behalf of the Appellant that once this Court has issued direction for payment of retiral dues, the Board has no power to withhold pension is also without any substance for the simple reason that at that time this Court directed for payment of retiral dues on the ground that no proceeding against the Appellant was pending. The Board after conducting proceeding in terms of Rule 43(b) of the Bihar Pension Rules has passed the order and as such earlier order did not stand in the way of the Board to pass a fresh order in terms of the relevant Rules.

10. The learned Counsel appearing for the Appellant lastly submitted that withholding of entire pension is harsh and shockingly disproportionate. In other words, he said that the punishment is not commensurate with the nature of allegation against the Appellant. During pendency of the appeal we asked Mr. R.K. Dutta, the learned Counsel appearing for the Board who is also State Counsel to get the land vacated from unauthorised occupation of the Appellant and he made statement before this Court that now the Appellant has been removed from the land of the Board. Thus there is no unauthorised occupation of the Appellant over the land. Taking into consideration this aspect of the matter and also the fact that there is nothing on record to show that during his entire service period the Appellant is alleged to have been found involved in any misconduct we are of the view that the order withholding entire pension appears to be excessive and unreasonable. Usually this Court on coming to the conclusion that the punishment awarded is disproportionate or excessive or such punishment cannot be given by reasonable man remands the matter to disciplinary authority to consider the same afresh, but taking into consideration, the fact that the Appellant has already superannuated in 1997 we are of the view that remanding the matter will cause unnecessary harassment and linger the proceeding. Accordingly, we are of the view that 10% withholding of pension of the Appellant will meet the ends of justice.

11. Accordingly, the impugned order passed by the Board is modified to the extent that instead of withholding of entire pension only 10% of the pension of the Appellant be withheld.

12. In the result, the appeal is allowed in part as indicated above.