
(2002) 07 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 1075 of 2002

Bindra Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Citation : (2002) 2 BLJR 1666 : (2002) 4 PLJR 170

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioner, an ex-employee of the Bihar State Electricity Board (hereinafter referred to as "the Board") is aggrieved by the decision of the Board to forfeit his entire pension with effect from the date of the order i.e. 5.7.2001 in a proceeding under Rule 43(b) of the Bihar Pension Rules.

2. The Petitioner superannuated from the Board's service on the post of Store Assistant while posted in Grid Maintenance Sub-division, Khagaul on 30.11.97. Prior to his superannuation he was posted at Bettiah until 1993 when he was transferred to Khagaul from where he finally superannuated. His 10% of pension and full gratuity besides unutilised leave salary were withheld by the Board. He came to this Court in CWJC No. 2970/99. The Board took the stand that the Petitioner was in unauthorised occupation of 0.50 Acre of land belonging to the Board at Bettiah. In support of his claim the Petitioner relied on "no dues" certificates said to have been granted by the concerned authorities with respect to his postings at Bettiah and Khagaul. By order dated 4.10.99 this Court held that the Board had failed to justify withholding of the pensioner dues and disposed of the writ petition with a direction to the respondents to release the pensionary dues of the Petitioner. The Board preferred Letters Patent Appeal (LPA No. 1472/99) which was dismissed on 31.7.2000.

3. Meanwhile it appears the proceeding under Rule 43(b) of the Bihar Pension

Rules in the matter of withholdment of pension was initiated against the Petitioner on 24.11.99. The proceeding was conducted exparte as the Petitioner did not appear despite notices including the one published in the newspapers. On 18.10.2000 the Enquiry Officer submitted his report holding that the charge levelled against the Petitioner stood proved. On 9.2.2001 upon consideration of the enquiry report second show cause notice was issued against the proposed withholdment of pension making it clear that if the Petitioner does not respond to the notice it will be presumed that he has nothing to say in the matter. The Petitioner again did not respond to the notice. Finally the Board decided to fix his pension at "Nil", that is, to withhold entire pension permanently with effect from the date of the order i.e. 5.7.2001.

4. When the petition came up for preliminary hearing on 15.3.2002 this Court directed the Petitioner to file an affidavit that he or any member of his family is not in unauthorised occupation of any land belonging to the Bihar State Electricity Board. Such an affidavit was filed by the Petitioner on 9.4.2002. This Court thereafter directed the Board to file its reply justifying the decision to withhold the pension. On 8.5.2002 the Board filed counter affidavit reiterating the stand about the Petitioner being in unauthorised occupation of 0.50 Acre land of the Board at Bettiah. The Board also stated about the steps it had taken earlier to get the land vacated. Apart from the steps taken on administrative side. It appears, the Board has lodged an FIR against the Petitioner.

5. When the case came up for hearing on 13.5.2002 this Court having noticed the diametrically opposite stand of the parties observed that it would like to go to the bottom of the matter to find out which of the two sides is making incorrect statement before this Court on oath. In the facts and circumstances the seniormost Additional District Judge, West Champaran at Bettiah was directed to hold enquiry after making local inspection of the land in presence of the two sides with a liberty to take evidence there itself or in his chambers subject to his convenience. The Enquiry Officer was directed to submit report after recording a definite finding as to whether the Petitioner or any one of his family member is in unauthorized occupation of any portion of the Board's land at Bettiah.

6. Pursuant to the above said direction of this Court Shri Arvind Srivastava, Ist Additional District Judge, West Champaran at Bettiah being the senior most Additional District Judge at Bettiah, held enquiry in course of which he took oral and documentary evidence, made local inspection of the land in question in presence of the parties and finally submitted his report dated 20.6.2002 to this Court, When the case came up for further hearing on 2.7.2002 time was allowed to the Petitioner to file affidavit in response to the findings of the Enquiry Officer. It may be stated that the Enquiry Officer has categorically held that the land in question was in unauthorised occupation of the Petitioner. Though on the date of inspection i.e. 19.6.2002 the members of the Petitioner's family were not found in the hutments which have been constructed by the Petitioner on the land, the Enquiry Officer gathered that they have been removed by the Petitioner on the

eve of inspection to prove his defence that he or his family members had no concern with the land. The Enquiry Officer noted that the family members were found on the spot upto 17.6.2002. The Enquiry Officer also found that on part of the land construction had been made by the Petitioner while the remaining part was being used for agricultural purpose.

7. Shri Rakesh Kumar Srivastava, earned Counsel for the Petitioner, submitted that the impugned decision of the Board to forfeit the pension is without jurisdiction and barred by the principle of *res judicata*. He submitted that the decision of the Board to withhold pension has already been set aside by this Court in CWJC No. 2970/99, affirmed in LPA No. 1472/99 and therefore the Board could not take contrary decision. Shri Srivastava also submitted that the Enquiry Officer did not take into account the relevant materials and the findings recorded by him are perverse.

8. Shri R.K. Dutta, earned Counsel for the Board submitted that CWJC No. 2970/99 was filed seeking direction to release full pension (10% of which had been withheld) and gratuity which had been withheld as an interim measure. Later a proceeding under Rules 43(b) of the Bihar Pension Rules, which has been adopted by the Board and is applicable to the officers and employees of the Board, was initiated on 24.11.99. The impugned decision was taken at the end of the said proceeding and therefore, there is no question of the decision being contrary to the order of this Court in CWJC No. 2970/99. The proceeding under Rule 43(b) being an independent proceeding, the said order of this Court cannot be treated as *res judicata*. He pointed out that the findings recorded in the said proceeding find corroboration from the findings of the Additional District Judge. In any view there being concurrent findings of fact recorded both by the competent authority in the proceeding under Rule 43(b), and in the enquiry by the judicial officer acting as *persona designate* pursuant to the order of this Court should not be interfered with in writ jurisdiction.

9. I find substance in the contention of the counsel for the Board. It is to be kept in mind that there is no dispute about the maintainability of a proceeding under Rule 43(b). It is not the case of the petitioner that Rule 43(b) is not attracted in the facts and circumstances of the case. In any view, the proceeding was never challenged. Having allowed the proceeding to conclude, albeit *ex parte* the Petitioner cannot question the validity of the proceeding. As a matter of fact, in fairness to the parties it must be mentioned that no submission was made to that effect on behalf of the Petitioner. The substance of the Petitioner's case, as noted above, is that there being an order of this Court in CWJC No. 2970/99 the Board could not take a different decision. This submission however is wholly misconceived. By order dated 4.10.99 in the aforesaid case, this Court merely directed the respondent Board to release pensionary dues of the petitioner but it does not mean that the Board was precluded from initiating a proceeding under Rule 43(b) which empowers the competent authority to withhold whole or part of the pension temporarily or permanently. The impugned order has been made

effective from 5.7.2001 which means that it can in no way be said to be in conflict with the earlier order of this Court. It may be mentioned that when the matter came up before the learned Judge in contempt (MJC No. 3666/99) at the instance of the Petitioner, he noted that withholdment has been made effective from 5.7.2001. The MJC was disposed of as prayed for by the Petitioner, to challenge the order in appropriate forum and that is how this writ petition was filed. An enquiry having been ordered by this Court to which the Petitioner never objected, he rather participated in it, the conclusions whereof supporting the Board's stand, it is too late to argue that he is not in unauthorised occupation of the Board's land.

10. The dispute in the facts and circumstances of the case, in my opinion, stands concluded by the findings of fact and there is no scope for interference in writ jurisdiction.

11. In the result, the petition is dismissed.