(1996) 02 PAT CK 0053

In the Patna High Court

Case No : C.W.J.C. No. 9863/94

Bishwanath Mishra APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-02-1996

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (1996) 1 PLJR 685

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : S.K. Katriar, Amrita Sinha, Narendra Kumar and Sanjeev Ranjan, for the Appellant; J.N. Jha and Renuka Sharma, for the Respondent

Judgement

Radha Mohan Prasad, J.—The Petitioner superannuated from the service of the State Government on 28.2.86 while he was posted as Head Clerk in Siwan Collectorate. It is contended by Mr. S.K. Katriar Learned Counsel for the Petitioner that three years after his retirement the Petitioner was paid 90% of the pension and that too without any Dearness Allowance admissible to retired Government servant.

2. Accordingly, the prayer of the Petitioner is to direct the authority concerned to release full pension of the Petitioner with up-to-date Dearness Allowance admissible to a Government servant. It has also been contended by Learned Counsel for the Petitioner that post retirement dues of the Petitioner such as death-cum-retirement gratuity, leave encashment, security money for working as Accountant/Cashier, payment under Group Insurance Scheme and the amount of G.P Fund have also not been given to the Petitioner.

3. Mrs. Renuka Sharma, Advocate, appearing for the Accountant General, submits that the balance of the amount of G.P. Fund of the Petitioner which used to be maintained by Accountant General earlier, has been transferred to the District Provident Fund Officer, Siwan, on 10.7.90. Thus, the Accountant General has now no liability to discharge for the same.

4. The Learned Counsel for the State has filed a counter affidavit on behalf of Collector-cum-District Magistrate, Siwan, Respondent No. 2. G.P.-2, with reference to the said counter affidavit submits that the Petitioner has been facing two departmental proceedings initiated before his retirement and a Money Suit No. 5/93 is also pending in the Court of Subordinate Judge, Siwan, for recovery of Government money. As such he has not been paid the post retirement dues. By now it is well settled that a departmental proceeding initiated against a Govt. servant before his retirement ends with his retirement unless the rule provides for its continuance even after retirement, Under Rule 43(b), of the Bihar Pension Rules such a power has been vested in the State Government, but no such order continuing the proceeding against the Petitioner even after his retirement, has been produced by the Respondent.

5. In that view of the matter, in my opinion, the Petitioner cannot be deprived of his pensionary benefits on account of pendency of such a proceeding. As regards Money Suit also I do not find any substance in the said plea of the Respondents, particularly, in absence of any order of interim injunction issued by the Civil Court. In case the State succeeds in Money Suit and a decree is passed then the remedy is provided in the CPC itself for execution of the decree. Thus, in my opinion, pendency of the said suit should also not come in the way for payment of the post retirement dues of the Petitioner.

6. Accordingly, the writ application is disposed of with the direction to the Respondent No. 2 to finalise the entire post retirement dues of the Petitioner and issue necessary sanction order for payment of the admitted dues within two months of the receipt of a copy of this order. In case of any dispute in regard to any of the claim of the Petitioner he must be communicated with a reasoned order by the Respondent No. 2, within the aforesaid time. The Petitioner if feels aggrieved by the said order will be at liberty to approach to appropriate forum.

7. A.G., Bihar, is directed to issue necessary authority slip within two weeks of the receipt of the sanction order.

