

(2001) 05 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 6114 of 2001

Chandrama Tiwary

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Citation : (2001) 2 BLJR 1393 : (2001) 3 PLJR 384

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved on account of complete the part of the respondents authorities of the Bihar State Electricity Board (in short "the Board") in deciding his claim relating to commutation of pension and payment of the amount of leave encashment.

2. The petitioner retired from the service of the Board on 31-1-2001. The Board, vide its resolution No. 1319 and 1321 dated 26-5-1999, which disagreeing with the report of the inquiry officer in respect of charge No. 2 and also after charge No. 1 has held the petitioner guilty and imposed him with the punishment of compulsory retirement from the Board's service with immediate effect. The petitioner filed C.W.J.C. No. 5602 of 1999 in this Court challenging the validity of the said resolutions. This Court, vide order dated 3-7-2000, contained in Annexure 2, quashed the said resolutions and remitted the matter back to the respondents authorities for passing fresh order after complying with the rules of natural justice, in accordance with law, within a period of two months.

3. It is not in dispute that since remand, no fresh order has been passed till date much less within the time stipulated in Annexure 2. As already noted above, the petitioner was allowed to superannuate from service on 31-1-2001. Meanwhile, as the petitioner was compulsorily retired, he applied for commutation of pension on 29-3-2000.

4. A counter-affidavit has been filed on behalf of the respondents in which it is stated that the grant of commutation is not automatic but depends on various factors to be considered as per the Pension Rules and only upon the satisfaction of the competent authority, commutation of pension can be sanctioned. It is also stated that the applicant is required to furnish information in Pension Form-7 and 9 and to appear before the Medical Board. The simplification of procedure to the extent of non-appearance before the Medical Board has been laid down by the State Government in its decision issued vide Finance Department's Memo No. 4019/F dated 14-3-1978, which, according to the respondents, does not apply to the persons retiring otherwise than superannuation. It is also stated that in addition to the charges in question, there are other charges pending against the petitioner relating to temporary embezzlement by a Bill Clerk of the Electricity Supply Sub-Division, Dimari and the complaint petition dated 10-5-1996 regarding acceptance of illegal gratification by him in which final decision is to be taken/awaited.

5. It is submitted on behalf of the petitioner that the defence taken in the counter-affidavit are merely lame excuses of the authorities of the Board for not discharging their duties in disposing of the aforementioned claim of the petitioner.

6. On the other hand, learned Counsel for the the Board has submitted that in view of the provisions contained in Rules 240 and 241 of the Bihar Pension Rules, which applies mutatis mutandis, to the employees of the Board also, the case of the petitioner requires consideration and only after the authority of the Board finds substance in the claim, the petitioner can be allowed commutation of pension. With respect to the leave encashment, it is submitted that in view of the Standing Order No. 784 dated 21-8-1997 (Annexure A), commutation of pension and payment of cash in lieu of unavailed period of earned leave can be sanctioned only after the charges against the employees/officers concerned are closed.

7. This Court is unable to appreciate the said submissions of the learned Counsel for the Board. The facts of the present case demonstrate the most callous attitude on the part of the authorities of the Board who has not even bothered to comply the order of this Court and yet has taken lame excuses for denying the due benefit. Admittedly, the application for commutation of pension and the payment of the amount of leave encashment was filed by the petitioner on 29-3-2000. Till date there has been no response from the Board to the said application which compelled the petitioner to file the present writ petition. Even assuming that Rules 240 and 241 give any discretion in the authority of the Board to decide the claim relating to commutation of pension, there is no justification on the part of the authority of the Board to withhold the decision on application of the petitioner when they did not pass any fresh order in the light of the order of this Court, contained in Annexure2, passed in the earlier writ petition, filed by him.

8. It is submitted by the learned Counsel for the Board that the Board has

preferred L.P.A. against the order of this Court, contained in Annexure 2, which has not been heard for admission till date. However, he does not dispute that there is no interim order passed in the said L.P.A.

9. This Court fails to appreciate the said submission of the learned Counsel for the Board. Even assuming that the L.P.A. is filed and finally allowed, that will not in any manner affect the disposal of the claim of the petitioner in pursuance of the order of his compulsory retirement with effect from 26-5-1999, which was the subject-matter of the writ. Moreover, this Court does not find any force in the submission of the learned Counsel for the Board that the Standing Order, contained in Annexure-A, can in any way come in the way of the authorities from deciding the claim relating to commutation of pension and making payment of the amount of leave encashment to the petitioner. Annexure-A only provides that commutation of pension and payment of cash in lieu of unavailed period of earned leave is to be sanctioned after the charges against the employees/officers concerned are closed.

10. In the instant case, there was not charge pending against the petitioner. Once the High Court quashed the resolutions and remitted the matter back to the authorities of the Board for fresh decision within two months and the Board did not take any decision, in my opinion, the charges cannot be said to be pending against the petitioner on account of inaction on the part of the respondent-authorities of the Board. Further, this Court does not find any substance in the submission that in addition to the said charges, other charges are also pending against the petitioner. It is not the case of the respondents that any proceeding has been initiated till date with respect to those so-called other charges. Moreover, the second charge is on complaint, petition filed on 10-5-1996. Thus, obviously, it can be said to be with respect to the event taking place before 10-5-1996 i.e. much beyond four years of the rider clause as provided for in proviso to Sub-clause (ii) of clause (a) of Rule 43(b) of the Bihar Pension Rules for initiating proceeding against a retired person. Accordingly, in my opinion, the entire defence taken by the respondents in the counter-affidavit are baseless and mala fide to cover up that lapses on their part and to deliberately harass the petitioner so much so that despite indulgences granted the respondent-Board has not bothered to dispose of the claim and produce the sanction order before this Court.

11. In the result, the writ application is allowed with a cost of Rs. 5,000/- (five thousand) to be paid by the respondent-Board to the petitioner within two weeks of the receipt/production of a copy of this order. The amount of cost shall be recovered from the person found responsible for the delay. This Court directs the respondents to take final decision on the application for commutation of pension filed by the petitioner and release the same along with the amount of leave encashment within two weeks of the receipt/production of a copy of this order.

12. In case of non-compliance of any part of this order, the Chairman of the Board (Respondent No. 2) shall not draw his salary and other allowances till the

order is complied and shall also be liable to pay a cost of Rs. 1,000/- (one thousand) from his own pocket to the petitioner in addition to the cost already awarded.