
(2002) 02 JH CK 0116

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4472 of 2001

Chhote Lal Prasad Sinha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2002) 50 BLJR 533

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Anil Kr. Sinha, R.N. Sahay, SC I, M.K. Roy, JC to SC I and A.K. Kashyap, for the Appellant; A. Allam, Pankaj Kr. and Sandhya Singh, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred by the petitioner against the order dated 25th June, 2001, whereby and where-under, the Director. Health Services, Bihar, Patna withheld the entire Pension Gratuity, leave encashment and G.P.F. of petitioner permanently under Rule 43 (b) of the Bihar Pension Rules, 1950.

2. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one.

3. The petitioner was in the services of the State of Bihar and posted at Daltonganj and retired on 31st December, 1996. After his retirement, a show cause notice was issued vide letter dated 12th March, 1997 to which he replied on 20th May, 1997. It was pointed out that certain materials (DDT) had not been handed over by the petitioner.

4. The petitioner having not paid the total retiral benefits moved before this Court in C.W.J.C. No. 2452/98 (R), which was disposed of on 2nd August, 1999, taken into account the stand taken by the petitioner that he handed over most of the items and the stand taken by the respondents in their counter affidavit that

the petitioner in spite of different letters and show cause, had not handed over the different materials and documents (Cash Book etc.) and certain observations made against him in the Audit Report relating to expenditure on day-to-day allowances made by the petitioner to the tune of Rs. 11,98,167/- excess to the budget allotment. The Court while observed that it was open to the respondents State to withhold full or part pension, including Gratuity under Rule 43 (b) and 139 of the Bihar Pension Rules, took into consideration that no such proceeding under Rule 43 (b) was initiated. Accordingly, the Secretary, Health Department, Government of Bihar was directed to make proper enquiry from the concerned office and if any amount was found recoverable from petitioner, to supply the list of articles and cost thereof, with liberty to petitioner to give reply. It was further observed that if no decision is taken within four months" period then to release the provisional Pension and Gratuity within six months with liberty that if decision is taken on such notice and enquiry, the respondents are to pass appropriate order in accordance with law.

5. It appears that thereafter the petitioner was given notice by the Secretary, Health Department, Government of Bihar, vide Memo No. 279 (22) dated 21st September, 1999 to which the petitioner replied. Thereafter, the impugned order was passed by the Director, Health Services, Government of Bihar on 25th June, 2001.

6. In spite of time allowed to the respondents State of Bihar on 18th September, 2001 and 19th December, 2001, no counter affidavit has been filed.

7. The Director, Health Services. Government of Bihar, in spite of receipt of order dated 18th September, 2001. did not choose to reply.

8. The impugned Order No. 298 dated 25th June, 2001 purported to have been passed by the Director under Rule 43 (b) of the Pension Rules, though the Director had no jurisdiction to pass such order under Rule 43 (b) after retirement of a Government servant. It is the State of Bihar which can pass order and that is the reason, the matter was remitted back to the Secretary, Health Department, Government of Bihar. The Court has also taken into consideration the stand taken by the petitioner that as no proceeding was conducted under Rule 43 (b), the respondents had no jurisdiction to pass impugned order dated 25 June, 2001 by which the Director, Health Services, Government of Bihar forfeited the Leave encashment and G.P.F. amount of petitioner.

9. For the reasons aforesaid, the impugned letter No. 298 dated 25th June, 2001 is set aside. It is open to Secretary, Health Department, Government of Bihar to pass final order under Rule 43 (b) after enquiry within four months, if permissible, under the law. If no order under Rule 43 (b) of Pension Rules is passed within four months from the date of receipt/production of a copy of this order, the respondent will be liable to release full Pension and Gratuity in favour of petitioner.

10. It will be open to the petitioner to raise all objections before the Secretary.

Health Department, including the objections raised before this Court that the State has no jurisdiction to pass order under Rule 43 (b), the year of enquiry of allegation being four years prior to the initiation of the proceeding.

The writ petition stands disposed of.