(2002) 09 JH CK 0072

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5190 of 2001

Deo Nandan Choudhary APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43
Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 478b

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; A.K. Mehta, SC-I and Rupesh Singh, JC to SC-I, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. A.K. Sahani, learned counsel for the petitioner and Mr. Rupesh Singh, learned JC to SC-I.

2. In this writ application, the petitioner has made a prayer for issuance of an appropriate writ commanding upon the respondents to pay all his retiral dues together with interest at the rate of 18% per annum. According to the petitioner, he joined his service in the Survey Settlement Department at Bhagalpur on 15.12.1970, whereafter he was transferred to Darbhanga and finally to Dumka in the year 1992. On or about 16.5.2001, by Annexure 1, the Assistant Settlement Officer (Headquarters) informed the petitioner he would be completing 58 years of age on 31.5.2001 and therefore would be superannuated on and from that date.

3. On the same day, i.e. 16.5.2001 the same Officer also asked the petitioner to produce the certificate of date of birth. This letter is marked as Annexure 2 to the writ application. Two days, thereafter, i.e., on 18.5.2001, the petitioner was directed to produce his certificates in relation to educational qualification as also his date of birth. This direction is contained at Annexure 3 to the writ application. According to the petitioner he submitted an application on 19.5.2001 which he

terms to be a reply to the aforementioned direction dated 18.5.2001 wherein he inter alia intimated that he had already submitted the original certificate in respect of his date of birth etc. However, he produced another copy of the said certificate on the same day, i. e., 19.5.2001. In support of the aforesaid contention, the petitioner has relied upon Annexure 4 to the writ application.

4. In the meantime on 31.5.2001 the petitioner superannuated whereafter on 4.7.2001 he filed a representation before the Settlement Officer at Dumka for payment of his retiral dues.

5. The petitioner states at paragraph 10 that after he superannuated, i.e., after 31.5.2001, a written report was made before the concerned Police Station under Sections 420, 467 and 468 of the Indian Penal Code by reason whereof it was inter alia alleged that he petitioner has concealed his date of birth. The aforementioned written report was registered as Nagar P.S. Case No. 146 of 2001. The petitioner has stated that under the provisions of Rule 43(b) of The Bihar Pension Rules, the respondents had a right of withholding or withdrawing pension or any part of it provided there was a finding recorded in a departmental or in a judicial proceeding to the effect that the petitioner was guilty of gross misconduct etc. during his service. Admittedly, in the instant case no departmental proceeding was ever initiated during the period when the petitioner was in service nor any such charge-sheet was drawn up or served upon the petitioner prior to the date of his retirement, i.e., 31.5.2001.

6. The learned counsel for the petitioner has further submitted that the proviso appended to Rule 43(b) gives liberty to the Government to initiate a departmental proceeding, if not instituted while a Government servant was on duty but such institution can only be made with the prior sanction of the State Government. In the instant case it has been stated at paragraph 16 of the counter affidavit filed by the respondent No. 4 that a proceeding under Rule 43(b) of the Bihar Pension Rules is being contemplated against the petitioner for having drawn salary for an excess period for almost six years and four months on the basis of forgery and accordingly, necessary steps have been taken for initiating a proceeding under the said rule.

7. Thus from what has been stated in the counter affidavit, it will be apparent that even till date there is only a contemplation against the petitioner to initiate departmental proceeding. Such a position, i.e., withholding of pension or recovery thereof in contemplation of a departmental proceeding is not provided in Rule 43(b) of the Bihar Pension Rules. Additionally till the date the petitioner superannuated, i.e., 31.5.2001, he was actively allowed to work and he was allowed to discharge his duty till that date.

8. For the reasons stated above, this Court feels that there was no justification on the part of the respondents to withhold any of the retiral dues in so far as petitioner is concerned. It has been stated at paragraph 17 of the counter affidavit that pursuant to an interim order passed in this case on 11.10.2001 the

petitioner has since been paid Group Insurance, Leave Encashment and General Provident Fund.

9. In that view of the matter, this writ application is disposed off and the respondents are directed to release the other retiral dues to the petitioner forthwith. This order, however, should not be construed by any of the parties to mean that this Court has in any way restrained the rights of the Government to initiate a proceeding but it is made clear that if such initiation is made, it will be strictly in accordance with law and not otherwise. This order should also not be construed to be an expression in any form whatsoever vis-a-vis the merits involved in the criminal case referred to above.

10. With the aforementioned observations, this writ application stands disposed off. However, there shall be no order as to costs.