

(2012) 04 PAT CK 0108

In the Patna High Court

Case No : CWJC No's. 13323 and 13795 of 2009

Dr. Bajrang Deo Narayan Sinha

APPELLANT

Vs

The State of Bihar
 Dr. Hemendra Nath Varma Vs The
State of Bihar and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Prevention of Corruption Act, 1988 — Section 7

Citation : (2012) 3 PLJR 207

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Advocate : Ambar Nath Banerjee, Sunil Prasad in CWJC No. 13323; Pramod Kumar Sinha, Rakesh Kumar Sinha, Madhukar Narayan Sinha in CWJC No. 13795; Ms Sunil Kr. Tiwary and Rajesh Kumar in CWJC No. 4068, for the Appellant; Gautam Bose, Ms. Sanghmitra Ghosh, Ms. Ratna Das (in CWJC No. 13323); M/s Mani Kant Mishra, J.P. Karn, Sanjay Pandey, Kumar Brajendra Nath, Subodh Chandra Jha, Sanjay Kumar (in CWJC No. 13795); Mrs. Namrata Mishra, M/s J.P. Karn, Harshwardhan Prasad (in CWJC No. 4068), for the Respondent

Judgement

Kishore K. Mandal, J.—All these writ petitions filed under Article 226 of the Constitution of India raise common issue and, as such, with the consent of the parties, they have been heard together. Order present shall govern them. Background facts of each case, however, are at some variance. They are, thus, noticed here in below.

C.W.J.C. No. 13323 of 2009

2. Petitioner superannuated as Touring Veterinary Officer of the Animal Husbandry Department of the Government. While in service, a criminal case [R.C. 45(A) of 1996] was lodged against him by the Central Bureau of investigation under diverse provisions of the Indian Penal Code as well as Prevention of Corruption Act (for short "P.C. Act"). Upon superannuation, he was not being paid the provisional pension, as such, he filed a writ petition seeking

appropriate direction upon the authorities of the respondent State to pay him the provisional pension. The same was allowed vide order dated 26.8.1999 [reported in 1999 (3) P.L.J.R. 949] whereafter he was in receipt thereof. In the meantime, he was convicted under those charges and sentenced besides imposition of fine by the Trial Court in the said criminal case launched against him and others vide judgment and order of conviction dated 25.9.2006 (Annexure-A to the counter affidavit). Aggrieved thereby, he filed appeal which has been admitted to hearing and he has been directed to be released on bail vide order dated 10.12.2007. The respondents thereafter served him a notice dated 14.1.2008 (Annexure-4) to show cause as to why pension be not stopped on account of his conviction of serious offence(s) relating to corruption charges. Petitioner filed reply (Annexure-5) stating therein that his appeal was pending consideration which should be treated as continuation of the criminal proceeding. On a consideration thereof, the respondent passed an order in purported exercise of powers conferred on the State under Rules 43(a) and (b) of the Bihar Pension Rules stopping payment of pension/gratuity on permanent basis. The said order has been challenged by filing the present writ petition

C.W.J.C. No, 13795 of 2009

3. Petitioner was appointed as Reserve Veterinary Officer. While in service, criminal prosecutions being R.C. 35(A) of 1996, R.C. 39(A) of 1996 R.C. 40(A) of 1996 and R.C. 45(A) of 1996 were launched by the Central Bureau of Investigation against him and others under diverse sections of the Indian Penal Code and P.C. Act. He was placed under suspension by order dated 1.2.1996. In the said departmental proceeding, he was ultimately held guilty and dismissed from service w.e.f. 11.3.1996. The petitioner assailed the aforesaid order by filing writ petition being C.W.J.C. No. 2357 of 1998. A Bench of this Court by order dated 31.8.1999 (Annexure-1) quashed and set aside the order of dismissal and he was reinstated in service. The authorities were, however, granted liberty to proceed in the matter afresh, if so advised, in accordance with law. In the meantime, the petitioner was convicted by the learned Special Judge, C.B.I., in Case No. R.C. 40(A) of 1996 by judgment of conviction dated 26.9.2006 (Annexure-A to the counter affidavit filed on behalf of respondent Nos. 2 to 4) and was sentenced for diverse term(s) besides imposition of heavy fine. It is the case of the petitioner that he filed a writ appeal being L.P.A. No. 570 of 2005 wherein this Court by an interim order dated 11.7.2005 directed for payment of 90% of pension and gratuity, if not already paid. The final outcome of the writ appeal has, however, not placed on record. Aggrieved by the judgment and order of sentence, he filed an appeal which was admitted to hearing by order dated 21.11.2006 (Annexure-3). Subsequently, by order dated 10.8.2007, he was directed to be released on bail. The respondent issued a notice dated 14.1.2008 (Annexure-5) to show cause as to why payment of pension be not stopped permanently in exercise of power conferred on the respondents under Rules 43(a) and (b) of the Bihar Pension Rules. Petitioner replied thereto (Annexure-6). The respondents by an order dated 4.8.2009

(Annexure-7) resolved to withhold payment of full pension and gratuity except payment of the subsistence allowance of the period of suspension. By yet another communication (Annexure-8), the Treasury Officer was accordingly informed about the decision of the respondent State. The petitioner has impugned the aforesaid two orders (Annexures-7 and 8 of the present application).

C.W.J.C. No. 4058 of 2010

4. Petitioner superannuated from the service of the State Government w.e.f. 31.8.1999 as Labour Superintendent functioning as the Incharge Assistant Labour Commissioner. While in service, a criminal prosecution was lodged vide Vigilance Case No. 33 of 1996 under diverse provisions of the Indian Penal Code as well as Section 7 of the P.C. Act on 19.10.1996 and he was placed under suspension which was subsequently revoked. Upon his superannuation, he was paid all the post retiral benefits except full pension and gratuity. Aggrieved thereby, he filed a writ proceeding being C.W.J.C. No. 15229 of 2001 which was disposed of directing the authority to sanction provisional pension/ gratuity (Annexure-3). The petitioner was convicted by the learned Special Judge, Vigilance on 30.5.2007 and aggrieved thereby, he filed appeal being Cr. Appeal No. 578 of 2007 which was admitted to hearing on 21.6.2007 (Annexure-4). Payment of his provisional pension was withheld in the light of the judgment and order of conviction passed against him in the criminal case lodged by the Vigilance. It is the case of the petitioner that provisional pension was paid to him up to May, 2007 whereafter it was stopped on account of conviction recorded against him by the Thai Court. Aggrieved thereby, he has filed the present writ petition seeking a direction upon the respondents to pay the pension which has been arbitrarily withheld.

5. I have heard the counsel representing the aforesaid writ petitions, the respondent State and the Accountant General. Lead arguments on behalf of the petitioners have been advanced by Mr. Amber Nath Banerjee (in C.W.J.C. No. 13323 of 2009) which was adopted by the counsel of the other writ petitioners, Mr. Gautam Bose. learned A.A.G.-8 assisted by Mr. Mishra S.C. 22 and Mrs. Mishra made submissions on behalf of the State respondent(s).

6. Mr. Banerjee submitted that Rule 43(b) would be applicable to the case and on perusal whereof it would appear that the procedure prescribed therein has not been complied with and as such impugned action would vitiate. According to him, a formal proceeding has to be initiated and conducted by the authority in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be passed. That having not been done, the order passed by the authority forfeiting pension and gratuity on permanent basis is contrary to law. It is next submitted that although the petitioner was convicted on grave charges and sentenced to undergo rigorous imprisonment in addition to imposition of fine but on an appeal preferred by the convict (the petitioner), the same has been admitted to hearing and he has been released on

bail. The authority ought to have waited for the disposal of the appeal which is continuation of the criminal trial/proceeding. That having not been done, the order passed by the authority would be unsustainable in law. Relying on an order of this Court passed by a learned Judge of this Court in C.W.J.C. No. 20156 of 2011 (Dr. Bimal Kant Das vs. The State of Bihar & Ors.), it has been submitted that in the factual scenario akin to the case of the petitioner, this Court held the view that appeal is in continuation of the trial and as such it was appropriate on the part of the respondents to wait till the disposal of the criminal appeal before stopping the pension on permanent basis. Learned counsel has produced the certified copy of the order passed in C.W.J.C. No. 20156 of 2011 for perusal of the Court which is taken on record and marked "X".

7. Per contra, Mr. Bose argued that Rule 43(a) of the Bihar Pension Rules (for short "the Rules") is a substantive provision independent of Rule 43(b) thereof enabling the State respondents to take action in terms thereof if the petitioner/pensioner is convicted of serious crime or be found guilty of grave misconduct. In his submissions, the order was passed in the purported exercise of power under Rule 43(a) of the Rules. Relying on a decision of the Government dated 25.10.2009 taken in the Department of Personnel and Administrative Reforms (Annexure-B to the counter affidavit), it has been submitted that the earlier provision extracted here in below was deleted: --

But an appeal being continuation of the trial, action under this proviso should not be taken until (1) the criminal appeal has been disposed of, or (2) the time limit for filing the appeal has expired.

8. In his submissions, there is, thus, no obstacle in taking action against a pensioner who has been held guilty of a grave misconduct in a criminal proceeding and has been convicted under diverse provisions of the Indian Penal Code as well as the P.C. Act. Pendency of appeal filed there against and suspension of conviction, thus, shall have no bearing. According to him, based on public policy, a convict public servant should be allowed to reel under the disability arising there from in spite of order passed in appeal filed there against suspending the execution of sentence and imposition of fine till the disposal of the appeal/revision. Reliance in this regard has been placed on K.C. Sareen Vs. C.B.I., Chandigarh, . Counsel further highlighted that it is not the case of the petitioners that the judgment of conviction itself was stayed by the Appellate Court. Materials on record indicate that only the sentence part thereof was kept in abeyance by the Appellate Court. Elaborating further, it is contended that even if the appeal is to be treated as continuation of the criminal proceeding/trial, the petitioner would not be entitled to receive pension/gratuity once he has been held guilty on the serious charge(s) of corruption by the Court of competent jurisdiction.

9. I have considered the rival submissions made by the parties and perused the materials on record. Chapter-III of the Rules deals with the general provisions relating to grant of pension. Rule 43(a) and (b) of the Rules read as under -

43(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that --

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation. -- For the purposes of the rule -

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted: --

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.

10. Both the provisions separately enable the State to withhold entire pension or any part of it. If the pensioner is convicted of serious crime or held guilty of grave misconduct. Rule 43(b), however, spells out the conditions in which such proceedings, departmental or judicial, can be levied, if not instituted while the Government servant was in service. It also enables the State to order recovery in case a pecuniary loss is caused to the Government by such misconduct/criminal act. There is no controversy that the criminal proceeding was instituted against the petitioner(s) while they were in service. The case in hand would, therefore, be governed by Rule 43(a) of the Rules. The submission of the petitioner that since entire formalities/procedure contemplated in Rule 43(b)(a)(iii) having not been undergone, the impugned order would vitiate, in my view, is misplaced. Said submission of the petitioner is, therefore, rejected.

11. Mr. Banerjee has strenuously argued that since appeal preferred by the petitioner has been admitted to hearing and the petitioners having been released on bail pending disposal of the appeal, respondents could not have taken impugned action/decision stopping pension/ gratuity on permanent basis during the pendency of appeal which is continuation of trial. Once an appeal has been admitted to hearing, there is fair chance of the appeal to be finally allowed and the petitioner acquitted of those criminal charges. It is submitted that in a comparable situation, this Court has taken a view that appeal being continuation of the trial/proceeding, the authority would not be justified in withholding grant of provisional pension/gratuity until the same is finally disposed of. Mr. Bose, on the other hand, took a stand that appeal may be a continuation of the proceeding but once the petitioner has been held guilty of serious charges under the P.C. Act then the Court should allow him to reel under the disability of conviction until conviction itself has been stayed or set aside by the Appellate Court.

12. The issue, therefore, is whether a pensioner against whom a criminal proceeding under provisions of Penal Code and the P.C. Act was lodged while he was in service and subsequently convicted thereunder imposing punishment as well as fine can be allowed to receive pension/ gratuity on account of the convict having filed an appeal there against and the order of sentence and imposition of fine suspended by the Appellate Court. In other words, once a pensioner in receipt of provisional pension/gratuity is convicted of grave charges of corruption in a criminal proceeding lodged while in service, the State respondent is precluded from taking action against such pensioner in terms of Rule 43(a) of the Rules on account of pendency of appeal filed there against.

13. There is no controversy that in the present set of writ applications, the criminal proceeding(s) under diverse provisions of the I.P.C. and P.C. Act were lodged against the petitioners while they were in service. In one case (C.W.J.C. No. 13795 of 2009), the authorities had initiated departmental proceeding which culminated into an order of dismissal which was however, interfered with and set aside by the Court and he was allowed to be reinstated and served until attaining

the age of superannuation. There is also no controversy that in the case of none of the petitioners, the Appellate Court, on an application filed by the convict(s)/petitioner(s), the judgment of conviction was suspended/stayed until disposal of the appeal(s).

14. The Supreme Court in K.C. Sareen (supra) was dealing with a matter wherein the appellant, an officer of the Bank, while in service was subjected to criminal trial at the instance of Central Bureau of Investigation wherein he was convicted under relevant provisions of P.C. Act as well as the Indian Penal Code whereafter he was dismissed from service. The appellant moved the High Court for suspension of conviction which was dismissed. Aggrieved thereby, the appellant moved the Apex Court. The submission of the appellant was noticed in paragraph 7 of the report which reads thus: --

7. Shri Vikram Chaudhari, learned counsel for the appellant repeated before us those grounds and further submitted that as a trial can logically reach its final end only when the appellate court decides the matter the conviction passed by the trial court cannot be treated as having become absolute. He made an endeavour to draw support for the said proposition from the following observations made by this Court in Akhtari Bi vs. State of M.P. (SCC p. 357 para 5).

Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction.

15. Referring to and relying on the aforesaid observation of the Apex Court in Rama Narang Vs. Ramesh Narang and Others, , the Hon"ble Apex Court in K.C. Sareen observed as under in paragraph 13 (at page 590 of the report): --

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

16. Learned counsel for the petitioner has argued that the aforesaid judgment was rendered dealing with a case involving application of Article 311 of the Constitution of India. In the case at hand, the issue is whether payment of pension/gratuity can be withheld on permanent basis invoking Rule 43(a) of the Rules on the ground that the petitioner(s) have been held guilty of the corruption charges at the trial. It has also been argued that this Court in Dr. Bimal Kant Das vs. The State of Bihar and Ors. took notice of the aforesaid fact in paragraph-7 of the order which reads as under: --

So far the reliance of learned counsel for the respondents upon a decision of the Apex Court in case of Deputy Director of Collegiate Education (Administration), Madras (supra) is concerned, it is only regarding Article 311 (2) of the Constitution of India with respect to the dismissal, removal or reduction in rank of a Government servant convicted by a criminal court. In the instant writ petition admittedly the petitioner has superannuated as far back as in the year 2002 and hence there is no occasion for his dismissal, removal or reduction in rank nor there is any question that a person convicted for such illegality can re-join the services. In the said circumstances, the above mentioned case law relied upon by the learned counsel for the respondents is not applicable to the facts and circumstances of this case.

17. The stand of the State respondents, on the other hand, is that the view expressed by the Apex Court in K.C. Sareen (supra) was not noticed by the learned Judge. It is also contended that the learned Judge, dealing with Dr. Bimal Kant Das (supra) in paragraph 8 of the order, noticed the special facts of the case and, as such, the said order can be said to have been rendered in the particular facts thereof. In the case at hand, the impugned action has been taken within a short span of the petitioner having held guilty at the criminal trial. In a case where the public servant has been held guilty on serious corruption charges and the same having not been suspended/stayed by the Appellate Court, he should be allowed to face all consequences arising there from. The disability may be in respect of his right to rejoin service and/or continue to receive pension/gratuity which, under relevant Rules, clearly contemplate that good conduct of a pensioner is an implied condition of grant of pension. There is no controversy that pension includes gratuity as per Rule 27 of the Rules. A public servant having been condemned by the Trial Court and convicted on amongst other serious charges of corruption, based on a sublime public policy, should be allowed to continue under the disability. Corruption in the society is all pervasive. Court is thus required to interpret rule/provisions with circumspection which may have the effect of disabling those who have been adjudged corrupt in claiming benefits, grant whereof is not absolute.

18. In the case of Dr. Ranjit Kumar Vs. The State of Bihar and Others, , a learned Judge of this Court dealing with a grievance relating to withholdment of pension/gratuity during the pendency of a criminal trial/proceeding held as under in paragraph 8: --

8. Under such circumstances, this Court finds it difficult to uphold the action of the respondents in withholding the payment of the remaining 10% of pension and full amount of gratuity of the petitioner. Rule 43(a) of the Bihar Pension Rules, 1950 empowers for withholding or withdrawing of pension which as per the definition clause contained in Rule 27 includes gratuity or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. Rule 43(b) empowers the State Government to withhold or withdraw the pension or any part of it, whether permanently or for a specified period and also to order

the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in department or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence during his service including service rendered on employment after retirement...

19. It, thus, appears that the view(s) taken by the Apex Court in K.C. Sareen (supra) on the effect of charge(s) of corruption proved against the public servant at the trial as well as of this Court in Ranjit Kumar (supra) were not brought to the notice of the Court in the case of Dr. Bimal Kant Das (supra). It also appears that the particular facts of the said case, as noticed in paragraph 8 thereof, weighed with the learned Judge to grant the relief. A public servant who misconducted himself while in service and swindled huge Government fund by involving himself in corrupt practices and/or acceptance of bribe in lieu of due discharge of his official function leading to trial and conviction would not be entitled to receive pension/ gratuity. Transplanting the view of the Apex Court in K.C. Sareen (supra) to the present set of cases it can be reasonably inferred that such condemned public servant should be allowed to suffer from the disabilities arising there from until finally exonerated of those charge(s) in appeal/revision. The matter would have been different if the judgment of conviction was stayed by the Appellate Court. Disability arising from conviction of the public servant at the trial would also take in its sweep the right to receive pension/gratuity particularly when receipt thereof is not an absolute right under the relevant Rules.

20. One aspect of the matter, however, needs to be noticed and clarified. From the impugned order/action passed/ taken by the respondent State, it appears that payment of pension/gratuity to the petitioners have been withheld on permanent basis on account of conviction(s) recorded against them at the trial. Such decision/ action of the Government shall, obviously, be subject to final decision to be taken by the Court in the proceeding levied where against. To make the position more explicit, it is observed that in the event of pending appeal(s) having been decided in favour of the petitioners/appellants, the authority would re-examine the impugned decision/action in the light of judgment/order passed on the pending appeal(s). In view of the discussions made hereinabove, this Court finds no merit in the applications. They are accordingly dismissed but without costs.