
(2005) 05 PAT CK 0054
In the Patna High Court
Case No : CWJC No. 16241 of 2004

Dr. Baliram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Citation : (2005) 4 PLJR 196

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : M. Pd. Sharma, for the Appellant; S.K. Ghosh, for the Respondent

Judgement

Barin Ghosh, J.—Despite service of a copy of the writ petition upon the respondents, except the learned counsel appearing on behalf of the Accountant General, no one is appearing on behalf of other respondents. Immediately before the petitioner was superannuated, a chargesheet was issued against him. The chargesheet was issued on the ground that the petitioner has given illegal appointments as well as illegal promotions. The petitioner was then permitted to retire upon attaining the age of superannuation and his suspension was revoked. Before the order of suspension was revoked the petitioner was asked to supply the details of the illegal payments made and it was held out that these are recoverable from him. That was the subject matter of the challenge in an earlier writ petition. The Court noticed that the subject matter of challenge in the said writ petition was the chargesheet and prior to issuance of the chargesheet, the petitioner was put under suspension. The Court found that the order of suspension has been revoked but at the same time it was found that the proceedings against the petitioner in terms of the chargesheet will continue. The learned counsel appearing on behalf of the respondents before the Court also accepted that the subject matter of challenge in the said writ petition was merely a chargesheet and accordingly by reason thereof the petitioner need not be apprehensive of any recovery from him. The Court accordingly dispose of that writ petition with assurance that the petitioner need not be worried about any

recovery and the subject matter of the challenge in the said writ petition was in fact the chargesheet issued in a disciplinary proceedings. It is the case of the petitioner in the present writ petition that subsequent thereto no steps have been taken in the disciplinary proceedings and on the other hand, the terminal dues of the petitioner have not been settled and paid to the petitioner. It is now settled that after the petitioner had been permitted to retire, the only order that can be passed in the disciplinary proceeding is withholding of full or part of the pension of the petitioner in terms of Rule 43 of the Bihar Pension Rules 1950. In terms of the said rules, there is no dispute, that gratuity is also part of pension. However, in terms of the said rules only a part or full pension can be withheld provided the petitioner has been proved guilty and not before that. From time to time, various administrative orders had been issued to the effect that when such proceedings are pending 90% of the pension is to be released to the delinquent as and by way of provisional pension. Those administrative decisions were subject matter of challenge before this Court and a Division Bench of this Court upheld these decisions. Subsequent thereto the Government through the Chief Secretary held out that in such situation 100% of the pension should be paid to the delinquent but, of course, as provisional pension.

2. In the light of that decisions of the Government, this writ petition is disposed of by directing the respondents to see to it that the pensionary dues of the petitioner to the extent of 100% are released to the petitioner as by way of provisional pension within a period of twelve weeks from the date of service of a copy of this order upon the respondent No. 7. The respondent No. 7 is directed to see to it that all the remaining terminal dues of the petitioner are released and paid to him within the aforesaid period. It must be kept in mind that in terms of Rule 43 of the said Rules only pension payable to the petitioner may be dealt with in the manner as prescribed therein, but not any other terminal dues.

3. The aforementioned dues of the petitioner must be released and paid to him together with interest at the rate of 5% as has been provided in the Government circular. This disposes of the writ petition. There shall be no order as to costs.