(2005) 05 PAT CK 0063

In the Patna High Court

Case No : CWJC No. 6886 of 2002

Dr. Birendra Kumar Sinha — APPELLANT

Vs

The Health Secretary and Others — RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304(B), 34, 498A

Citation : (2005) 3 PLJR 106

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the counsel appearing for the Accountant General. The petitioner retired from the service of the State Government on 31.1.2000. Prior to his superannuation the petitioner was arrested on 8.12.1999 in connection with Laheriasarai P.S. Case No. 427 of 1999 in which he was made accused under sections 498A and 304(B) / 34 of the Indian Penal Code. During the period of judicial custody, the petitioner has superannuated. The petitioner had made representation before the respondent authorities for fixation and grant of pension and other consequential pensionary benefits which was under consideration. The office of the Accountant General drew the attention of the State Government towards the pendency of the criminal case against the petitioner. Since the petitioner was taken into custody and remained in Judicial custody till the date of his superannuation, the Deputy Secretary, Government of Bihar vide order dated 24.7.2001 kept the petitioner under suspension with effect from 8.12.1999 from the date he was arrested and till the date of his superannuation. Thereafter a departmental proceeding was initiated against the petitioner for the same charges/The charge was framed against him by the Dy. Secretary to the Government. In the criminal case petitioner was convicted by the trial Court. Against the judgment and order of conviction, he preferred Cr. Appeal No. 196 of 2002, which was allowed and he was acquitted. The prayer of the petitioner is for payment of salary w.e.f. October, 1999 to January, 2000 and difference of salary w.e.f. 1996 to

September, 1999 as well as payment of pension, gratuity and leave encashment. It is submitted that 90% pension has been paid but 10% of the pension with arrears has been withheld. It is also submitted that payment of earned leave has not been made though sanctioned by the Accountant General, payment of gratuity has not been made, G.P.F. has been sanctioned, but payment has not been made. Leave encashment was also sanctioned but it was not paid.

2. During the pendency of this application, the petitioner was acquitted of charges by the judgment and order passed in Cr. Appeal No. 196 of 2002, vide Annexure 9. The departmental proceeding has also been dropped vide order dated 26.10.2004 and the petitioner has been exonerated from the charges.

3. Considering these developments now there is no reason for withholding the retiral dues and pension of the petitioner, accordingly, petitioner is entitled for the reliefs prayed in the writ application.

4. Second supplementary affidavit has been filed by the petitioner making additional prayer on the basis of a notification dated 25.6.2003 whereby employee of the State Government, who have not been given benefit of any financial progression during their service career, shall be given financial progression after completion of 12/24 years of service. The petitioner''s case is that in his 33 years of service, he has not been given any financial progression. He is still in the basic scale of Rs. 6500 to 10500. Considering the fact that notification dated 2.5.6.2003 has come into force w.e.f. 9.8.1999, i.e. prior to superannuation of the petitioner and also that during 33 years of his service, petitioner has not received any financial progression, he is entitled for the benefit of this notification dated 25.6.2003.

5. In the counter affidavit filed by the State, submission made by the petitioner has not been denied.

6. Counsel for the Accountant General has submitted that earlier 90% pension and other duos were sanctioned and now 10% pension and gratuity amount has been sanctioned. Pension payment order has also been issued in favour of the petitioner.

7. Respondent No. 2, Civil Surgeon-cum-Chief Medical Officer has stated that final payment of deposited amount towards 8011 Group Insurance Scheme has already been sanctioned vide letter No. 3319 dated 18.11.2003 and paid vide letter dated 2.9.2004, as informed by Incharge Medical Officer, Sadar Block, Darbhanga, G.P. amount in prescribed proforma has been sent to respondent No. 3 vide letter No. 2096 dated 5.8.2004 as per the instruction given by the Under Secretary to the Government, Department of Health, Patna vide Memo No. 741(2) dated 27.4.2004.

8. Regarding arrears of salary, it has been stated that petitioner himself being drawing and Disbursing Officer, the payment of arrear of his salary would be made on authority slip issued by the Accountant General, Bihar, Patna.

9. Considering the fact that almost all the retiral dues of the petitioner have already been sanctioned, the Treasury Officer, Darbhanga is directed to make payment of sanctioned amount to the petitioner within three weeks from the date of production/communication of this order. For arrears of salary, the Accountant General is directed to issue authority slip in favour of the petitioner, within three weeks of the receipt/production of the copy of this order. So far as the benefit of a notification of the Finance Department dated 25.6.2003 is concerned, the petitioner is directed to file representation before the Civil Surgeon, Darbhanga, respondent No. 2 as well as the Health Secretary, Government of Bihar, Patna, who will examine the matter and if it is found that the petitioner is entitled for the benefit of the scheme, the order should be passed in favour of the petitioner within three weeks from the date of filing of such representation.

10. A copy of this order be handed over to the Junior Counsel to AAG 2 for necessary compliance. The counsel for the petitioner has submitted that the petitioner had superannuated in the year 2000, but the payment has not been made till date and on account of delayed payment, he is entitled for statutory interest. From the facts it appears that delay was caused due to petitioner''s involvement in criminal and Departmental proceeding. He has been exonerated from the charges in the departmental proceeding by order dated 26.10.2004, and acquitted from the charge in criminal proceeding on 28th June, 2004. At best petitioner can claim statutory interest, on his retiral dues, on account of delay, from 26.10.2004 only. However, interest on G.P.F. should be calculated from the date of superannuation. Respondents should pay interest, as per Government resolution in case of delayed payment.