(1990) 04 PAT CK 0013

In the Patna High Court

Case No : CWJC No. 7970 of 1988

Dr. Jyotindra Sahay — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

Citation : (1990) 38 BLJR 926 : (1991) 1 PLJR 637

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.P. Singh, J.—The petitioner, who retired from the Health Services as Regional Deputy Director on the 30th June, 1986, has claimed payment of full and final pension and gratuity with interest on the delayed payments. Before his retirement, the petitioner submitted all his papers on the 28th June, 1986, regarding pension, gratuity and other retirement benefits. On the 25th January, 1988 the office of the Accountant General, Bihar, issued payment order granting 90% provisional pension which is contained in Annexure 1 to this application.

2. The petitioner started his career as Civil Assistant surgeon in the year 1956 and was promoted, as Civil Surgeon is the year 1985. The petitioner retired from the service on the 30th June, 1986, as Regional Deputy Director, Health Services.

3. Repeatedly, the petitioner requested for payment of full and final pension and gratuity in several communications addressed to the respondents, but he received no reply. The admitted fact is that no recovery proceeding was started or is pending against the petitioner under Rule 43 of the Bihar Pension Rules.

4. After one year of the petitioner''s retirement, the Deputy Secretary (Health) issued a memo in May, 198;, calling upon the petitioner to explain certain charges which were based on a D.O. letter dated the 10th February, 1986, issued by the Commissioner, North Chotanagpur Division. A copy of the chargesheet was also enclosed alleging that the petitioner was guilty of violating the

Government instruction prohibiting an officer is make any appointment within two years prior to his retirement.

5. In view of the sole legal question raised by Mr. Saran, the learned Counsel for the petitioner, that, in view of the Resolution of the Finance Department dated 31st July, 1980 the pension greeting authority shall have no power to stop the pension, there is no necessity of considering the validity of the charges, although the same has been explained. It was submitted that the petitioner was competent to make appointments and that the appointments of the two drivers and one sweeper were emergent. These appointments are made on ad hoc basis and only temporary for a period of three mouths, only because of the prevailing emergent situation so that she Ambulance service and the work of the Family Planning at the Sub-Center and the Referral Hospital at Bhoraich Nagar which required a sleeper as well could function properly end smoothly in the interest of the general public, The emergent situation was also highlighted by the local representatives of the public. The persons appointed were duly registered in the Employment; Exchange and their applications were also available in this office of she Civil Surgeon. The petitioner had thus sent a detailed reply to the charges but he received no reply from the Health Department.

6. In support of the contention, the learned coarser for the petitioner referred to and re-laid upon Resolution No. 3014-F., dated the 3ist July, 1980, of the Finance Department, of which para 7 (kha) is important to be notices for the purpose of deciding the question, raised herein. The English translation has been forwarded by the learned Counsel for the petitioner:

If till the date of retirement of a Government servant, any kind of departmental enquiry, criminal case, judicial enquiry, etc. have been started against the Government servant then in that situation the pension granting authority shall have no power to stop the pension in any circumstance whatsoever. It; further provides that Rule 43 of the Bihar Pension Rules is a statutory rule and, therefore, any action in contravention of the name by different department to stop pension by adopting different proceedings as also the necessity of obtaining integrity certificate from the Vigilance Department would stand automatically revoked.

7. On the other hand, the learned Counsel for the State relied upon Rule 43 of the Bihar Pension Rules, 1950 and contended that the Provincial Government had the right of withholding or withdrawing the pension or any part, of it. There is no difficulty in identifying the right of the Provincial Government of withholding or withdrawing the pension or any part of it but the condition imposed under Rule 43(a) of the Bihar Pension Rules is that such withholding or withdrawing the pension or any part of it by the Provincial Government shall be applicable in a case where the petitioner is convicted of a serious crime or found guilty of grave misconduct. Rule 43(b) also provides that the State Government shall have the right of ordering recovery from the pension the whole or part if any pecuniary loss is caused to the Government but again on the condition that the petitioner is

found guilty of grave misconduct in a departmental or judicial enquiry.

8. The explanation to the proviso to Rule 43 may by noticed and it reads:

A departmental proceeding shall be deemed to have been instituted only 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 a judicial proceeding shall be deemed to have been instituted 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 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 the Civil Court.

9. On the facts of the present case and on the admitted position, Rule 43 of the Bihar Pension Rule is not attracted in the case of the petitioner. The admitted position is that on the date of retirement, charges against the pensioner were never issued to him and he had not been placed under suspension from an earlier data. Therefore, there was no departmental proceeding instituted against the petitioner and there was no judicial proceeding against him. In this view, the State Government had no right of withholding or withdrawing the pension or any part of it. The petitioner''s case is fully covered under Para 7 (kha) of the aforesaid Finance Departments Resolution issued on the 31st July, 1980. and it has to be held that the pension granting authority had no power to stop the pension and gratuity of the petitioner.

10. Accordingly, Respondent No. 2, the Secretary to the Government of Bihar, Department of Health, and Respondent No. 3, the Accountant General, Bihar, are directed to pay the full and final pension to the petitioner, including the full amount of the gratuity which fell due after the retirement of the petitioner with interest at the rate of 12% per annum on the delayed payments with effect from the date of superannuating till the date of payment. The payment shall be made within a period of three months from the date of communication of this order.

11. This application is, accordingly, allowed but, in the circumstances of this case, there shall be no order as to costs.

