
(2010) 04 PAT CK 0223
In the Patna High Court
Case No : CWJC No. 1856 of 2006

Dr. Lakshmi Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Bihar Pension Rules, 1950 — Rule 27

Citation : (2010) 04 PAT CK 0223

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Judgement

Jyoti Saran, J.—Heard Mr. Amresh Kumar Sinha, learned Counsel for the petitioner, Mr. Deepak Kumar, learned Assisting Counsel to G.P.16 and Mr. L.P.K. Rajgrihar, learned Counsel representing the Accountant General, Bihar.

2. The writ petition was filed for payment of G.P.F. gratuity, leave encashment and arrears of 10% pension which are due since 31.1.2004. The prayer for payment of interest has also been made.

3. Brief facts of the matter is that the petitioner superannuated from the post of Regional Malaria Officer, Muzaffarpur with effect from 31.1.2004. Although the respondents sanctioned 90% provisional pension to the petitioner but no steps were taken for payment of his other dues leading to the filing of the writ petition for the relief(s) set out hereinabove.

4. Learned Counsel for the petitioner, with reference to the statements made in paragraph-11 of the writ petition, submits that as the petitioner was found to have sanctioned certain sum towards the medical expenses in favour of certain employees, an audit objection came to be raised in the year 2003 charging the petitioner of not taking proper sanction for release of the said amount. As according to the respondents the said action was not in accordance with the rules, a departmental proceedings was initiated against the petitioner in the year 2005, i.e. after his superannuation and which is yet pending.

5. Learned Counsel for the petitioner submits that on the pretext of the departmental pending proceedings, the remaining dues of the petitioner have been withheld by the authorities, despite lapse of more than six years of retirement.

6. A counter affidavit was initially filed by the Under Secretary, Health Department in which it was stated that the G.P.F. amount was sanctioned on 1.7.2005 and that in view of the pending departmental proceeding, 10% pension, unutilised leave encashment and gratuity has been kept pending until finalization of the departmental proceedings. The said counter affidavit was followed by a supplementary counter affidavit and in which it was stated that the petitioner had been asked to file a show cause in the departmental proceedings and which has yet not been filed by the petitioner. It was also stated that another departmental proceedings Which was initiated against the petitioner could not progress, as the relevant records of the proceedings went missing from the department itself and for which report had been lodged with the local police station.

7. The petitioner has filed a rejoinder to the counter affidavit and in which it is stated that despite the affidavit of the Under Secretary mentioning therein that the G.P.F. amount of the petitioner was sanctioned under department letter No. 637(3) dated 1.7.2005, the respondents have not yet paid the said amount to the petitioner and which has been wrongfully withheld by them.

8. Learned Counsel for the petitioner, with reference to the provision of the Finance Department's resolution No. 3014 dated 31.7.1980 (Annexure-5), submits that in view of the stipulations made in para-7 of the said resolution, the respondents could not withheld the gratuity amount of the petitioner as well as the Unutilised leave encashment amount.

9. Learned Counsel, relying upon a decision of this Court rendered in C.W.J.C. No. 717 of 2006 dated 7.4.2010 (Annexure-6), submits that the case of the present petitioner also falls under the same category and this petitioner is entitled to the relief(s) extended in the said writ petition.

10. Having considered the rival contentions advanced on behalf of the parties and on perusal of the materials available on record of the proceedings, one thing is evident that out of two departmental proceedings initiated against the petitioner, neither of them have reached a finality. In fact, the respondents themselves, accept that the records of the other departmental proceedings have been misplaced from the office itself. In any view of the matter, taking into consideration the definition of pension as present at Rule 27 of the Bihar Pension Rules and the stipulations contained in the circular dated 31.7.1980 (Annexure-5), I am of the opinion that the petitioner would be entitled for payment of 90% of pension as well as 90 % gratuity. As leave encashment is a salary earned by an employee for the services rendered to the department, the respondents have no jurisdiction to withhold the same and the same would be

released without delay. The opinion aforesaid finds support by a Division Bench judgment of this Court reported in Bajrang Deo Narain Sinha Vs. The State of Bihar and Others, .

11. The pendency of a departmental proceedings does not permit the respondents to withhold the entire gratuity or the leave encashment of the petitioner.

12. In the circumstances the respondents are directed to release the G.P.F., 90 % gratuity and the entire leave encashment amount of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

13. The writ petition is disposed of with the directions aforesaid.