
(2011) 04 PAT CK 0294
In the Patna High Court
Case No : CWJC No. 13187 of 2008

Dr. Madan Mohan Dubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Bihar Service Code, 1952 — Rule 97
Pension Rules — Rule 43

Citation : (2011) 59 BLJR 2625 : (2011) 2 PLJR 920

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The Petitioner has come to this Court challenging the order dated 16.4.2004 as passed by the State (Annexure-12) as well as the order dated 1.2.2008 (Annexure-15) by which State has refused to recall the said order, upon representation being filed, pursuant to orders of this Court. It may be noted that the Petitioner was punished in the departmental proceedings with reduction of his pensionary benefits by 50%. That is a subject matter of separate writ petition.

2. What happened in the present case is that with an order withholding 50% of the pensionary benefits, the disciplinary proceedings were concluded by order dated 13.1.2004. The Petitioner, while in service, was suspended. Pending departmental proceedings, he superannuated. While being suspended, the disciplinary proceedings were carried out with the aid of Rule 43(b) of the Pension Rules. Upon superannuation, the suspension itself lapsed and ordinarily the Petitioner was entitled to receive such remuneration for the period of suspension but no such payments were made. Punishment order was passed on 13.1.2004 but no order withholding the payment of suspended period having been passed, the disciplinary proceeding came to an end. Petitioner then asked for payment of such remuneration of suspended period which he has become

entitled to In addition making the said payment on 16.4.2004 (Annexure-12), a fresh order was passed wherein it was ordered that nothing more is paid for the period of suspension. Petitioner assailed the order before this Court. This Court directed the Petitioner to represent before the authority against the said order and the authorities were directed to consider the matter. The case was, thus, disposed of by this Court. Upon Petitioner's representation dated 1.2.2008 (Annexure-15), an order was passed refusing to recall the order as such.

3. In my view, this case calls for intervention. It is well established that a person can remain suspended only while he was in service. The moment he superannuates, the master-servant relationship comes to an end. The suspension automatically stands revoked. The effect would be that the Petitioner would become entitled to due payment of due remuneration of suspension period as a matter of course. Rule 97 of the Bihar Service Code would not apply to such a situation because the application of Rule 97 of the Service Code is dependent upon reinstatement. The consequence of orders passed in disciplinary proceeding does not arise in the facts of the present case. There is no question of re-employment as the employee superannuated. It is, therefore, settled principle that in such an event the employee becomes entitled to full payment. Now if for any reason this payment has been denied to the employee can it without hearing him or without giving notice to him. The answer is no for the simple reason that the action of withholding payments amounts to civil consequences and it is settled law that no order which has adverse civil consequences can be passed without hearing. This is basic principle of natural justice. It is equally well established that an order passed in course of violation of natural justice is void ab initio. That being so, the order dated 16.4.2004 passed by the State, as contained in Annexure-12, is void ab initio. If we refer to the subsequent order by which the State has refused to recall the order, it would show that primarily State has passed this order on the assumption that the Central Bureau of Investigation has found Petitioner guilty. This is virtually on the ground that the Central Bureau of Investigation found no evidence of any culpable action against the Petitioner. The Petitioner is completely exonerated of any criminal liability as far back and Petitioner was discharged by the C.B.I. Court in the criminal prosecution but still the C.B.I. maintains that there were certain other irregularities for which Petitioner can be proceeded departmentally and with such an order withholding of payment of suspension period, as held by me above, such an order cannot be passed after superannuation as Rule 97 is not applicable as there is no reinstatement in this case.

4. Thus, for the reasons aforesaid, the writ petition is allowed and Annexures-12 & 15 are quashed. It is directed that the Petitioner is entitled for full payment of remuneration for the period he remained suspended. State would ensure payment within three months from the date of production of a copy of this order before the Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.