(2001) 06 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No. 5271 of 2001

Dr. Ranjit Kumar — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Bihar General Provident Fund Rules, 1948 — Rule 14
Bihar Pension Rules, 1950 — Rule 27, 43

Citation : (2001) 4 PLJR 768

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Surya Nr. Verma, for the Appellant; J.D. Singh, S.P. Verma for State and Vishwambhar Sharma, for Accountant General, for the Respondent

Judgement

Radha Mohan Prasad, J.—The Petitioner, who retired as Deputy Director. Health, Government of Bihar, is aggrieved on account of withholding of 10% of his pension, full amount of gratuity and non-payment of G.P.F. for the period 1980-81 and 1981-62 and the statutory interest on the entire G.P.F. upto April 2001, so far.

2. It is submitted on behalf of the Petitioner that under Rule 14 of the Bihar G.P.F. Rules, 1948 read with Government of India, Ministry of Finance Resolution No. F. 5(1) FV (B) 62 dated 1st May 1962, the Petitioner is entitled interest on the entire G.P.F. upto April, 2001 as admittedly authorization for payment of the same has been issued on 28.4 2001 vide Annexure ''A'' to the counter affidavit filed on behalf of Respondent No. 5. However, he has not able to show that the said resolution of the Government at India has also been made applicable to the employees of the State Government. Moreover, the said Government Resolution provides that the payment of G.P.F. if paid after 15th day of the month then the person will be entitled for interest for the said month but shall draw the amount only in the next month.

3. On oral instruction learned Counsel for the Petitioner submitted that the

Petitioner drew that said amount on. 7th May, 2001. As such, according to him the Petitioner is entitled for interest for the month of April, 2001. However, learned Counsel for the Petitioner has failed to show any such pleading in support of the fact that the Petitioner drew the said amount on 7th May, 2001. Under such circumstances, learned Counsel for the parties have rightly suggested that the Petitioner may be given liberty to move the authority concerned for payment of interest on G.P.F. for the month of April, 2001. Accordingly, this Court directs that the Petitioner may file representation before the authority concerned for payment of interest on G.P.F. for the month of April, 2001, who shall consider the same and dispose it of by a reasoned order within a fortnight of the receipt of the representation alongwith a copy of this order.

4. As regards the claim relating to G.P.F. for the period 1980-81 and 1981-82 the Joint Commissioner, Accounts, (G.P.F.), Bihar (Respondent No. 5) in his counter affidavit has stated that after scrutinising and verifying the statement of deductions received from the Health Department, final authorisation with statutory interest for withdrawal of Rs. 6,43,710/- has been authorised under authority No. 611 dated 28.4.2001. The Petitioner has not filed any reply to the said counter affidavit. However, in reply affidavit filed on behalf of the Petitioner to the third supplementary counter affidavit, it is stated that the contribution made by the Petitioner during 1980-81 and 1981-82 and the interest accrued thereon as per Rules have not been calculated till date as the District Treasury Officer, Bhagalpur (Respondent No. 6) has not sent the statements of contributions duly countersigned by him to the Joint Commissioner, Accounts (G.P.F.), Bihar, Patna. Under such circumstances, as agreed, this Court directs that the Petitioner may file representation before the Joint Commissioner, Accounts (G.P.F.), Bihar (Respondent No. 5) as well as the District Treasury Officer, Bhagalpur (Respondent No. 6) with respect to his said claim which shall be examined and disposed of by a reasoned order by the said authorities positively within two weeks and authorisation for the remaining amount, if any found payable, must also be issued within the said time.

5. From the counter affidavit, it appears that payment of 10% pension and full amount of gratuity have been kept withheld on account of some enquiry by the Vigilance for placing orders and receipts of medicines by this Petitioner from the Government Medical Store Depots. Learned Government Pleader No. I has submitted that the letters of the Assistant Director General, Government medical Store Depot, Calcutta as well as of the Assistant Depot Manager, Government Medical Store Depot, Mumbai which have been annexed as Annexures R-1/C series and R-1/D series respectively prima facie show the involvement of the Petitioner. According to the learned Government Pleader No. I, Annexures R-1/C and R-1/D show that the supplies of medicines were made by the said two depots during the tenure of posting of the Petitioner at Bhabhua, i.e. between 27.2.1993 to 25.7.1995.

6. This Court is unable to accept the said submission of the learned Government

Pleader No. I. The said two annexures only show the invoice number and to whom the supply was made as well as the amount for which the supply was made. Neither of the said two annexures show that any order was placed by this Petitioner against which the said supplies were made by the said two Medical Depots nor it shows that the said supplies were received by the Petitioner during the tenure of his posting at Bhabhua. At the admission stage this Court granted ample opportunity to the learned Government Pleader to bring on record any documentary evidence involving this Petitioner in the matter of purchase or fake receipt of medicines during his posting at Bhabhua for which enquiry by the C.B.I, is going on but nothing has been shown by the learned Government Pleader to involve this Petitioner so far.

7. Learned Counsel for the Petitioner has submitted that the remaining 10% amount of pension and gratuity of the Petitioner cannot be withheld on such vague enquiry, particularly when no departmental or judicial proceeding has been initiated against him. Learned Government Pleader No. I has not disputed that neither any departmental proceeding or judicial proceeding has been initiated against the Petitioner so far.

8. Under such circumstances, this Court finds it difficult to uphold the action of the Respondents in withholding the payment of the remaining 10% of pension and full amount of gratuity of the Petitioner. Rule 43(a) of the Bihar Pension Rules, 1950 empowers for withholding or withdrawing of pension which as per the definition clause contained in Rule 27 includes gratuity or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. Rule 43(b) empowers the State Government to withhold or withdraw the pension or any part of it, whether permanently or for a specified period and also to order the recover from a pension of the whole or part or any pecuniary loss caused to Government if the pensioner is found in department or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence during his service including service rendered on employment after retirement Further proviso to Rule 43(b) empowers the State Government to initiate the departmental proceeding and judicial proceeding, if not instituted white the Government servant was on duty ether before retirement or during reemployment with certain riders provided therein.

9. Learned Government Pleader NO. I has failed to show any provision under which the State Government can withhold any amount of payment of pension and gratuity on such vague enquiry being conducted by the C.B.I.

10. Under such circumstances, in my opinion, the Respondents are not legally justified in withholding the payment, of remaining 10% of pension and full amount of gratuity of the Petitioner. Accordingly, the Respondents are directed to issue necessary sanction order for payment of the remaining amount of pension and gratuity within four weeks of the receipt/production of a copy of this judgment/order. The Account General, Bihar (Respondent No. 3), who is

represented by Mr. Vishwambhar Sharma, Advocate, Is directed to issue authority slip with respect to the remaining amount of pension and gratuity within one week of the receipt of the sanction order.

11. Learned Counsel for the Petitioner has pointed out that the application of the Petitioner for commutation of pension has also not been disposed of by the Respondents. Accordingly, this Court directs the Respondents to dispose of the application for commutation of pension, if any, filed by the Petitioner and pay the commuted value as determined within four weeks of the receipt/production of a copy of this order.

It is needless to add that any payment made under this order shall be subject to final outcome of the enquiry, if any, being made by the C.B.I.

12. In case of non-compliance of any part of the order, the concerned authority shall not draw his salary and other allowances till the order is complied and shall also be liable to pay a cost of Rs. 1000/- from his pocket to the Petitioner.

13. The writ application is, accordingly, disposed of.