
(2019) 09 JH CK 0014
In the Jharkhand High Court
Case No : Writ Petition (S) No. 7583 Of 2013

Dr. Shiv Narayan Mandal

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164
Evidence Act, 1872 — Section 74, 80
Bihar Pension Rules, 1950 — Rule 27, 43, 43(a), 43(b), 139, 139(a), 139(B), 139(c), 193(c)

Citation : (2019) 09 JH CK 0014

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saurabh Shekhar, B.B. Sinha

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Saurabh Shekhar, learned counsel for the petitioner and Mr. B.B. Sinha, learned counsel appearing for the respondents.
2. The petitioner has preferred this writ petition for quashing the order dated 07.09.2013 and also further prayer is made for grant of the pensionary benefits.
3. The petitioner has joined his service in the State of Bihar and after Bifurcation of the State of Bihar, the petitioner joined the Animal Husbandry and Fisheries Department and the cadre was allocated to State of Jharkhand. While the petitioner was posted in the department of Animal Husbandry & Fishery Department, he has been involved in a Criminal Case being R.C. Case No. 39A/1996 whereby the petitioner has been put under suspension vide order dated 11.07.1996 and the petitioner not being paid the subsistence allowance which compelled the petitioner to move before this Court in W.P.(S) No. 899 of 2011 which was allowed by order dated 08.08.2011 whereby the direction was

issued to pay subsistence allowance to the petitioner. Subsequently, letters patent appeal was preferred by the State before this Court in L.P.A. No. 02 of 2012 and the same was dismissed vide order dated 14.03.2012. Thereafter, the petitioner was paid subsistence allowance.

4. He further submits that when the petitioner was not paid the retiral dues even after his retirement, the petitioner has preferred a writ before this Court in W.P. (S) No. 3949 of 2012 for payment of pensionary benefits and during pendency of the writ petition impugned order dated 07.09.2013 has been passed and by way of I.A. that order was challenged in W.P.(S) No. 3949 of 2012. The writ petition was permitted to be withdrawn with liberty to file afresh. Pursuant to that the petitioner has filed this writ petition challenging the order dated 07.09.2013. By impugned order dated 07.09.2013 following punishment has been inflicted upon the petitioner. :

i. The payment of pension has been withheld permanently with immediate effect to the petitioner.

ii. For the period from 01.04.2011 to 06.09.2013, 90% pension will be admissible.

iii. According to Rule No. 27 of Bihar Pension Rules "Pension includes Gratuity". So, the payment of gratuity has been withheld permanently to the petitioner.

iv. Payment of no amount except subsistence allowance will be admissible to the petitioner for the suspension period (from 11.07.1996 to 31.03.2011) to the petitioner, but the said period will be counted for pension purpose.

v. The payment of leave encashment has been sanctioned to the petitioner.

vi. The suspension of the petitioner has been revoked with effect from the date of retirement i.e. 31.03.2011.

5. Learned counsel appearing for the petitioner assailed the impugned order on the ground that the petitioner was put under suspension on 11.07.1996 and the petitioner was allowed to function during the period of suspension till 31.03.2011. He submits that so far as payment of subsistence allowance is concerned, the service of the petitioner is admitted to be regularised as there is no dismissal order against the petitioner is there. He further submits that no departmental enquiry was initiated against the petitioner in spite of that the impugned order has been passed. He further submits that so far as the impugned order is concerned a bare perusal of the paragraph 5 and 6 of the impugned order which transpires that it was based on the two rules paragraph 5 speaks about Rule 43 (a) and paragraph 6 speaks about Rule 139 (c) of the Pension Rules. He further submits that so far as the Rule 139(c) is concerned the State can re-examine pensionary benefits after giving opportunity of being heard but there is bar of 3 years from the approval of first pension. He further submits that so far as Rule 43(a) is concerned it is with respect to the future good conduct. The petitioner was retired in the year 2011 whereas the petitioner has

been convicted in the year 2008 itself. So it cannot be said that the pension order has been passed under rule 43(a). He further submits that the authorities concerned are need to pass order in terms of the Statute. There are two para materia so far as the rules are concerned. Thus, by way of rule 43(a) and 139(c) of Pension Rules, he submits that rule 43(a) prescribes that future good conduct is implied condition for pension and Rule 139(c) prescribes the order to withheld pension can be taken within three years after sanction order of pension was first passed. He submits that so far as the Rule 139(c) is concerned it meant for the issuance of order while the person in service and so far Rule 43(a) is concerned it meant for the issuance of order after retirement of person. He further submits that so far as the authorities are concerned they are not sure under which rule they have passed the order. Wherein para 5 they have stated that Rule 43(a) of the pension Rules they are passing the order as the petitioner has been held guilty in RC case no. 39(A)/96 and punished for 6 years rigorous imprisonment in the year 2008 itself, therefore, there is no question of future conduct. In para 6 the authority concerned issued notice to the petitioner under section 139(c) and asked to file show cause reply within 15 days asking the petitioner as to why not in view of the above punishment his pension and gratuity will be stopped. It is submitted that the authority concerned are not proceeded in terms of the Statute. To substantiate his argument he relied on the judgment Nazir Ahmad Vs. Emperor reported in MANU/PR/0111/1936 which is a case before the privy council and has referred paragraph 12 which is as under:-

12. On the matter of construction Sections 164 and 364 must be looked at and construed together, and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. Upon the construction adopted by the Crown, the only effect of Section 164 is to allow evidence to be put in a form in which it can prove itself under Sections 74 and 80 of the Indian Evidence Act. Their Lordships are satisfied that the scope and extent of the section is far other than this, and that it is a section conferring powers on Magistrates and delimiting them. It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle. Any Magistrate of any rank could depose to a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of Magisterial confessions would be so enlarged by this process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case.

6. He also relied in the case of Ram Awadhesh Sharma vs. The State of Bihar & Ors. reported in MANU/BH/1140/2000. He referred paragraph 17 which extracted herein below:-

"17. In the aforesaid background, in the light of decision in case of Mr. Irish Ansari (supra), (supreme Court) no penal order can be passed in respect to an event which took place more than four years before institution of proceeding under Rule 43(b) read with Rule 139 of the Bihar Pension Rules and no distinction can be made on the ground of institution of proceeding prior to or after retirement. 18A. on the basis of provisions as laid down under the rule and decision as referred above, the Rules 43(b) and 139 can be summarized as follows:

The full pension is admissible only if the service rendered by a person has been approved and not to be given as matter of course [Rule 139(a)]. The sanctioning authority may reduce the pension, at the time of initial sanction, if the service had not been thoroughly satisfactory, on the basis of service records [Rule 139(b)].

Once pension is sanctioned by the sanctioning authority, the State Government cannot reduce the same, except under Sub-Rule-C to Rule 139, under revision power, which should be based on service record or proof of grave misconduct, recorded while in service. However, such revision/reduction of pension cannot be made, if not made within three years from the date of his sanction of pension [Rule 139(c)].

Even after retirement and sanction of pension for future misconduct, the Government can withhold or withdraw the pension or part thereof, if convicted of a serious crime or found guilty of a grave misconduct. That means, even after retirement, a retired employee is to maintain good conduct for grant of each and every month pension otherwise the same may be curtailed, if convicted [Rule 43(a)].

In respect of an allegation/event, while in service of proceeding is not initiated or concluded, for such allegation, pension or part of it can be withheld permanently or for a specified period or recovery from pension can be made.

However, such event must have taken place within four month (sic years?) from the date of institution of a proceeding and not of prior period. Such curtailment can be made, if found guilty for misconduct or if found to have caused pecuniary loss to the State Government by misconduct or negligence during the service [Rule 43(b)].

The same principle to be applied in respect of a judicial proceeding."

7. He further submits that in view of the judgment of Ram Awadhesh Sharma (Supra) the State cannot reduce the pension in view of the Rule 193(c) of Pension Rule. By way of referring the Pension Rules relating to this judgment, he submits that by way of interpreting Rule 43(a) it has been held in that case that even after retirement the future good conduct is an implied condition of every grant of pension. He further submits that there is no allegation with regard to future misconduct after retirement and therefore, 43(a) is not applicable in the

case.

8. Per contra, learned counsel for the State submits that so far as the impugned order is concerned that has been issued under rule 139(c) of the Pension Rules as the petitioner was asked to file show cause reply under rule 139(c). He chooses not to reply on the ground that the case of the petitioner is pending before the High Court. In spite of the second reminder he has not replied. The notice was issued under Rule 139 (c) of the Pension Rules. He further submits that there is no limitation under Rule 139 whereas the pension has been sanctioned in the year 2013 and therefore there is no bar in passing the order under Rule 139(c) and the said pension is passed invoking the rule 139(c) of the Rules. In a similar circumstances a question of pension has been arose before the Hon'ble Patna High Court and the Division Bench of the Hon'ble Patna High court in the case of State of Bihar & Ors. Vs. Bimal Kant Das Reported in 2015 SCC Online Pat 1706 the fact of that case was that the petitioner during the employee of Animal and Husbandry Department, Government of Bihar was involved in infamous AHD scam cases. The FIR was instituted against the petitioner amongst others at the behest of the CBI and Regular Case was registered. The writ petitioner was arrested he put under suspension on 02.03.1996. He continued under suspension and superannuated on 31.07.2002. The criminal proceedings against the petitioner has been culminated in his conviction and being sentenced to rigorous imprisonment on different terms upto four years, he filed an appeal before the Jharkhand High Court which has been admitted and after about two years, he was released on bail. The case of the petitioner stands of similar footing. This petitioner is also superannuated while he was under suspension and this petitioner has been convicted in R.C. 39(A)/96 for six years with fine of Rs. 2,00,000/-. The petitioner has filed an appeal before this Court which is pending and there is no suspension of sentence so far as the appeal is concerned. Considering these aspects of the matter, the Division Bench of the Patna High Court has set aside the order of learned Single Judge and held that writ petition is not maintainable and would have been dismissed and the appeal was allowed. Paragraph 6 of he said judgment is quoted herein below:

"6. Firstly, a reference to Rule 43 of the Rules would show that no sooner a Government employee is held guilty by a criminal court of an offence of embezzlement of Government money, it would be in conflict with the first part of Rule 43(a) of the Rules which states that future good conduct is an implied condition of every grant of pension. Thus, upon a trial by a Court of competent jurisdiction, the writ petitioner was found guilty. He filed an appeal. The appeal was admitted for hearing and ultimately the High Court of Jharkhand released him on bail."

9. In view of the above discussions and looking into the judgment of the Division Bench of the Patna High Court, the writ petition stands dismissed.

10. However, it is indicated that in the event of success of pending appeal preferred by this writ petitioner in criminal proceeding the authority concerned

will be required to re-examine the fact in the light of the judgment as passed in the appeal.

11. In view of the above, the writ petition stands dismissed.