(1998) 10 PAT CK 0041

In the Patna High Court

Case No : C.W.J.C. No. 3261 of 1990

Dr. Shyam Nand Singh — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 29-10-1998

Acts Referred:
Bihar Pension Rules, 1950 — Rule 43

Citation : (1999) 1 PLJR 766

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

Bench : Single Bench

Advocate : P.N. Shahi, for the Appellant; Jawahardhan Singh and Chandra Shekhar Pd. Sinha, for the Respondent

Judgement

B.P. Singh, J.—The Petitioner herein has impugned the order imposing punishment Annexure-1 dated January 11, 1990 whereby the Petitioner has been deprived of the full gratuity payable to him under the rules and in addition 10% of the pension has been withheld permanently. It has further been directed that during the period of suspension, the Petitioner shall not be entitled to the payment of any other amount other than the subsistence allowance.

2. The case of the Petitioner is that he was posted as the Potato Development Officer at Patna. An explanation was sought from the Petitioner on 23.8.1972 asking him to justify the acceptance of tender of M/s Himalaya Cold Storage, Muzaffarpur in the year 1970. The Petitioner furnished his explanation, but ultimately by order dated 18.8.1977, the Petitioner and two persons were placed under suspension. Thereafter a charge sheet was submitted on 16.2.1978 against the Petitioner. The order of suspension was quashed by this Court on 18.4.1978. but the departmental proceeding continued. The Petitioner superannuated from service on 30th September, 1985. Even thereafter explanations were repeatedly asked for from the Petitioner, the last one on 18.12.1986. It appears that thereafter the impugned order was passed on 11.1.1990.

3. Counsel for the Petitioner submitted that the occurrence, which was subject matter of the inquiry, took place as early as in the year 1970 and therefore under Rule 43(b) of the Bihar Pension Rules, the Respondents could not continue with the proceeding with a view to impose any punishment either under the conduct rules or under the Bihar Pension Rules. It was secondly submitted that though an inquiry was conducted, the report of the inquiring officer was never served upon the Petitioner. His case is that in fact no evidence was led in the inquiry. He, therefore, submitted that without affording the Petitioner an opportunity of representing his case and commenting on the findings of the inquiring officer, the impugned order has been passed in violation of principles of natural justice.

4. So far as the first submission is concerned, it has no substance because proviso to Rule 43(b) is only attracted in cases where the departmental proceeding has not been initiated on the date on which a Government servant concerned superannuated. In such a case a proceeding under Rule 43(b) shall not be initiated in respect of an event which took place more than four years before the institution of such proceeding. In the instant case, the Petitioner was placed under suspension on 18.8.1977 and a charge sheet was submitted on 16.2.1978. Under explanation to Rule 43, a departmental proceeding shall be deemed to have been instituted when the charges are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date. It is, therefore, apparent that the departmental proceeding has already been initiated before the superannuation of the Petitioner and therefore the Petitioner cannot claim any protection under proviso to Rule 43(b) of the Bihar Pension Rules.

5. The second submission has however, force and must be accepted. It is not disputed before me that a disciplinary proceeding was initiated and an Inquiring Officer was appointed who submitted a report to the Government. Having regard to the settled principles of law, if the government proposes to take any action against the Petitioner on the basis of such inquiry report, the report should have been made available to the Petitioner for his comments, and after considering his comments, the Government could have taken appropriate action. The position is the same if on the basis of such inquiry report action is sought to be taken under Rule 43(b) of the Bihar Pension Rules, 1950. Since the report of the inquiring officer was never furnished to the Petitioner, he had no opportunity of representing his case before the Government. In fact, counsel for the Petitioner sought to argue before me that no evidence whatsoever was produced before the Inquiring Officer. I do not wish to express any opinion on this submission at this stage, because that is also a matter which has to be considered by the government while passing a final order in the proceeding.

6. In these circumstances, the impugned order, Annexure-1, dated 11th January, 1990 is quashed but with liberty to the Respondents to pass a fresh order in accordance with law after serving upon the Petitioner a copy of the Inquiring Officer''s report and giving him an opportunity of offering his comments in the

light of the findings of the Inquiring Officer. Since the Petitioner has superannuated as early as in the year 1985, it would be in the interest of justice if the proceeding is concluded as soon as possible. It is, therefore, directed that the Petitioner shall produce a copy of this order before Respondent No. 3 and on production of this order, the Respondents shall serve upon the Petitioner a copy of the report of the inquiring officer within three weeks. The Petitioner must furnish his comments within three weeks thereafter. After the Petitioner furnishes his comments, the Respondents must take a final decision in the matter within four weeks thereafter. The interim order dated 17.7.1990 shall operate till a final order is passed by the Respondents in the proceeding under Rule 43(b) of the Bihar Pension Rules.

7. The Petitioner has also brought On record by way of amendment petition the order dated 19.6.1978 passed by the Director of Agriculture (Administration), Bihar whereby the Petitioner was prevented from crossing the efficiency bar during the pendency of the departmental proceeding. In case the Petitioner is exonerated of the charges leveled against him and no action is proposed to be taken under Rule 43(b) of the Bihar Pension Rules, it will be open to the Petitioner to claim consequential relief so far as crossing of efficiency bar is concerned.

8. The writ petition stands disposed of accordingly.