(2012) 04 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10599 of 2005

Dr. Smt. Ritambhari Devi APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Bihar Pension Rules, 1950 — Rule 27, 43
Civil Services (Classification, Control and Appeal) Rules — Rule 55

Citation : (2012) 04 PAT CK 0051

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Madhuresh Prasad and Mr. Subodh Kumar, for the Appellant; Shashi Shakher Prasad Sinha, A.C. to G.P.17 Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard learned counsel for the parties. The petitioner is aggrieved by order dated 20.06.2005 bearing memo No. 234 issued under the signature of the Director(Primary)-cum-Deputy Secretary, Human Resources Development Department, imposing a penalty of reduction of pension by 50%. The order is placed at Annexure-16 of the writ petition.

2. The petitioner raises a very short issue. It is submitted on her behalf that the petitioner having been made to superannuate under the orders of the State Government on 31.12.1996 and from the University with effect from 31.12.1998, the proceeding initiated against the petitioner in exercise of powers vested under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 (herein after referred to as the ''Rules'') is wholly illegal, without jurisdiction and thus unsustainable and the order impugned having been passed in consequence of such proceeding which itself is void ab initio, also cannot be sustained and thus is fit to be quashed and set aside.

3. The fact of the matter in brief is that the petitioner was appointed as a Lecturer in History in Patna University on 31.10.1960 with a date of birth

recorded as 20.01.1941. The initial appointment of the petitioner was made on temporary basis but was subsequently confirmed. The petitioner was thereafter promoted as a Reader on 1.4.1974 with effect from 01.03.1974 and was also confirmed against the said post. Following an advertisement in a newspaper seeking applications from eligible candidates for appointment of Principal at Gulzarbag Government Women''s College on 20.09.1975, the petitioner responded and was recommended for appointment against the post of Principal of the Gulzarbag Government Women''s College. While the petitioner was serving under the State Government, a dispute came to be raised as regarding her date of birth and after holding a proceeding, an order was passed on 21.9.1996 (Annexure-4) determining the date of birth of the petitioner as 28.12.1938 and thus fixing her date of retirement on 31.12.1996. Following the order passed by the State Government determining the date of birth of the petitioner as 28.12.1938 and superannuating her from service with effect from 31.12.1996, the Patna University the parent employer of the petitioner where the petitioner gave her joining, following the order of superannuation by the State Government on completion of 58 years of service, superannuated her with effect from 31.12.1998 on completion of 60 years on the basis of date of birth on 28.12.1938. The order dated 21.9.1996 (Annexure-4) was challenged by the petitioner through a writ petition bearing CWJC No.12198 of 1996 and which was allowed by order dated 20.12.1996. The order dated 21.09.1996 was quashed. The order of this Court is also part of Annexure-4. The LPA preferred by State giving rise to LPA No. 83 of 1997 was dismissed.

4. The respondents passed fresh orders superannuating the petitioner in the light of the earlier determination of her date of birth, thus reiterating their decision as regarding her date of birth. The petitioner has questioned the proceedings including the orders of determination of date of birth in separate writ petition(s) bearing C.W.J.C. No. 6977 of 1998 and C.W.J.C. No. 11135 of 1999.

5. In so far as the issue raised in the present proceeding is concerned, under a resolution dated 16.12.2000 bearing No. 667, a proceeding was sought to be initiated against the petitioner in purported exercise of power vested under Rule 55 of the Rules, though the petitioner stood superannuated and the rules were applicable to in service employees. The petitioner, submits that she never received any such communication. In response to another communication dated 23.12.2000 requiring the petitioner to be present on 16.01.2001 for hearing, the petitioner responded by letter dated 22.01.2001 (Annexure-10) informing the Director, Primary Education, Department of Secondary, Primary and Adult Education, Government of Bihar that though the date of hearing was fixed for 16.1.2001 but the said letter was received by her only on 18.01.2001. It was further pointed out that she had not received any letter No. 667 dated 16.12.2000 and thus was not aware as to the charges for which she was being proceeded against. She thus requested the Director to make her available the copy of the letter No.667 dated 16.12.2000 and also give information regarding next date of hearing together with charge memo enabling her to present her side

of defence. As the letter dated 22.01.2001 of the petitioner was not responded to by the Director, Primary Education, the petitioner again reminded him of her request by a second letter dated 16.02.2001 as contained in Annexure-11 as also drew attention of the Director towards the fact that the petitioner having been made to superannuate with effect from 31.12.1996 there was a cessation of master and servant relationship and in which circumstance the proceedings were not sustainable under the Civil Services (C.C.A) rules. The Director, Primary Education vide letter dated 16.03.2001 and reminder dated 16.06.2001 (Annexure-12), sought guidelines from the Director (Administration) in the light of the objection raised by the petitioner regarding the veracity and continuation of the proceedings under the Rules, in the circumstance that the petitioner already stood superannuated. While the issue raised by the petitioner regarding validity of the proceedings in the light of her superannuation remained pending, by a letter dated 02.07.2001 (Annexure-13) of the Director(Administration) Primary Education, the petitioner was directed to be present on 16.07.2001 at 3 P.M. for hearing. The petitioner was also required to give her options as to whether she wanted to be proceeded under the Bihar Pension Rules or under the Civil and Criminal Law of the land. The said notice was followed by a cryptic enquiry report, submitted by the Director, Primary Education simply holding that the charges can be treated as proved in absence of any show cause filed by the petitioner. The enquiry report dated 16.04.2002 was forwarded by the Director, Primary Education vide letter dated 17.04.2002 to the Director (Administration)-cum-Deputy Secretary and who in turn while forwarding the same to the petitioner vide letter dated 10.03.2003 (Annexure-14) required her to file her show cause as to why her pension be not reduced by 50% under the provisions of Rule 27 and 43(b) of the Bihar Pension Rules. The petitioner in response to the second show cause filed a detailed reply on 14.04.2003, placed at Annexure 15 of the proceedings. It was submitted that the entire proceedings having been initiated under the provisions of the Civil Services (Classification, Control and Appeal) Rules, was void ab initio as no such proceeding could have been initiated after her superannuation. It was pointed out that even the Director (Administration) was not sure as to under which service rule the petitioner was to be proceeded against and which is substantiated by the letter dated 2.07.2001 bearing memo No. 503 (Annexure-13) requiring the petitioner to exercise option as to the relevant Rules under which she would like to be proceeded. It was pointed out that the enquiry report is a non-speaking report which does not even discuss the witnesses examined or the materials found against the petitioner, entailing any penalty for the alleged charges. A prayer thus was made for dropping of the proceedings.

6. The impugned order has been passed more than two years thereafter vide Memo No. 234 dated 20.06.2005 placed at Annexure-16 of the writ petition imposing a penalty of forfeiture of 50% of pension. The Director, Primary Education-cum-Deputy Secretary while passing the impugned order has incorrectly mentioned that though second show cause was issued against the

proposed penalty to the petitioner but no response has been filed by her and that the proposed penalty has since been approved by the Bihar Public Service Commission.

7. Learned counsel for the petitioner had the following contentions to be made :-

(a) The charges were never communicated to the petitioner.

(b) The procedure was never determined as to whether the petitioner was being proceeded under the Discipline Rules or under the Pension Rules.

(c) The enquiry report as well as the order imposing punishment are cryptic orders neither dealing with the charges forming the basis for imposition of the penalty nor discussing the materials which formed the basis of such decision.

(d) The principles of natural justice had not been followed.

(e) The representation objecting to the initiation of the proceedings

under the Discipline Rules was never disposed of and the interim order dated 31.08.2000 passed in C.W.J.C. No. 8243 of 2000 requiring the State Government to pay the entire pensionary benefits had been flouted.

(f) The proceedings having been initiated under Rule 55 of the Rules was not maintainable as the petitioner admittedly stood superannuated and thus the entire proceedings was without sanction of law.

8. A short counter affidavit has been filed on behalf of the respondent Nos. 1 to 4 sworn by the Deputy Secretary, Human Resources Development Department, Government of Bihar. The respondents have very candidly admittedly in paragraph 6 of the counter affidavit that the resolution bearing No. 667 dated 16.12.2000 where under the Government decided to initiate departmental proceedings against the petitioner under Rule 55 of the Rules in place of Rule 43(b) of the Bihar Pension Rules, was a mistake. The said admission of the respondents itself decides the fate of the entire proceedings. A notice initiating proceedings under the Discipline Rules in no circumstance can be deemed to be a notice under the Pension Rules inasmuch as the penalties enshrined in either of the Rules are completely distinct to each other.

9. The defence taken by the respondents in their counter affidavit that an incorrect mentioning of the provisions in the notice initiating proceedings cannot render the proceedings void ab initio, also cannot be upheld. It is rather surprising that even while the Director, Primary Education was apprised of this situation by the petitioner in her objection dated 16.02.2001 (Annexure-11) drawing his attention towards the fact that consequent upon her superannuation, the proceedings under the Discipline Rules was not maintainable and which objection upon being taken note of by the then Director, Primary Education, he sought guidelines from the Director (Administration) vide Annexure-12, yet the respondents did not choose to correct the glaring mistake and proceeded to continue and conduct the proceedings in the light of a notice issued under the

Discipline Rules. The order of punishment being couched in a manner as having been passed under the provisions of the Pension Rules cannot cure the defect for the reason that no notice was ever issued to the petitioner under the Bihar Pension Rules and thus in absence of any notice under the Pension Rules, the entire proceedings including the order impugned purporting to have passed under the Pension Rules cannot be sustained. The defect in the proceeding is such that it cannot be cured at this stage.

10. For the reasons aforesaid, the order of punishment as contained in Memo No. 234 dated 20.06.2005 as contained in Annexure 16 cannot be sustained and is quashed and set aside. The writ petition is allowed with all consequential relief''s. However there shall be no order as to costs.