(2006) 02 PAT CK 0043

In the Patna High Court

Case No : CWJC No. 15346 of 2004

Gautam Deo Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 05-02-2006

Acts Referred:

Citation : (2006) 2 PLJR 151

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : J.P. Shukla, M.N. Parbat, for the Appellant;

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner as also learned counsel appearing on behalf of the Bihar School Examination Board. The petitioner who served as an Assistant in the Bihar School Examination Board (in short ''the Board'') and was scheduled to superannuate in normal course on 31.1.2005 has filed this writ petition assailing the office order bearing memo No. 2466 dated 30.10.2004, Annexure-3, whereunder he has been directed to superannuate voluntarily with effect from 31.10.2004. He has further assailed the office order bearing memo No. 2467 dated 30.10.2004, whereunder 25 percent of his honorarium amount has been directed to be deducted. The ground raised in support of the challenge to the office order, Annexure-3 voluntarily superannuating the petitioner with effect from 31.10.2004 is that the said order is violative of Sub-Rule (b)(i) of Rule 74 of the Bihar Service Code (in short ''the Code'') which has already been adopted by the Board in terms of provisions contained in Clause-28 of the regulations framed by the Board.

2. According to learned counsel for the petitioner, order superannuating the petitioner, Annexure-3 has been passed on the date petitioner filed application for voluntary retirement from the service of the Board thereby the order superannuating the petitioner on the date of application became violative of Sub-

Rule (b)(i) of Rule 74 of the Code. In this connection it is further submitted that the order voluntarily retiring the petitioner should have been passed after passage of three months from the date of request to retire voluntarily. To buttress the aforesaid submission, learned counsel for the petitioner has relied on a decision of this Court rendered in the case of State of Andhra Pradesh Vs. Polamala Raju @ Rajarao, as also on two decisions of the Hon''ble Supreme Court rendered in the cases of Sambhu Murari Sinha vs. The Project and Development India, reported in AIR 2000 SC 2473 and K.L.E. Society vs. R.R. Patil and Anr., reported in 2002(5) SCC 278, 15 & 18.

3. Learned counsel for the petitioner has assailed the order, Annexure-4 deducting 25 percent of his honorarium on the ground that the same is not only violative of principles of Natural Justice but the punishment imposed thereunder is too severe as 25 percent of his honorarium amount has been withheld on a charge which is not a misconduct under the regulations.

4. On the other hand, learned counsel appearing on behalf of the Board has supported the two impugned orders. He states that by submitting application dated 30.10.2004 which is contained in AnnexureA to the counter affidavit the petitioner requested the Chairman of the Board to accord permission for his voluntary retirement forthwith and in response to the said request the impugned office order, Annexure-3 was passed and issued on the same day waiving the notice period. In support of his contention, learned counsel for the Board has relied on a judgment of the Hon''ble Supreme Court passed in the case of P.N.B. vs. P.K. Mittal, reported in AIR 1989 SC 1083, 9. Learned counsel for the Board further refuted the challenge raised against the office order, Annexure-4, whereunder 25 percent honorarium amount was directed to be deducted as the perusal of the said order itself would indicate that the same has been passed after issue of show cause notice to the petitioner as also after considering his reply and thus the principles of natural justice was duly observed before the said order was passed and issued. He further submitted that if the petitioner is aggrieved by Annexure-4 then he should first approach the Chairman/the Administrator of the Board as the show cause notice, Annexure-1 as also the impugned order, Annexure-4 has been passed by the Deputy Secretary of the Board.

5. Having heard the counsel for the parties and having perused the two impugned orders. Annexures 3 and 4 it appears that the petitioner requested the Chairman of the Board through his request letter dated 30.10.2004, as contained in Annexure-A to the counter affidavit to accept his offer of voluntary retirement at the earliest which request was considered and granted on the same day by issuing office order dated 30.10.2004, Annexure-3. Once the offer to voluntarily retire was accepted by the employer by waiving the period of notice as required in terms of Sub-Rule (b)(i) of Rule 74 of the Code then it is not open for the employee or his wife to request the employer to reconsider the matter. In the circumstances, this Court does not find any illegality in the impugned order dated

30.10.2004, Annexure-3 and the challenge to the said order fails. The three case laws relied on by the counsel for the petitioner have no application to the facts of the present case as in those cases before the offer of the employee to retire voluntarily was accepted the employee had already withdrawn the request to retire voluntarily and without considering the said withdrawal the earlier request to retire voluntarily was accepted which was not permitted by the Courts. In the present case waiving the notice period under the Rules the request to retire voluntarily was accepted as such there was no occasion for any withdrawal of the offer to voluntarily retire and the case in hand is distinguishable on facts from the three cases which have been cited by the counsel for the petitioner. So far the challenge to the impugned order, Annexure-4, whereunder 25 percent of the honorarium payable to the petitioner has been directed to be deducted is concerned, it appears the same has been passed after considering the cause shown by the petitioner by the Deputy Secretary of the Board, as such, if the petitioner is aggrieved by the same, he may assail the same before the Chairman/ the Administrator of the Board. In the light of my findings recorded above, the writ petition fails and is dismissed. No cost.

