(1998) 10 PAT CK 0006

In the Patna High Court

Case No : C.W.J.C. No. 7371/97

Gopal Prasad APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Citation : (2000) 1 PLJR 169

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Anjani Kumar Verma, for the Appellant; Tarkeshwar Dayal for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Chy. S.N. Mishra, J.—This relates to the payment of retiral benefit to the petitioner who retired from service as Supply Inspector on 31.7.98. Admittedly, nothing has been paid so far to the petitioner after his retirement from service. It appears that after the retirement of the petitioner a letter was sent to the District Magistrate, Bhagalpur directing the petitioner to refund a sum of Rs. 5,78,417.24 paise. From a perusal of the impugned letter it does not appear as to what is the basis of writing this letter with a direction aforesaid as no details of the amount and/or allegation has been made against the petitioner. It is further submitted that neither any departmental proceeding was initiated while he was in service for the alleged misconduct nor the proceeding u/s 43(b) of the Pension Rule was initiated against the petitioner even after his retirement. However, it appears that certain articles were found shortage in the year 1974 and accordingly the amount to the extent of shortage is sought to be recovered from the petitioner. Admittedly the amount sought to be recovered has not been ascertained in accordance with law as yet. In this case counter-affidavit has been filed earlier on behalf of the State as well as the respondent Bihar State Food & Civil Supplies Corporation wherein the factual aspect has not been denied in their pleadings. Since the petitioner has retired the aforesaid amount is sought to be recovered from the pensionary benefits legally payable to the petitioner. Though it is permissible for the State respondents to initiate proceeding in terms of Rule 43(b) of the Pension Rule even after retirement of the employee yet no such proceeding has been initiated against the petitioner who had retired in the year 1996. Learned counsel for the State submits that while issuing last pay certificate it has been mentioned that certain amounts are recoverable from the petitioner but admittedly, no step has been taken to recover the said amount while he was in service. After having heard learned counsel for the parties and going through the materials on record I am of the view that the action of the respondents are wholly illegal, arbitrary and without jurisdiction in withholding the retirement benefits payable to the petitioner on flimsy grounds. It has neither been proved in the departmental proceeding nor it has been ascertained by appropriate authority and as such, retiral benefit payable to the petitioner cannot be withheld. Accordingly, I direct the State respondents to issue the sanction order with respect to all the retiral benefits legally payable to the petitioner, within two weeks from the date of receipt/production of a copy of this order and forward the same to the Accountant General who will issue authority slip within two weeks therefrom. Learned counsel for the petitioner at this stage submits that the monetary benefits arising out of the time bound promotion has also not been paid to him. It goes without saying that if the amount arising out of such promotion has not been paid, that must be paid to the petitioner within the time aforesaid. Since the retirement benefits has been illegally withheld on flimsy ground the petitioner is entitled to the interest at the rate of 12% per annum from the date of retirement till the respective payments alongwith the cost which is assessed at Rs. 1000/-. Both the interest and the cost shall be paid alongwith the principal amount within the time aforesaid. This application is allowed to the extent indicated above.

