
(2008) 01 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 13340 of 2005

Indradeo Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Penal Code, 1860 (IPC) — Section 149, 302, 324, 326

Citation : (2009) 2 PLJR 38

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—In this writ application the petitioner had initially sought for a direction commanding the respondents to make payment of his post retirement benefit i.e. pension, gratuity, unutilised earned leave etc. on the basis that he had retired as Assistant Teacher on 31.7.2001 from the office of the Block Education Extension Officer, Ghosi (South). In the main writ application, further prayer had been made to for a direction for payment of salary to the petitioner for the period 7.7.1995 to 31.7.2001 after deducting the amount of subsistence allowance already paid to him. During the pendency of the writ application the petitioner has filed I.A. No. 4270/07 wherein a prayer has been made to quash the order dated 22.3.2006 whereby and whereunder the claim of the petitioner for grant of post retirement benefit has been rejected on the ground that the petitioner was a convicted person and was thus not entitled for payment of post retirement benefit. The respondent-District Superintendent of Education, Jehanabad in the impugned order, however, has directed for payment of amount of provident fund, group insurance as also difference of salary for the period 1.1.1971 to 31.3.1973.

2. Sri Ganesh Prasad Singh learned Senior Counsel for petitioner while making elaborate submissions for grant of aforementioned relief has firstly contended

that the petitioner had an exemplary service record for a period of nearly 30 years i.e. till 20.8.1990, when he was convicted in a criminal case for offence u/s 302/11A of the Indian Penal Code (I.P.C.) and as such he could not be deprived of his right to receive post retirement benefit including monthly pension only on account of his aforesaid conviction. It has been further submitted that such a right to receive pension to a retired employee cannot be taken away on mere whims and fancies of the authorities inasmuch as the expression "misconduct" as has been used in Rule 43 of the Bihar Pension Rules in order to deprive of an employee of being paid his retirement benefit including monthly pension must be so shocking to the conscience of any prudent person so as to make him believe that the person concerned in service was not entitled for payment of pension. On the other hand counsel for the State with reference to averments made in the counter affidavit has submitted that the petitioner holding the post of a teacher was expected to have an exemplary moral and character but his conviction for a serious offence went to show that his conduct was unbecoming of a Government servant. In this context learned counsel for the State has also placed reliance on the order of this court dated 18.3.1998 passed in CWJC No. 689/97 as contained in Annexure-A as well as on the Circular dated 28.10.2003 as contained in Annexure-B to the counter affidavit filed by respondent No. 5.

3. Having given anxious consideration to the aforementioned submissions, this Court is of the opinion that the writ application of the petitioner must fail on a simple ground that it is not in dispute that day on which the petitioner attained the age of superannuation i.e. 31st July, 2001 his status was that of a convicted person for a serious crime.

4. At this stage it has to be taken into consideration that the petitioner was made accused in a case of murder and was taken into custody in the year 1984 itself. The petitioner remained in custody for a period of 16.7.1984 to 6.1.1985 and thereafter during the period trial was going on the petitioner was allowed to work and consequently was also paid his salary. The trial court had eventually convicted the petitioner by a judgment dated 21.8.1990 for the offence u/s 302 read with Section 149 IPC and he was sentenced to undergo rigorous imprisonment for life. From this date i.e. 21.8.1990 the petitioner was again taken into custody and he remained in custody on 25.4.1991 and only when the appellate court i.e. this court had granted him bail pending disposal of the appeal, the petitioner joined his post of teacher on 26.4.1991 and continued to do his work till 2.2.1995 when his conviction was affirmed with some modification from Section 302/149 I.P.C. to Section 326 I.P.C. and also by reducing the sentence of life imprisonment to a period of two and half years by a judgment dated 3.2.1995. In terms of the judgment of this court the petitioner again surrendered and was taken into custody on 6.7.1995 and remained in custody till 21st September, 1995 when he was granted bail by the Supreme Court pending disposal of the appeal filed by the petitioner and others against the judgment dated 3.2.1995. During the pendency of appeal before the Supreme Court the petitioner while continuing under suspension ultimately

attained the date of superannuation on 31st July, 2001 and the Supreme Court only after his retirement had pronounced judgment in his appeal on 4.3.2003 wherein the conviction and sentence as modified by the High Court had been affirmed. As a matter of fact the petitioner had to undergo and serve sentence even after his attaining the age of superannuation on 31.7.2001 and had to complete the remaining period of his sentence in view of the judgment of the Apex Court dated 4.3.2003. Therefore, the position of the petitioner as on 21.8.1990, the date on which he was convicted by the trial court and thereafter always remained that of a convicted person for a serious crime u/s 326 I.P.C. which had remained unaltered in view of the judgment of the Supreme Court dated 4.3.2003. The fact that the petitioner was on bail in between 21.8.1990 to 4.3.2003 during the pendency of his appeal before this Court or the Apex Court as noted above did not change the position and thus the day the petitioner had reached the age of superannuation on 31.7.2001, he was still a convicted person who would stand automatically disentitled for payment of pension in terms of the provisions made in Bihar Pension Rules.

5. The Bihar Pension Rules which governs issue of payment of pension in such cases under its Rule 43(a) and (b) provides as follows:-

"43(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

43(b). The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service reduced or re-employment after retirement."

6. In view of the aforementioned clear provision in the Rules the petitioner can not be heard to say that he was/is entitled for payment of pension and other retirement benefits as on 31.7.2001, the day he had reached the age of superannuation even when he had been convicted by the trial court for a serious crime way back on 21.8.1990 which in fact was affirmed by the Supreme Court on 4.3.2003. Thus when the competent authority by the impugned order dated 23.2.2006 had taken a decision that the petitioner will not be entitled for payment of pension in view of his conviction maintained by the Apex Court in its judgment dated 4.3.2003, such decision was fully justified keeping in view the wide ambit of Rule 43 as the same itself envisages withholding or withdrawing pension to a pensioner convicted of serious crime.

7. The next part of submission of the learned counsel for the petitioner that conviction of the petitioner was not for a "serious crime" in terms of Rule 43 of the Bihar Pension Rules so as to be disentitled of his pension is also to be noted only for its being rejected. What would be a serious crime in the given context will always depend on the fact and circumstance of each case but then there cannot be any dispute so far it relates to an offence u/s 326 IPC inasmuch as it is a serious offence thus a serious crime punishable for an imprisonment for a period up to ten years. The issue as with regard to the complicity of the petitioner leading to his conviction u/s 326 I.P.C. has been in fact examined by the Apex Court itself in his criminal appeal wherein the petitioner was appellant No. 5 and the Apex Court in this regard had held as follows:-

"In respect of A-5 and A-6 it was submitted that injuries to be grievous they must be such which endanger life. It was submitted that the term "endanger life" must necessarily mean that the injury must be one which is not only dangerous but it just dangerous to life. It was submitted that any injury which does not endanger life cannot be considered to be a grievous injury. The evidence on record, particularly the evidence of the doctor indicates that the injuries which has been inflicted by A-5 and A-6 were dangerous to life. There is categorical evidence that they were dangerous to life. There is hardly any cross examination on this aspect. In our view, it cannot be said that the injuries were not grievous. The grievous injuries were inflicted with sharp weapon. Therefore, the conviction u/s 326 IPC is correct and must be maintained.

As noted above, sentence is for 2 1/2 years. It was submitted that they have already undergone two years. It was submitted that this Court may, therefore, release them by reducing the sentence to that already undergone. It was submitted that the court may increase the fine. We have considered this submission. We find that u/s 326 IPC the sentence could have been up to 10 years. The High Court in awarding only 2 1/2 years imprisonment has already been lenient. The State has not filed any appeal against such a lenient sentence. We do not think this to be a fit case where we should interfere with the sentence...."

8. The logical outcome of the aforementioned findings of the Supreme Court is that the petitioner was conclusively found guilty for the offence u/s 326 IPC and in presence of such finding it is not possible to accept the submission of Mr. Singh that he was not convicted for a serious crime.

9. The next submission of Mr. Singh that this court should direct for payment of pension even if the petitioner was found guilty for a serious offence, by invoking the provisions of proportionate pension in terms of Rules 46 and 46A of the Bihar Pension Rules is also not acceptable to this Court. The provision contained in Rules 46 and 46A of Bihar Pension Rules reads as follows.-

46. No pension may be granted to a Government servant dismissed or removed, for misconduct; insolvency or inefficiency, but to Government servant so

dismissed or removed compassionate allowances may be granted when they are deserving of special consideration; provided that the allowance granted to any Government servant, shall not exceed two third of the pension which would have been admissible to him if he had retired on medical certificate.

46A. A Government servant compulsorily retired from service as a penalty may be granted by the authority, competent to impose such penalty pension at rate not less than two third and not more than full invalid pension and special additional pension, if any, to which he would have been entitled, if he retired on that date."

10. A bare reading of the aforesaid provisions would make it clear that they have been framed for a specific purpose and for specified category of employees and it is not applicable in case of a person who has been convicted for serious crime as mentioned in Rule 43A of Bihar Pension Rules. Moreover the power under Rules 46 and 46A is a discretionary power where the State if so chooses in a specific category of a Government employee can grant compassionate allowance to a pensioner who has been dismissed or removed from the service. Rules 46 and 46A of Bihar Pension Rules thus if read in the context of Rule 43 thereof would itself go to show that they cannot be applicable for the category of the persons like the petitioner who has been deprived of his pension as a consequences of his being convicted for a serious crime. Judged in this background the petitioner is also not entitled for payment of compassionate allowance in terms of Rules 46 and 46A of Bihar Pension Rules specially when he had not been dismissed or removed from service or was even retired compulsorily in his service period. The petitioner in fact was only allowed to continue in service after 21.8.1990 as a convicted person subject to result of his appeal before this court and the Apex Court, during the period he was on bail. In this context this court on perusal of the materials would find that the petitioner was placed under suspension on 18.9.1990 when he was convicted by the trial court and his such suspension continued till 26.4.1992 when he was allowed to work with a specific condition that his continuation in service will be dependent on the result of his pending Criminal Appeal and if the conviction was affirmed by the High Court, he would be dealt in accordance with the Rules of the Government. As a matter of fact when the appeal of the petitioner was dismissed by this Court on 3.2.1995 and the petitioner after being taken into jail custody had been granted bail by the Apex Court on 21.8.1995 had submitted his joining on his previous post the same was not accepted and he was not allowed to resume his duty. In that situation the petitioner had moved this Court in C.W.J.C. No. 689 of 1997 for acceptance of his joining and payment of salary w.e.f. 1.9.1995. This Court however had rejected his such prayer by passing the following order on 18.3.1998:-

"The petitioner claims to be a teacher in the Primary School, Khiriyawan, Madanpur Block, Gaya now in Aurangabad District. The petitioner is claiming his salary for the month of June, 1995 and also from 1.9.1995 till today.

It is not in dispute that in a Sessions Trial the petitioner was convicted on a charge u/s 302/149 of the I.P.C. and sentenced to undergo imprisonment for life.

On appeal, a Division Bench of this Court modified the sentence and converted it to a conviction u/s 324 of the I.P.C. and the Division Bench was pleased to observe in the judgment that the sentence is reduced to the period spent in custody and a further sentence of rigorous imprisonment for two and half years was imposed.

Thereafter, on appeal before the Hon"ble Supreme Court against the said judgment of the Division Bench dated 9.2.1995 in Criminal Appeal No. 341 of 1990, the Hon"ble Supreme Court by the order dated 21st August, 1995 granted special leave and allowed the petitioner to remain on bail. The said appeal before the Hon"ble Supreme Court has not as yet been disposed of.

At this juncture, the petitioner wants to join his duty as a teacher and wants to claim his salary. This court is of the opinion that the status of the petitioner even today is that of a convicted persons. Of course, against his conviction the Apex Court has admitted his appeal, but that does not mean that the order of conviction passed by the Division Bench of this Court has been wiped out. In my view a convicted persons cannot and should not continue with the job of teacher in a school. As such there is no scope for paying his salary.

Learned Counsel for the petitioner has relied upon the judgment of a learned Single Judge of this Court delivered in the case of "Ram Nandan Prasad vs. State of Bihar & Ors." reported in 1995(1) P.L.J.R. Para-399. In the said judgment of Ram Nandan Prasad (supra) the learned Judge has held that person cannot be dismissed from service in exercise of power under Article 311(2) proviso of the Constitution in view of his criminal conviction if at that time when such order of dismissal is passed, his appeal is pending.

In the instant case, no dismissal order has been passed against the petitioner. As such the ratio of the said judgment in the case of Ram Nandan Prasad (supra) has no application here. Here the petitioner is asking for a direction from this court for payment of his salary and a consequential direction for allowing him to continue his duty. This court sitting in a writ jurisdiction in exercise of its discretionary power, is disinclined to grant the aforesaid prayer, inasmuch as, this court is of the view that the petitioner has no right to get the said relief.

Apart from that the atmosphere of an educational institution should not be further eroded by the presence of a person who in the eye of law is still a convicted man. As such the aforesaid prayer is rejected. This writ petition and the I.A. both are rejected, but at the same time this Court passes a direction upon the respondent authorities to pass an appropriate order for suspension of the petitioner at an early date so that during the suspension period the petitioner may get the subsistence allowance in accordance with law."

11. It is therefore clear that the petitioner in fact had reached his age of

superannuation on 31.7.2001 while continuing under suspension in terms of the order of the court and thus when even after that his conviction was affirmed by the Apex Court on 4.3.2003, he cannot claim pension under Bihar Pension Rules as he was convicted for a serious crime. It is difficult to digest that the petitioner who was not allowed to do his work after dismissal of his appeal by this Court in the year 1995 would still be entitled for payment of pension after his conviction being affirmed by the Apex Court. Payment of pension to a Government servant is of course not bounty but then it is definitely also not a charity to be granted as a matter of right to a person even when he is convicted for serious crime.

12. That being so the decision taken under the impugned order dated 22.3.2006 (Annexure-8) after affording him an opportunity of hearing in terms of the show cause notice dated 8.4.2004 (Annexure-4) and examining the exhaustive reply of the petitioner dated 26.4.2004 (Annexure-6) does not suffer from any infirmity specially when his another writ application against the aforesaid show cause notice dated 8.4.2004 was also dismissed as withdrawn by an order dated 15.4.2004 in C.W.J.C. No. 2785 of 2004 vide Annexure 5 to the writ application.

13. The next submission of the learned counsel that the Government in a similar case has granted relief to one Ram Chandra Sharma, an Assistant Teacher is also of no avail. From the materials on record it is not clear that as to whether Ram Chandra Sharma was also a convicted for a serious crime alike the petitioner. The only relevant pleading in this regard being paragraph 7 of the supplementary affidavit read with Annexure-13 is wholly insufficient to allow the claim of the petitioner for payment of compassionate allowance in terms of Rules 46 and 46A of the Bihar Pension Rules.

14. As a matter of fact, when this writ application was filed and was heard on 6.8.07 counsel for the petitioner in presence of the aforementioned undisputed evidence including filing of two unsuccessful writ applications on the same subject as also his conviction being upheld upto the Supreme Court had taken a specific plea that he will produce judgment to the effect that even after conviction for a serious crime, the Government servant is entitled for receiving payment of post retirement benefits including monthly pension. Despite of indulgence given on 6.8.07, 14.8.07, 26.9.07 and 10.10.07 he however could not produce any decision or authority in this regard. Thus for the reasons indicated above, I do not find any reason to interfere with the impugned order and consequently, this writ application is dismissed.