
(2009) 02 PAT CK 0062

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5961 of 2003

Kailash Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2009) 57 BLJR 1639 : (2009) 2 PLJR 593

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Advocate : Najmul Hoda and Md. Qumrul Hoda, for the Appellant; Chandra Shekhar Singh, J.C. to G.A. VII for Respondents Nos. 1 and 6, Tara Kant Jha and Amish Kumar, for Respondents No. 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Shailesh Kr. Sinha, J.—The petitioner is aggrieved by the notice dated 7.5.2003, issued by the District & Sessions Judge, Katihar (respondent No. 4), as contained in Annexure 8, directing him to deposit a sum of Rs. 18,134.13 consequent upon rejection of his representation against the order of recovery for the aforesaid amount on account of loss of books from the Library of the Civil Court at Katihar during the period the petitioner was in-charge of the Library for being the Seristedar of the office of the District & Sessions Judge, Katihar.

2. The short facts of the case are that the petitioner was Seristedar in the Civil Court at Katihar between the period 1.3.1990 to 31st of October, 1996. While working as Seristedar, the petitioner was also the In-Charge of the Library of the Civil Court. During the above incumbency of the petitioner, 579 books of the Library worth Rs. 18,134/- were found missing. The matter was enquired as mentioned in letter No. 535 dated 24.6.2000 (Annexure 2) written by the District & Sessions Judge, Katihar to the Registrar (Administration), High Court, Patna, from which it would appear that the library books were found missing worth Rs. 36,134/-. However, on enquiry it was found that the petitioner was only

responsible for the loss of 579 books worth Rs. 18,134/- during the period he was Seristedar between the period 1.3.1990 to 31.10.1996. The value of the rest of the books found missing were during the incumbency of the previous Seristedars, In-Charge of the Library, namely, Smt. Krishna Roy and Shri Jitendra Pathak. The amounts on account of missing books during the period of aforesaid two employees, namely, Smt. Krishna Roy and Shri Jitendra Pathak were paid by them to the extent of their liabilities.

3. The petitioner was given a show cause notice dated 27.3.2001, as contained in Annexure 3, asking him to show cause with respect to the aforesaid missing books. The petitioner submitted his reply vide his letter dated 12th of April, 2001, as contained in Annexure 4, whereby he only denied that during the material period he was not made the In-Charge of the Library of the Civil Court by any order, either written or oral and, as such, he has nothing to say with respect to the missing books.

4. The District & Sessions Judge, Katihar on receipt of the above reply to the show cause notice sent the entire matter with respect to the missing of the books to the Registrar (Administration), High Court, Patna (respondent No. 3) enclosing the reports submitted in the enquiry conducted by Shri S.P. Singh, the then Subordinate Judge III, Katihar and Shri M.M. Siddiqui, Judicial Magistrate, First Class, Katihar, vide letter dated 17th of May, 2002, as contained in Annexure 5. Respondent No. 3 thereafter communicated the District & Sessions Judge, Katihar, vide his letter dated 23rd of December, 2002 (Annexure 6), the decision to take steps for realization of the loss amount on account of the missing books amounting to Rs. 18,134.13 from the petitioner.

5. The petitioner thereafter submitted, his representation dated 23rd of January, 2003. The same was, however, rejected and accordingly informed by the respondent No. 3 to the District & Sessions Judge, Katihar as per the letter dated 25th of April, 2003, as contained in Annexure 7. Consequently, the impugned notice, vide Annexure 8, was issued enclosing the letter dated 25.4.2003, as contained in Annexure 7, directing the petitioner to deposit the amount.

6. A counter affidavit has been filed on behalf of respondents No. 2 and 3. The stand of the above respondents are that after enquiry, it was found that the library books numbering 579 worth Rs. 18,134/- were found missing between the period 1.3.1990 to 31st of October, 1996, when the petitioner was the Seristedar in the Office of the District & Sessions Judge, Katihar and also In-Charge of the Library. The further stand taken in the counter affidavit is to the effect that right from the establishment of the Civil Court at Katihar after bifurcation from the Judgeship of Purnia, the Seristedars of the Office of the District Judge, Katihar at different points of time were In-Charge of the Library and, as such, while the petitioner was Seristedar, he was also In-charge of the Library between the period 1.3.1990 to 31st of October, 1996 during which period the books in question were found missing.

7. Mr. Najmul Hoda, learned Counsel appearing on behalf of the petitioner has mainly submitted that the respondents cannot realize any amount on account of loss of missing books from the petitioner without holding regular proceedings, including a proceeding in terms of Rule 43(b)(a)(ii) of the Bihar Pension Rules, 1950 (hereinafter referred to as "the Pension Rules") and that having not done, the direction contained in the impugned notice for depositing the aforesaid amount of Rs. 18,134.13 is absolutely illegal and not sustainable in law. It is further submitted that the petitioner retired on 31st of October, 1996 and steps for recovery of the aforesaid amount has been initiated in terms of Annexure 3 in the year 2001, i.e., after four years of the retirement of the petitioner is illegal. Reliance was placed on the decisions of this Court in the case of Raghunath Prasad v. State of Bihar reported in 1989 PLJR 373, in the case of Parmeshwar Dayal Verma Vs. State of Bihar and Others, , and in the case of Brajendra Kumar Sinha (Dr.) Vs. The State of Bihar and Others, . Learned Counsel further submitted that even though the show cause notice issued to the petitioner vide Annexure 3, and replied by him, as contained in Annexure 4, it would not be said to be a proceeding in law and, therefore, in the absence of any proceeding, the authorities were not justified in law in passing the order for recovery of the amount in question.

8. Mr. Tara Kant Jha, the learned Senior Advocate appearing on behalf of respondents No. 2 to 5 submits that in this case the petitioner has not denied the fact that he was the Seristedar in the Office of the District & Sessions Judge, Katihar between the period 1.3.1990 to 31st of October, 1996. He has also not denied the fact about the prevailing practice that whoever was the Seristedar of the District & Sessions Judge at Katihar was also the In-Charge of the Library of the Civil Court. He has also not denied about the loss of 579 books of the Library. The only denial of the petitioner was that he was not made the In-Charge of the Library at the material time and gave a vague reply that he has nothing to say with regard to the missing books. The learned Counsel has further submitted that the continued practice of making In-Charge of the Library of the Civil Court to the concerned Seristedar was continuing since the establishment of the Judgeship in the district of Katihar after its bifurcation from the Judgeship of Purnia. Prior to the petitioner becoming the Seristedar, two employees, namely, Smt. Krishna Roy and Shri Jitendra Pathak were the Seristedars and as such they were the In-Charge of the Library as well on the practice being followed since the time of establishment of the Judgeship at Katihar without any written order. The fact was well-known to all, including the petitioner, since he became the Seristedar subsequently between the aforesaid period. The fact that the above practice that the Seristedar used to be the In-Charge of the Library was found correct even during the enquiry made by the aforementioned two judicial officers as revealed in their reports referred to in the letter written by the District & Sessions Judge, Katihar to the Registrar (Administration), High Court, Patna, vide Annexure 2. It was further submitted that there remained nothing further to be enquired since the material facts were not in dispute save and except that the

petitioner denied that he was not the In-Charge of the Library even though not disputing the fact that as per the practice, the Seristedar used to be made the In-Charge of the Library and, as such, the submission of the petitioner that in the absence of any regular proceeding, no recovery can be made from the petitioner on account of missing of books in question cannot be accepted.

9. As regards the submission advanced on behalf of the petitioner with regard to the proceedings as contemplated under the provisions of Rule 43(b) of the Pension Rules, it is submitted that no proceeding was initiated in terms of the aforesaid Rule 43(b) of the Pension Rules and, as such, the above provisions are not attracted. The action taken against the petitioner for recovery of the amounts on account of missing books were not made from the pension or its any portion payable to the petitioner. As a matter of fact, as submitted by the petitioner, he is getting the pension and, as such, the provisions of the aforesaid Rule 43(b) of the Pension Rules are not attracted. Accordingly, it has been submitted that the cases relied on by the petitioner in the aforementioned decisions of this Court are not applicable in the fact's and circumstances of the case.

10. It has further been submitted that even if the contention of the petitioner that the proceeding is required to be initiated within four years in respect of the alleged missing of books which took place more than four years of the date of the show cause notice, the said notice, vide Annexure 3, was issued to the petitioner in the year 2001 after the matter was enquired and the report was submitted in the year 1999, vide Annexure 2, and, as such, the period of four years would commence from the date of the report i.e., 1999 and, therefore, even if for the sake of argument that Rule 43(b) of the Pension Rules is attracted, the proceeding for recovery of the amount was taken well within the time. In this connection, learned Counsel has relied on a decision of this Court in the case of Ashok Kumar Mishra Vs. State of Bihar and Others for the proposition that the prescribed period of four years shall commence from the date of knowledge for initiating the necessary action.

11. Considering the rival submissions of the parties and upon perusal of the respective pleadings, it would appear that the fact that the petitioner was the Seristedar of the District Judge in the Civil Court, Katihar between the period 1.3.1990 to 31st of October, 1996 as also the fact as claimed by the respondents that the long consistent practice in the Civil Court at Katihar that the Seristedar in the Office of the District Judge was also In-Charge of the Library since the very time of establishment of the Judgeship at Katihar was continuing are not in dispute. Further, the fact that 576 books from the Library during the aforesaid period were found missing is also not in dispute. The only dispute raised by the petitioner is that he was not made the In-Charge of the Library during the aforesaid period neither by any written or oral order. In this connection, the statement made in the counter affidavit filed on behalf of respondents No. 2 and 3, besides stating other materials facts on the merits of the matter, that prior to the petitioner, Smt. Krishna Roy and Shri Jitendra Pathak, who were the

Seristedars of the Civil Court, were the In-Charge of the Library by virtue of being the Seristedar of the Civil Court has not been denied.

12. Therefore, in my opinion, from the above, it would appear that the petitioner while working as Seristedar during the material period was also the In-Charge of the Library and, as such, on account of loss of books during the period the petitioner was In-Charge of the Library, the respondents have rightly directed the petitioner for payment of the sum of Rs. 18,134/- on account of loss of books numbering 579, vide notice dated 7th of May, 2003, as contained in Annexure 8.

13. In view of the discussions, as mentioned above, I do not find any merit in this writ application. The same is accordingly, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.