
(2010) 12 PAT CK 0007

In the Patna High Court

Case No : CWJC No"s. 8666 of 2006 and 11274 of 2007

Kameshwar Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 — Rule 2, 4
Bihar Pension Rules, 1950 — Rule 43

Citation : (2011) 2 PLJR 134

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—The Petitioner has filed two writ petitions. In the first writ petition, he has prayed for payment of salary dues for a specified period in the year 1988-89 as a consequence of revocation of his suspension. In that writ petition, a counter affidavit was filed by the State that the money is due and payable to the Petitioner and has been withheld because of an order passed against the Petitioner for recovery of over Rs. 3,00,000/- in a departmental proceeding. Petitioner then filed the second writ petition to quash the said proceeding and the orders passed therein stating that he was totally unaware of any departmental proceeding.

2. A counter affidavit has now been filed in the second writ petition bringing on record that Petitioner was duly served with memo of charge and he responded thereto with letter of non-cooperation. Both of which are annexed belying the stand of the Petitioner that he was unaware of any such proceeding. Soon thereafter, Petitioner superannuated and an order in terms of Rule 43(b) of the Bihar Pension Rules, 1950 having been passed and the proceeding ultimately culminated with punishment of censure only. In the proceeding, it was found that Petitioner was not able to account for substantial amount of money in excess of Rs. 3,00,000/- and, as such, orders for recovery were passed but as the Petitioner had superannuated by then, it was ordered that the same would be recoverable from pension. No order withholding or reducing pension was passed.

3. Heard the parties and with their consent the writ petitions are disposed of at this stage itself.
4. Having heard the matter at considerable length when order was to be dictated, learned Counsel for the Petitioner prays that he be permitted to withdraw the writ petition to pursue his statutory appeal as against the order passed in the disciplinary proceedings.
5. Having considered the matter, in my view, leave need be granted. Petitioner is permitted to withdraw these writ petitions to pursue his statutory remedy.
6. The Petitioner, being a Member of Subordinate Service, in terms of Rule (4) read with Rule (2) of the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules 1935, an appeal would lie to the immediate superior authority who passed the order on behalf of the Government.
7. If the appeal is filed within one month from today, the same shall be entertained on merits condoning the delay occasioned because of pungency of these writ petitions.
8. With these observations, both the writ petitions, thus, stand disposed of.