

(2002) 11 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 4786 of 2002

Kashi Nath Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2003) 2 PLJR 335

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Judgement

1. Heard learned Counsel for the Petitioner and learned Counsel for the State.
2. Petitioner retired from the post of Additional Director, Health Services, Government of Bihar on 31st May, 2001. He has filed this writ petition for a direction to the Respondents to sanction and pay full pension and gratuity and other retiral benefits.
3. According to learned Counsel for the State provisional-pension has been sanctioned in favour of the Petitioner but gratuity and ten per cent of pension has been withheld for the time being for the reason that Petitioner is alleged to be involved in a M.S.D. scam relating to purchase of medicines between the year 1992-93 and 1993-1994. It has been asserted in the counter affidavit that a C.B.I. enquiry is going on in connection with the said M.S.D. scam as per order by a Division Bench of this Court. In the counter affidavit a resolution dated 2nd of August, 2002 has also been annexed along with a copy of charges to show that the State of Bihar in the department of Health has ordered for a proceeding against the Petitioner under Rule 43(b) of the Bihar Pension Rules. According to learned Counsellor the State, since the service career of the Petitioner has not been fully clean and enquiries are going on by the C.B.I. hence the Respondents are justified in withholding 10% of his pension and the gratuity amount till the C.B.I. enquiry and the departmental proceeding are concluded in accordance with law.

4. On behalf of Petitioner reliance has been placed upon a Division Bench judgment of this Court in the case of Bajrang Deo Narain Sinha Vs. The State of Bihar and Others, to submit that the State cannot withhold pension or any part thereof till such an order is passed under Rule 43(b) of the Rules and such an order can be passed only in case of proved misconduct so as to withhold a part or full of pension. Learned Counsel for the Petitioner has also placed reliance upon a judgment in the case of Dr. Ranjit Kumar Vs. The State of Bihar and Others, to submit that the learned Judge who passed the judgment which is relied upon by the State and is contained in Annexure-E to the counter affidavit has subsequently taken a different view and followed the principle laid down in the case of Bajrang Deo Narayan Sinha (supra). Dr. Ranjeet Kumar was also said to be involved in the M.S.D. Scam in which C.B.I. is making inquiries. In his case it was held that State cannot withhold any amount of pension on a mere vague enquiry being conducted by the C.B.I. and accordingly direction was issued to make necessary payments subject however, to final out-come of the C.B.I. inquiry.

5. Following the aforesaid judgments relied upon on behalf of the Petitioner the Respondents are directed to sanction and pay full pension to the Petitioner within a period of three months which, however, shall be subject to revision by the competent authority depending upon the outcome of C.B.I. enquiry and the proceeding under Rule 43(b) of the Pension Rules. So far as due of gratuity are concerned, no doubt, the same is covered by the definition of pension but where the allegations involve financial irregularity and loss to the Government, it may not be possible for the State to recover the loss if the entire gratuity is paid to the concerned employee. In such circumstances the action of the State to withhold dues of gratuity for a reasonable period keeping in view the nature of allegations cannot be held to be arbitrary so as to require interference in exercise of writ jurisdiction. This principle cannot be applied in each and every case but apparently it is attracted in the present case. Withholding of gratuity or other financial benefits for the purpose of intended recovery as a result of pending proceeding cannot be for an indefinite period and the State must make all efforts to act reasonably and conclude pending proceeding expeditiously. In the present case the C.B.I. enquiry has not resulted in a complaint or a charge sheet to a criminal court, so far as Petitioner is concerned hence it cannot be said that a judicial proceeding as contemplated under Rule 43(b) of the Rules is pending against the Petitioner. So far as proceeding initiated by Annexure-E is concerned, the same appears to have been initiated on 2nd of August, 2002 although Petitioner retired in May, 2001.

6. In the facts and circumstances of the case, without going into the validity of the proceeding initiated by Annexure-E at this stage it is deemed proper that such a proceeding be decided expeditiously and in accordance with law within a reasonable time and till the proceeding is finally concluded the Respondents may withhold the gratuity payable to the Petitioner which shall be subject to final result of the said proceeding. This proceeding, in the facts of the case, is directed

to be concluded expeditiously and in any case within one year from the date of production/communication of a copy of this order. If the Petitioner does not co-operate in the said proceeding then the authorities may proceed exparte so as to conclude the proceeding within the time fixed by this Court. This writ petition is disposed of accordingly. Let a copy of this order be given to learned Counsel for the State.