(2003) 02 PAT CK 0060

In the Patna High Court

Case No : C.W.J.C. No. 11237 of 1999

Kedar Pati Pandey APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Citation : (2003) 2 BLJR 1125 : (2003) 1 PLJR 758

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Manish Kumar, Jayanandan Singh and Harendra Tiwary, for the Appellant; S.B.N. Singh, J.C. to G.A., for the Respondent

Judgement

R.M. Prasad, J.—The petitioner, who retired from the service of Bihar State Board of Religious Trust. Patna as Inspector on 1-2-1995, is aggrieved on account of nonpayment of his post retrial dues, such as gratuity, amount against unutilised leave and unpaid salary from August, 1992 to February, 1995.

2. The Respondent Board has filed counter affidavit and supplementary counter affidavit to which the petitioner has filed rejoinder. A counter affidavit has also been fled on behalf of the State of Bihar (Respondent No. 1) to which a copy of the order passed in C.W.J.C. No. 2601 of 1987 has been annexed as Annexure-A. wherein this Court on details consideration has held that it is obligation of the Board to pay salary of its employees, and, therefore, this Court cannot issue mandate on the State Government to release the amount for payment to its employees.

3. The claim of the petitioner is not disputed. Mr. Singh, learned Senior Counsel appearing for the Board, has fairly conceded that the liability to pay pensionary retrial dues is of the Board. However, he contended that the Board is facing complete financial crunch on account of non-cooperative attitude of the State Government. In support of this he referred to various paragraphs of the supplementary counter affidavit filed on behalf of the Board, wherein it is stated

that the Government acquired and distributed 33000 Bighas of land of around 100 trusts resulting into a sharp fall in the income of the Board and ultimately it has to depend upon the State Government even for meeting its establishment costs. He also ventured to submit that there has been rise in the income of the Board during the regime of its present President, but, in view of the liability it is like a drop in the ocean. He has, thus, submitted that the Board is not in a position to meet its liability to pay the pensionary dues.

4. It is really shocking to hear such defence on behalf of various autonomous bodies established in the State including the Respondent Board that they are unable to discharge their liability on account of financial crunch and still continue to function. This Court fails to appreciate as to now the employees working in the Board can be kept deprived of their legitimate dues despite the being no dispute over the liability of this Board to pay the same to the Board. It is the Board which has to generate fund or to acquire fund from the concerned source and in case anything is to be done against the State if the State has failed to discharge its liability towards the Board, the Board should have moved the appropriate authority/forum for recovery of their dues, if any, against the State. But, in my opinion, no such defence as aforementioned is tenable and the Board cannot get away from discharging its liability. On account of their mis-management they are to suffer and not the employees from whom they have been taking work. In facts, in case the members of the Board fall to discharge their duty/liability towards employees, they are not fit to continue in the office and the State Government should consider the desirability of taking steps for winding up of the Board, as instead of serving any purpose, it is only creating liability.

5. However, in the facts and circumstances aforementioned especially when the liability of the Board to pay the dues of the petitioner is not disputed, this writ petition is disposed of with a direction to (Respondent Nos. 3 & 4 respectively) to get the entire dues of the petitioner calculated and pay the admitted dues along with calculation chart within two weeks of the receipt/production of a copy of this order, failing which the members of the Board including the President and the Secretary of the Board shall not draw even single farthing out of the fund of the Board on their account till the entire dues of the petitioner is cleared. In case of any default the concerned Respondent shall be liable to pay a cost of Rs. 2,000/- (Rupees two thousand) from his/their pocket and the petitioner will be at liberty to file two pages affidavit for revival and taking appropriate action against the erring authority.

