
(2002) 04 JH CK 0033
In the Jharkhand High Court
Case No : CWJC No. 7559 of 1999 (P)

Lal Bihari Prasad	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Bihar Pension Rules, 1950 — Rule 49

Citation : (2002) 04 JH CK 0033

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : J.P. Jha, for the Appellant; M.M. Banerjee, A.G., for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner has preferred this writ petition against the order No. 388 (22) dated 26.3.1999 issued by the Director-in-Chief, Health Services, Bihar, Patna; Memo No. 613 dated 14.6.1999 issued by the Civil Surgeon-cum-Chief Medical Officer, Dumka as also an order containing in Memo No. 302(22) dated 8.2.1999 issued by the Director-in-Chief, Health Services, Patna.

2. By order dated 8.2.1999, the Director-in-Chief, Health services, Bihar, Patna while held that the petitioner has been found guilty in the departmental proceeding, issued second show cause notice to the petitioner enclosing the copy of the enquiry report. By subsequent order dated 18.6.1999, the Director-in-Chief imposed penal order purported to be issued under Rule 49(d) of the Bihar Pension Rules, 1950 deducting 20% of the pension, permanently withholding the gratuity with further order to lodged FIR against the petitioner. It was forwarded by the Civil Surgeon to the petitioner.

3. The case of the petitioner is that he was suspended on 29.9.1994 in contemplation of a departmental proceeding followed by charge-sheet issued on 17/26.4.1998. The petitioner denied the allegation and filed show cause (sic)

whereinafter no order was passed. The petitioner at that stage moved before the High Court in CWJC No. 3886/98 for direction on the respondents to drop the proceeding. A Bench of this Court on 8.1.1999 disposed of the writ petition with direction to the respondents to conclude the proceeding on a day to day basis and to conclude it within a time frame. It was made clear that the departmental proceeding is not concluded by 1.4.1999, the proceeding shall stand quashed and the petitioner cannot be punished on the basis of the charges in respect of such departmental proceeding.

4. Further case of the petitioner is that he appeared before the respondent No. 5 in person, who asked to file written statement and without giving any opportunity to the petitioner, the proceeding was concluded hurriedly. In the meantime, the petitioner superannuated from the services of the State on 31.1.1999.

5. The petitioner alleged that the respondents passed the impugned order without taking into consideration the show cause reply filed by him.

6. The petitioner has enclosed the charge-sheet as also the enquiry report. From the enquiry report enclosed with letter dated 8.2.1999 (Annexure 1), it will be evident that the enquiry officer did not choose to refer any evidence, nor discussed the defence as was taken by the petitioner. He merely referred the para 6 to the Annexure 4 as was enclosed by the petitioner in CWJC No. 3886/98 which was not a part of the evidence and came to the conclusion that the petitioner accepted that the Medical Officer, Leprosy Control Unit, Barmasia, Dumka made illegal appointment, the joining of the illegal appointees were accepted and they were paid salary. Thus without discussing any evidence and without giving any finding as to what illegality petitioner committed, held the charges proved that the petitioner accepted joining of illegal appointees and was a party to the payment made.

7. In the aforesaid background, the enquiry report being illegal, there was no occasion for the respondents to impose any penal order on the petitioner under Rule 43(b) of the Bihar Pension Rules, 1950. Further, the petitioner having retired on 31.1.1999, the Penal Code under Rule 49(b) of the Bihar Pension Rule could have been passed only by the State and not by the Director-in-Chief, who had no jurisdiction.

8. In the facts and circumstances, the orders dated 26.3.1999 and 14.6.1999 issued by the Director-in-Chief, Health Services Bihar, Patna being illegal, they are set aside. The respondents are directed to pay the petitioner the full salary of the period of suspension after adjusting the subsistence allowance, if any paid and to pay the full retiral benefits like pension, and gratuity on its finalisation, within three months failing which the respondents will be liable to pay the interest @ 5%.

9. The writ petition is allowed, with the aforesaid observations/directions.

10. Let a copy of this order be handed over to learned A.G. for communication to the concerned officer.