
(2000) 01 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 2061 of 1999

Laxman Prasad Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Citation : (2000) 1 PLJR 1061

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Binod Kumar, for the Appellant; R.P. Singh, G.N. Ojha for the State and Mr. Rakesh Kumar for the Accountant General, for the Respondent

Judgement

Radha Mohan Prasad, J.—The petitioner superannuated from the service of the State Government long back on 31.7.1997, yet he has been kept deprived of the entire pensionary benefits till date. It appears that only three days before his retirement, a disciplinary proceeding was initiated against him, vide order dated 28.7.1997, and later the same was continued, vide order dated 26.8.1997, after revoking the order of his suspension. On account of pendency of the said proceeding, the petitioner has been kept deprived of his pensionary benefits. This Court, on consideration of the relevant rules and various decisions of the Apex Court in the case of Sachchidanand Singh vs. The State of Bihar, reported in 1993 (3) PLJR 513 : 2000(1) BLJ 125, held that where a Government servant is allowed to retire without the exercise of the power of retaining him in service under rules 73 to 75 of the Bihar Service Code, the power to continue the proceeding already initiated while in service can be exercised only in terms of proviso to rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as "the Rules") and not otherwise, which obviously means after conforming the conditions mentioned therein. This was based on the principle decided by the Apex Court in the case of State of Bihar and others Vs. Mohd. Idris Ansari, , wherein the Apex Court was considering the scope of rules 43 and 139 of the Rules and also on the principle decided in various decisions of the Apex Court ;

like the one in the case of Kirti Bhushan Singh Vs. State of Bihar and Others, and the recent one in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , in which it has been held that once the appellant had retired from service, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. It was also held that in the absence of such authority, the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

2. Rule 43 of the Rules certainly vests power in the State Government for withholding or withdrawing a pension or any part of it and also for ordering for recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement and under its proviso, for passing such an order, the Government has been vested with the power to initiate departmental proceeding even if not instituted prior to the retirement of a Government servant or during his re-employment with certain riders provided therein, one of which is that such proceeding shall not be instituted save with the sanction of the State Government and the other that it shall not be in respect of an event which took place not more than four years before the institution of such proceeding.

3. This Court in the case of Kartik Prasad vs. The State of Bihar and ors. (C.W.J.C. No. 389 of 1999 (R), disposed of on 23rd December, 1999) held that there cannot be any question of automatic continuance of the proceeding in the absence of specific provision like the one contained in rule 9(2) of the Central Civil Services (Pension) Rules, 1972, while dealing with an employee of the State Government after cessation of the relationship of master and servant on his retirement.

4. In the case of State of Bihar vs. Mohd. Idris Ansari (supra), the State Government had awarded punishment to the respondent as per the order dated 6.6.1992. The validity of the said order was challenged before this Court and the same was quashed as the principles of natural justice were violated by the authorities. This Court gave liberty to the State Government to proceed afresh against the respondent. In the meanwhile, respondent reached the age of superannuation on 31.1.93 and retired from Government service. On 17.7.1993, the respondent was required to submit explanation regarding irregularities and for the said purpose he was served with a notice dated 17.7.1993. Before that notice could be processed further, a show cause notice was issued to the respondent on 17.9.1993 intimating that as he had already retired from service and the period of charges was prior to four years, no action could be taken against him under rule 43(b) and that the Government had decided to issue show cause notice under rule 139 of the Rules.

5. The validity of the said proceedings was again challenged in a writ petition in this Court which was quashed. The matter went to the Supreme Court and the Apex Court held that the earlier notice dated 17.7.1993, by which fresh departmental proceedings was sought to be initiated, was rightly quashed by the High Court as it was based on the alleged misconduct of the respondent during 1986-87 which was more than four years prior to the issue of the said notice. It was also held that such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent was clearly hit by the proviso to sub-rule (b) of rule 43 of the Rules.

6. With respect to the notice under rule 139 of the Rules, the Apex Court on the facts held that the said notice was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. It was further held that on a conjoint reading of rule 43(b) and rule 139(a), there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to four years from the date show cause notice was issued, the appellant-authority had no power to invoke rules 139(a) and (b) against the respondent on the ground of alleged proved misconduct. Consequently, the proceeding under rule 139 was also held to be wholly incompetent.

7. However, learned counsel for the State has, for the first time, brought to my notice an unreported judgment of the Full Bench of this Court in the case of Shambhu Saran Vs. The State of Bihar and Others, wherein it has been held that where a disciplinary proceeding had already been started, even if the person concerned attains the age of superannuation, the enquiry can be continued under rule 43 of the Rules for the limited purpose of taking such action as provided under the said Rule even after such superannuation and for that purpose no specific or express order of the Government is necessary. It is submitted that even if the Full Bench decision is not in conformity with the decision of the Supreme Court, the same is required to be considered by the Larger Bench and this Court cannot go into the said question in view of the law settled in the Constitution Bench decision of the Apex Court in the case of State of U.P. and another Vs. C.L. Agrawal and another, etc., .

8. It appears that this Court has elaborately dealt with the issue involved in the present case in the case of Sachchidanand Singh vs. The State of Bihar (supra) as the Full Bench decision of this Court was not brought to the notice nor the aforesaid Constitution Bench decision of the Apex Court was brought to the notice. However, in view of the principle decided by the Apex Court in the case of State of U.P. vs. C.L. Agrawal (supra), in the facts and circumstances aforementioned, in my opinion, this matter requires consideration by the Larger Bench.

9. Accordingly, let this matter be placed before Hon''ble the Chief Justice for consideration and appropriate order.

10. Learned counsel for the petitioner, however, submitted that even if the principle decided by the Apex Court is to be applied in the instant case, the petitioner will be entitled at least for payment of provisional pension and provisional gratuity, besides other admissible dues towards pensionary benefits.

11. This Court finds substance in the submission of the learned counsel for the petitioner. Under rule 43 of the Rules, the State Government is only empowered to withhold or withdraw a pension or any part of it or make recovery of the pecuniary loss caused to it from a pension and not that it can withhold any other dues. The word "pension" is defined under rule 27 of the Rules, which includes gratuity. As such, the State Government is empowered to withhold pension and gratuity alone and not any other pensionary dues like provident fund, unutilised leave, group insurance etc. It has rightly been pointed out by the learned counsel for the petitioner that as per the decision of the State Government, even while proceeding is pending, the pensioner is entitled to get provisional pension and provisional gratuity, which have not been paid to the petitioner till date. Accordingly, the respondents authorities are directed to pay the same along with other pensionary dues within two weeks of the receipt/production of a copy of this order, in accordance with law.