
(2007) 09 PAT CK 0070
In the Patna High Court

Mahendra Prasad Singh @ Mahendra Singh APPELLANT
Vs
State of Bihar and Others RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Citation : (2008) 117 FLR 187 : (2009) 2 PLJR 957 : (2008) 1 PLJR 532

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Judgement

Barin Ghosh, J.—The petitioner was subjected, to disciplinary proceedings. In the disciplinary proceedings the disciplinary authority WHS entitled to punish the petitioner by way of dismissal or removal. It has no authority to discharge the petitioner. After the disciplinary proceeding was concluded, the disciplinary authority passed an order in Hindi and thereby directed "Seva Mukta". The disciplinary authority while using the words "Seva Mukta" translated the same into English and recorded "Discharge" within bracket after the words "Seva Mukta". Rule 46 of the Bihar. Pension Rules, 1950 debars payment of pension to a government servant who has been dismissed or removed. In the present writ petition the petitioner is contending that since the petitioner has been discharged and neither been dismissed nor removed he is entitled to pension.

2. The learned Counsel for the petitioner has referred to various judgments of this Court wherein the learned Judges were concerned with the expression "Seva Samapta" which had been literally translated into "termination of employment", The learned Judges felt that since termination of employment is not a barrier for grant of pension, those employees whose services have been terminated by not using the words dismissed or removed, they are entitled to pension. In none of these judgments the learned Judges took note of the power of the disciplinary authority. The disciplinary authority admittedly was not entitled to discharge the petitioner. He was only entitled to either remove or dismiss the petitioner. In the present writ petition the order of the disciplinary authority is not under challenge. It has not been contended that the order passed by the disciplinary

authority requires interference by this Court. It is being contended that since by the order of the disciplinary authority the petitioner has been discharged and not removed or dismissed he is entitled to pension.

3. When the disciplinary authority had not been authorised to pass an order directing discharge and was authorised to pass an order of removal, the order as accepted by the petitioner, which tantamounts to severance of the services of the petitioner, should be deemed to be either removal or dismissal from services. The expression "discharge" written in English in the order of the disciplinary authority is of no consequence. An employee who has been dismissed or removed from service, under Rule 46 of the Rules, admittedly is not entitled to any pension. The writ petition accordingly to that extent fails and the same is dismissed.

4. In the event G.P.F. amount has not been paid, the same must reach the petitioner within three months from today together with statutory interest until the date of payment. The liability of G.P.F. payment is of course, upon the State of Bihar.

5. The writ petition stands disposed of.