(2001) 04 PAT CK 0021

In the Patna High Court

Case No : C.W.J.C. No. 1846 of 2001

Maheshwar Lal Das APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Citation : (2001) 2 PLJR 504

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Rabindra Nath Kanth, for the Appellant; Azfar Hasan, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—As prayed, learned counsel for the petitioner is permitted to make Treasury Officer, Darbhanga as party Respondent no. 6. In this writ petition prayer on behalf of the petitioner is to issue appropriate writ, order or direction commanding the Respondents to pay his entire post-retiral benefit including pension, gratuity, commuted value of pension and arrears over and above the payments already made by way of provisional pension together with an interest thereon at the rate of 18% per annum from the date of superannuation on 31.7.1999.

2. Petitioner superannuated from service as Publication Assistant-cum-Sales Manager in Mithila Research Institute, Darbhanga under the Department of Higher Education, Government of Bihar. After his retirement other retirement benefits as Q.P.F., Group Insurance and leave encashment has been paid to him and provisional pension has also been sanctioned, but payment of full pension and gratuity have been kept withheld. It is stated that despite several directions by the superior authority, Head- clerk-cum-Accountant kept the matter pending on one pretext or the other. In support of this he has annexed a copy of the letter issued by the Director, Mithila Research Institute, Darbhanga, contained in Memo No. 371/99 dated 22.12.1999. It is claimed that formal application duly

filed in Form 4 along with other necessary papers were submitted by the petitioner long back but that was not forwarded When it was not forwarded, he submitted representation on 15.2.2000 before the Director (Respondent no. 4) requesting him to send pension papers to A.G. and also to grant provisional gratuity. It is stated that pension papers were forwarded to the Accountant General for issuance of Pension Payment Order and Gratuity Payment order vide Memo no. 139/2000 dated 29.4.2000 (Annexure-3). The Accountant General issued PPO vide No. 293772 and GPO on 20th June, 2000 and forwarded the same to the Treasury Officer, Darbhanga for disbursement of the amount. A xerox copy of the PPO and GPO forwarded to the petitioner has been annexed as Annexures 4 & 5. Commutation of pension has also been sanctioned by the authority concerned and the Accountant General issued order for payment of commuted value of pension vide his order dated 21.8.2000 (Annexure-6) to the Treasury Officer, Darbhanga. It is stated that when the petitioner appeared before the Treasury Officer, Darbhanga, he refused to honour the authority as the concerned authority had not furnished no demand certificate. Petitioner filed representation on 26.7.2000 along with copy of PPO and GPO to the Director, Mithila Research Institute, Darbhanga and requested for issuance of no demand certificate to the Treasury Officer, Darbhanga, which was, however, not issued, which compelled the petitioner to file the present writ petition.

3. A counter affidavit has been filed purporting to be on behalf of ''Respondent nos.'' and another counter affidavit has been filed on behalf of Director Incharge, Mithila P.G. Study and Research Institute, Darbhanga (Respondent no. 5). In the said counter affidavit, it is claimed that there are certain outstanding dues, not cleared by the petitioner and it is also stated that penal rent was payable by the petitioner on account of delay in vacating the official quarters. Certain allegations are also made against the then Incharge Director Dr. Shreedhar Tripathy, who worked in the Institute from January, 1986 to December, 1999. According to the Respondents he never conducted physical verification of the Books of the publication division, although the rule provides for yearly verification with information to the department regarding damaged books and to get necessary instructions. From the statements made therein, it appears that there was damage caused to the books to the tune of Rs. 1,72,767.25 due to ill maintenance of books. However, Dr. Tripathy was of the opinion that the petitioner alone cannot be held responsible for the same and passed order for forwarding of pension papers to the A.G., Bihar. In the above circumstances, it is pleaded that the deponent, who is presently working as Director Incharge of the Institute did not find it fit and proper to issue no dues certificate in favour of the petitioner and send the same to the Treasury Officer without clear direction or order from the Government. It is alleged that the whole matter has been reported to the Department and necessary instruction order is awaited.

4. Learned counsel for the petitioner has submitted that till date no proceeding has been initiated against the petitioner either during his service or even after his retirement under Bihar Pension Rules. According to the learned counsel for

the petitioner entire action of the Respondents, in withholding the payment of pension and gratuity in pursuance to the authority slip issued by the Accountant General and the commuted value of his pension as per the sanction order is without any authority and malafide just to harass the petitioner.

5. Learned Standing Counsel No. VII appearing for the Respondents with reference to first counter affidavit has submitted that at the time of forwarding pension papers of the petitioner to A.G., Bihar, Incharge Director of the Institute recorded about the last pay certificate of the petitioner that whatever dues will be found outstanding against the petitioner will be communicated to the Treasury Officer, Darbhanga for recovery from the petitioner at the time of final payment of pension and gratuity to him. This submission is based on the statement made in paragraph 8 of the first counter affidavit filed on behalf of ''Respondent nos.'' in which the said statement is not based on the record or even the knowledge of the person swearing affidavit. However, learned Standing Counsel No. VII in this regard referred to paragraph 7 of the counter affidavit filed on behalf of Respondent no. 5, wherein he stated that the then Incharge Director recorded over the last pay certificate that whatever dues will be found outstanding against the petitioner, will be communicated to the Treasury Officer, Darbhanga for recovery at the time of final payment of pension and gratuity. No document in support of this case has been produced on behalf of the Respondents. Learned Standing Counsel has failed to show from the authority slips, contained in Annexures-4, 5 & 6 that there was any such condition mentioned for disbursement of the payment in pursuance thereto. Under such circumstances, this Court does not find any substance in the submission of the Learned Standing counsel. Moreover, even if such condition was mentioned in the sanction order, the Respondent-Authorities cannot be held to be justified in sitting tight over the matter since issuance of authority slips by the Accountant General in June and July, 2000. If at all there was any recovery to be made from the final payment of the pension and gratuity, the Respondents should have acted promptly to inform the Treasury Officer with respect to it. This only shows the callous attitude of the Respondents in telling with the claim of the pensioners and take such malafide and unfounded defence only after the writ petitions are filed. Learned Standing Counsel No. VII appearing for the Respondents has failed to show any provision under which the Treasury Officer or any other authority can withhold payment after issuance of the authority slip by the Accountant General. He, however, referred to Rule 139 of the Bihar Pension Rules and submitted that the power of the State Government is reserved for revising the order relating to pension by taking recourse to the provision contained in sub-rule (c) of Rule 139. There cannot be any dispute to the said proposition. Under sub-rule (c) power of the State Government for revising an order relating to pension passed by the subordinate authorities under their control is reserved, but the said power is only exercisable by the State Government. No order has been brought on record to show that the State Government has passed any such order. Moreover, such power can be exercised by the State Government only if they are satisfied that

the service of the pensioner was not thoroughly satisfactory or there was proof of misconduct on his part while in service and that too after giving the pensioner concerned a reasonable opportunity of showing cause against. the action proposed to be taken in regard to his pension and further with a rider that such power shall not be exercised after expiry of the period of three years after the order of sanction was first passed. It is not the case of the Respondents that the petitioner was given any opportunity much less reasonable opportunity for exercise of such power or that such power has been exercised after being satisfied that the services of the petitioner was not thoroughly satisfactory or there was proof of grave misconduct on his part. Under such circumstances, in my opinion, the plea of the learned Standing Counsel is not at all tenable in the facts and circumstances of the present case.

6. Learned Standing Counsel then ventured to submit that this Court in the facts and circumstances of the case may not exercise discretionary jurisdiction of this Court in view of the fact that the Accountant General has issued authority slip without issuance of no dues certificate by the competent authority. He has failed to show that there was any such requirement to be complied by the Accountant General before the issuance of authority slip. Moreover, according to their own case, the Respondents were required to communicate to the Treasury Officer. Darbhanga for recovery of any amount recoverable from the petitioner at the time of final payment of pension and gratuity but the Respondent- authorities have not bothered to act even according to the same, although in my opinion, in absence of any such statutory provision, the Treasury Officer, Darbhanga was not legally justified in withholding payment in pursuance to the authority slips issued by the Accountant General. The facts of the case only demonstrate that at every stage unnecessary hurdles are created by different authorities for disbursement of the claim of the pensioner even after the Accountant Genera! who is competent authority issued the authority slip. This Court strongly deprecates such action of the Respondents. There cannot be any dispute that the Respondent-authorities are competent to act within the permissible limit as per the statutory provision but their action to protect the officer who acts not within the permissible limit in such flimsy ground is mollified. Accordingly, writ petition is allowed with cost of Rs. 5,000/- which shall be paid to the petitioner by the State and the amount of cost shall be recovered from the officer/person found responsible for withholding of payment. The Treasury Officer, Darbhanga, newly added Respondent no. 6, is directed to pay the entire amount in pursuance to the authority slips issued by the Accountant General forthwith on receipt of the copy of this order. The amount of cost shall also be paid to the petitioner within two weeks of the receipt/production of a copy of this order. It is needless to add that this order shall not come in the way of the concerned authority from taking any appropriate action as is permissible in law against the petitioner.

