

(2004) 11 JH CK 0032
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3432 of 2003

Pankaj Mohan Bhuin

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Bihar Pension Rules, 1950 — Rule 27, 43

Citation : (2005) 104 FLR 1109 : (2005) 1 JCR 263

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Rajiv Nandan Prasad, for the Appellant; B.S. Lal, A.A.G., for the Respondent

Judgement

Tapen Sen, J.—In this application the petitioner prays for quashing the order dated 26.06.2003 as contained in Annexure 6 by which the petitioner's full gratuity amount, salary for the period 14.02.1996 to 31.10.1998 and; arrears of leave encashment on account of revision of pay has been withheld. According to the petitioner, in the absence of any proceedings under Rule 43(b) of the Bihar Pension Rules, the respondents have no authority to withhold the aforementioned post retiral dues and that too, when the respondents have already released full pension including Dearness Allowance in the revised scale. According to the petitioner, since full pension has been sanctioned by the competent authority, he is therefore entitled to the full amount of gratuity.

2. Heard the parties and this application is being disposed off at this stage.

3. The petitioner, while posted as an Accountant in the Department of Animal Husbandry, Dumka, retired on 31.10.1988. Prior to his retirement i.e. 14.02.1996, he was put under suspension for alleged involvement in the Animal Husbandry case numbered as RC No. 38-A of 1996. He continued to be in suspension and in the mean time, retired on 31.10.1998.

4. After retirement he moved the Hon'ble Patna High Court vide C.W.J.C. No.

10648 of 1998 and by order dated 30.08.1999 an Hon"ble single Judge held that since the petitioner has already superannuated, there is no question therefore of the order of suspension remaining in force and in that view of the matter, the Writ Petition was disposed off giving liberty to the petitioner that it would be open to him to pray for salary and pensionary .benefits etc. before the competent authority.

5. The petitioner submits that pursuant to the aforementioned order he filed a detailed representation for payment of his post retiral dues and when nothing was heard from the side of the respondents, he again filed C.W.J.C. No. 3460 of 2000 which was also disposed off on 07.02.2003 vide Annexure 3 with an observation that the petitioner could file a representation once again before the Secretary of the Animal Husbandry Department. The said authority was directed to look into the grievances and pass a reasoned order within a period of two months from the date of receipt/production of the copy of the said order. It was also observed that if some amount was found due, the same would be paid to the petitioner within 15 days.

6. The petitioner has stated that during the pendency of the aforementioned writ petition, some amounts like G.P.F, full pension and leave encashment on the old scale was paid to the petitioner but gratuity was not paid and the salary for the aforementioned period i.e. 14.02.1996 to 31.10.1998 was withheld. In the mean time, the petitioner filed a detailed representation dated 21.02.2003 pursuant to the order passed on 07.02.2003 passed in C.W.J.C. No. 3460 of 2000 and the Accountant General, Bihar and Jharkhand by letter dated 18.12.2002 (Annexure 5), requested the respondent No. 4 (Regional Director, Animal Husbandry Department, Dumka) to take steps and send the matter along with the Service Book for immediate release of gratuity. But even then, the respondents, according to the petitioner, have done nothing.

7. The petitioner has a grievance that although this Court, by order dated 07.02.2003, had directed the respondents to dispose off the representation by a reasoned order but, defying the said order, the Deputy Secretary (Respondent No. 3), without considering the representation has passed the impugned order dated 26.06.2003 rejecting the claim of the petitioner.

8. The aforementioned submission of the petitioner cannot be accepted because from a perusal of the impugned order, it is evident that the same has been passed after taking note of the order passed in C.W.J.C. No. 3460 of 2000. It is seen that the respondents have not acceded to the demands of the petitioner but it cannot be said that there is deliberate defiance on their part. Moreover, from a further perusal of the impugned order, it is evident that the respondents have taken the following decisions-

(a) Since the petitioner is involved in the two Animal Husbandry Cases namely RC 58(A) of 1996 and RC 845 (A) of 1996, therefore, the question of payment of salary for the period of suspension till retirement, would be taken after disposal

of the said criminal cases;

(b) The payment of Gratuity will not be paid and;

(c) Leave encashment in the new scale would i.e. kept in abeyance.

9. It is true that no formal order under Rule 43(b) of the Bihar Pension Rules has been brought on record showing the intention of the Government to proceed against the petitioner but that does not come to the rescue of the petitioner because Rule 43(b) of the Pension Rules protects the Government and gives it the right to withhold or withdraw pension or any part of it if an employee is found, in a departmental or judicial proceeding, to have been guilty, either of grave misconduct or to have caused pecuniary loss to the Government. The explanation appended to Rule 43(b) lays down as follows :-

"Explanation:-For the purposes of the rule :-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted :-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a Criminal Court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court."

10. From a perusal of the aforementioned explanation appended to Rule 43(b), it is evident that by reason of a deeming (sic) inserted therein, the departmental proceeding will be deemed to have been instituted from the date of suspension. In this case, the petitioner was suspended on, 14.02.1996 and notwithstanding the fact that he retired on. 31.10.1998, he cannot take a plea that merely because a formal order under Rule 43(b) was not issued, therefore, the respondents have no right to exercise their discretion conferred under the said Rule for purposes of protecting their own interests. After all, it is said that two criminal cases are pending against the petitioner.

11. However, the provisions of Rule 43(b) itself takes sufficient care to protect the interest of the respondents and they can certainly act in accordance with the said Rule provided the employee is found guilty. However, that by itself does not mean that the respondents have the right to withhold the entire amount of Gratuity. Under Rule 27, pension has been described to mean and include Gratuity also.

12. In that view of the matter, this Court is of the opinion that for the time being, the respondents should release 90% of his pension and 90% of Gratuity. So far as the other amounts are concerned, that will obviously have to await the

outcome of the criminal cases. So far as salary is concerned, the respondents cannot be mandated, at this stage to pay him salary on the revised scale nor leave encashment on the said scale. All these payments will have to await the outcome of the criminal cases.

13. With the aforesaid observations and directions, this writ petition is disposed off.