(2004) 08 PAT CK 0090

In the Patna High Court

Case No : C.W.J.C. No. 3297 of 2002

Parmeshwar Dayal Verma APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 26-08-2004

Acts Referred:

Citation : (2004) 4 PLJR 159

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Lakmesh Marvind, for the Appellant; Sanjay Singh for the State, for the Respondent

Judgement

Aftab Alam, J.—The petitioner is a retired clerk from the Government Polytechnic College, Purnea. The respondent authorities have withheld payment of the amounts in lieu of his unutilised leave (Rs. 59,336) and gratuity (Rs. 84,447) on grounds that (i) there are government dues against him amounting to Rs. 2,23,057/- and he continues to be in unauthorised occupation of a government quarter allotted to him during his service tenure. The petitioner admits that he occupies the government quarter till date but he denies any government dues and on his behalf it is submitted that in any event no deduction/recovery can be made from his retiral dues in the absence of any departmental or judicial proceeding against him while he was in service or any proceeding under rule 43(b) of the Bihar Pension Rules after his retirement. The petitioner retired from service on 31.1.1998. As there was some delay in payment of his retiral dues he came to this court in C.W.J.C. No. 9670 of 1999. That writ petition was disposed of by order dated 5.11.1999 in terms of the directions earlier issued by the court in the case of Rukmani Devi, 1996(2) P.L.J.R. 348.

2. In the counter affidavit filed by the respondents in this case it is stated that apart from leave encashment and gratuity all other retiral dues of the petitioner were paid to him even before the court passed the order in the earlier case.

3. When no further payments were made to him, the petitioner filed a contempt petition (being M.J.C. No. 847 of 2000) against the concerned respondents. In the show cause filed by the Principal of the Polytechnic in the contempt case it was brought to the notice of the court that books in very large number were missing from the that institution''s library, during the period it was in the charge of the petitioner; the missing books were valued at Rs. 2,18,064/-. Apart from the books, materials from the store worth Rs. 3,826/- were also missing. Further, a sum of Rs. 1,167/- given to the petitioner as development advance also remained unadjusted. Thus a sum of Rs. 2,23,057/- remained due against the petitioner for adjustment/recovery of which he was given show cause notices. Copies of certain office orders and the show cause notices issued to the petitioner were made annexures to the show cause filed in this case.

4. The contempt petition was disposed of by order dated 8.1.2002 leaving it for the petitioner to seek redressal of his grievances before an appropriate authority/ forum. Against this order, the petitioner filed L.P.A. No. 251 of 2002 which he was permitted to withdraw "to pursue the other remedy available in law".

5. This writ petition was then filed challenging the show cause notices issued to him for adjustment/recovery of the government dues from his retiral dues and for a direction to the concerned authorities to pay him the amounts of gratuity and unutilised leave, amounting to Rs. 1,44,183/- alongwith interest @ 9% per annum till the date of payment.

6. In the counter affidavit filed by the Principal of the Polytechnic, it is stated that by order no. 69 dated 31.1.1991, the petitioner was asked to hand over full charge of the library to one Shri Rajendra Prasad Yadav. Later, Shri Yadav informed the Principal that the petitioner had not handed over to him full charge of library. The Principal then asked clarification from the petitioner by letter no. 102, dated 19.3.1993. When the petitioner did not respond to the repeated letters issued by the Principal, he wrote to the Director, Science and Technology, Bihar vide letter no. 254, dated 15.6.1994 recommending that the petitioner be put under suspension. No action was, however, taken and the petitioner was allowed to continue till his superannuation on 31.1.1998. After superannuation the Principal asked him by letter no. 296, dated 2.7.1998 to submit No Dues Certificate alongwith the relevant papers so that advice for payment of gratuity and pension to him may be forwarded to the Accountant General''s office. Again, by letter dated 2.12.1998 the Principal asked him to vacate the official quarter and submit No Dues Certificate alongwith the relevant papers in proper proforma for payment of Pension and gratuity. But the petitioner did not respond to those letters. The counter affidavit gives details of further letters sent to the petitioner by the Principal till he refused to accept the letters sent to him through Special Messenger and those letters were then sent to him by registered post. In the meanwhile, Shri Yadav, the acting librarian, was repeatedly agitating the matter of huge shortage of books from the library during it was under the charge of the petitioner. According to him, the petitioner had not given him the registers of the

Central Government books, Relief Society books and the furnitures of the library; the auditor in his report also pointed out that very large number of books were missing from the library during the period it was under the petitioner''s charge. In those circumstances, the Director, Science and Technology directed the Principal to form a three-member Committee of local Professors to determine the value of the missing books. In the counter affidavit it is stated that the direction was given by the Director in presence of the petitioner. In pursuance of the direction the Principal constituted a team of three professors and the petitioner was repeatedly asked to appear and submit before them all registers, papers and documents relating to the institution''s library and the lost books. The petitioner, however, never cared to appear before the Committee. It is further stated that though the petitioner retired on 31.1.1998, he did not vacate the official quarter despite repeated directions and he continues to occupy it even today.

7. Counsel for the petitioner plainly admitted that the petitioner continued to be in occupation of the official residence and tried to justify his action on the ground that his retiral dues were not cleared by the respondent authorities.

8. As regards the government dues arising out from the missing books (and two other small amount relating to store materials and development advance), learned counsel contended that no adjustment/recovery from the retiral dues was permissible since no proceeding was held under Rule 43(b) of the Pension Rules.

9. The submission cannot be said to be without substance.

10. From the counter affidavit filed by the Principal, it is clear that the service rendered by the petitioner was far from satisfactory and his acts amounted to gross misconduct in several ways. It was open to the disciplinary authority at that time to frame charges and to hold a disciplinary proceeding against him. In the departmental enquiry if those charges were proved the petitioner could be awarded suitable punishment including dismissal from service. But that was not done and the authorities sat idly even over the Principal''s recommendation to put him under suspension. By the time of his retirement in 1998 the matter was already seven years old and it was clearly hit by the bar of limitation under Rule 43(b) of the Pension Rules. The exercise started several years after his retirement by constituting a three-member committee of the local Professors to fix the value of the lost books cannot be held to be a proceeding under rule 43(b) of the Pension Rules and on that basis no adjustment/recovery can be made from the petitioner''s retiral dues.

11. In an earlier decision of this court in Smt. Indu Devi Vs. The State of Bihar and Others, this court did not permit any adjustment/deduction from the retiral dues on the basis of an inventory of missing books and periodicals made by a committee after the death of the concerned employee.

12. I am therefore of the view that the respondents cannot be allowed to withhold payment of the amounts of unutilised leave and gratuity to the

petitioner as adjustment/recovery of the amount of the government dues.

13. Coming now to the petitioner''s claim for interest, I am not inclined to give any direction for interest in his favour. The petitioner has succeeded in his claim for payment of gratuity and encashment of leave on the ground that the law does not permit the respondent authorities to withhold those payments. But the petitioner''s own conduct has been quite reprehensible. He deserved major punishments, that might have included dismissal from service but he escaped it due to the negligence on the part of the disciplinary authority. Even after retirement he admittedly continues to be in occupation of the official quarter and tries to justify on flimsy grounds. The process of the court is meant to help a wronged person to get his legal rights and not to aid the wrong doer in getting unduly benefitted. This court, therefore, rejects the petitioner''s claim for any interest.

14. On the basis of the discussion made above, the respondent authorities are directed to make full payment of the amounts of unutilised leave and gratuity to the petitioner. The payment must be made to him within ten days of his vacating the official quarter and submitting within proof of his handing over possession of the quarter to the competent authority. This writ petition stands disposed of with the aforesaid observations and directions.