(2004) 08 PAT CK 0052

In the Patna High Court

Case No : CWJC No. 9350 of 1997

P.K. Indira Kurup — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Bihar Pension Rules, 1950 — Rule 139, 43

Citation : (2004) 2 BLJR 1511 : (2006) 108 FLR 497 : (2005) 4 PLJR 660

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—One M.P.K. Kurup (now deceased) filed this writ petition challenging the Government decision as intimated to the Accountant General, Bihar by letter, dated 17.10.1996 (Annexure 1) from the Deputy Secretary to the Government in the Department of Primary and Adult Education. In this fetter, it was stated that the Government had taken the decision to permanently reduce Kurup''s pension by 10%; that he was held responsible for causing losses to the Government amounting to Rs. 4,34,012/- and the money was liable to be recovered from the gratuity payable to him. it was further stated in the letter that in case his gratuity was insufficient for full adjustment of the recoverable amount, intimation should be given immediately so that the balance dues may be realised by proceeding against him under the Public Demands Recovery Act.

2. The writ petition was initially dismissed by a learned Judge of this Court by order, dated 30.10.1998. In that order it was held that the petitioner was not entitled to any relief prayed for in the writ petition; nevertheless, it was left open to him "to challenge the order passed by the respondent authority inflicting punishment in the proceeding initiated against him."

3. Against that order M.P.K. Kurup filed an appeal being LPA No. 1349 of 1998. In the appeal it was pointed out that the writ petition was filed precisely for the

purpose of challenging the order of punishment and to have it set aside by the High Court. The appeal was allowed by a bench of this Court on 3.11.2003. The order, dated 30.10.1998 passed by the learned single Judge was set aside and the case was remitted for consideration and disposal in accordance with law.

4. Here it may be noted that during the pendency of the appeal M.P.K. Kurup died and his widow P.K. Indira Kurup was substituted in his place by the same order by which the appeal was allowed. Thus, the petitioner now before the Court is the widow of M.P.K. Kurup.

5. The material facts of the case are brief and without controversy. The petitioner''s husband retired from service on 31.3.1991 as Executive Engineer in the Department of Education, Govt. of Bihar. He submitted his pension papers on 15.11.1991. He was not given full pension and gratuity but by letter, dated 7.5.1992 (Annexure 2) the Special Officer-Cum-Joint Secretary in the Human Resources Development Department informed the Accountant General, Bihar that the petitioner was provisionally allowed 90% pension and a decision was taken to withhold 10% of his pension and the full amount of gratuity till the disposal of the charges against him and passing of further orders in this regard.

6. At that stage the petitioner came to this Court in CWJC No. 3137 of 1995 challenging the decision to withhold 10% of his pension and full gratuity payable to him. It was stated on his behalf that no departmental or criminal proceeding was pending and no judicial enquiry of any kind was held against him and, therefore, the action of the authorities in withholding part of his pension and full gratuity was illegal, bad and unreasonable. That writ petition was disposed of by judgment and order, dated 8.4.1996. In that order the Court noticed that there was nothing on record to indicate that any proceedings under the Bihar Service Code or the Bihar pension Rules were ever initiated or were pending against the petitioner. It was further observed that no order initiating a proceeding or a charge sheet was brought on record by the respondents despite opportunities given to them. The writ petition was finally disposed of in the following terms :

"Having regard to the facts and circumstances of the case, the writ petition is disposed of with, a direction to the State Government in the Primary, Secondary and Adult Education Department to take a final decision in respect of the alleged proceeding pending against the petitioner in accordance with the rules within four weeks'' from the date of receipt of a certified copy of the order by the Commissioner-cum-Secretary, Human Resources Department and the State Government shall also pass appropriate orders sanctioning the balance payment of 10% pension and the amount of gratuity due to the petitioner in accordance with law."

7. The petitioner''s husband was then issued a show cause notice on 26.8.1996. It was stated in the notice that in the financial years, 1984-85 and 1985-86 he had not returned the unadjusted amount of Rs. 3,71,630/- under the head of construction of school buildings and further that according to the Cabinet

Vigilance Department while he was posted as Executive Engineer at Munger, he had caused a loss of Rs. 62,382/- to the Government due to his negligence and default in supervision. And in that view the Government had taken a decision to permanently reduce his pension by 10%. He was asked to give his reply within fifteen days in case he wished to say anything in his defence. In the show cause there was no indication of any decision to withhold his full gratuity. it appears that following the notice, dated 14.8.1996 the Government re-affirmed its decision and intimation was given to the Accountant General vide the impugned letter, dated 17.10.1996.

8. On hearing the parties and on a consideration of the matter, I am of the view that both the manner in which the decision was arrived at as also the decision to permanently withhold 10% pension and full gratuity payable to the petitioner are quite illegal, bad and unsustainable in the eyes of law. The petitioner''s husband was given the show cause notice on the premise that he had failed to return the unadjusted amount of Rs. 3,71,630/- under the head of construction of school buildings and had caused a loss of Rs. 62,382/- by his negligence and default in supervision. There is no material on record either in the present proceeding or in the previous proceeding of CWJC No. 3137 of 1995 that at any time any departmental action was taken against the petitioner in which he was held responsible for the misappropriation and the loss respectively of the Government money. There is nothing to show that any proceeding was held after giving him a show cause notice in which his responsibility for the misappropriation and the loss was established and the amounts of misappropriation and loss were duly quantified. It seems that the Government took the decision clearly behind the back of the petitioner and simply acting on the basis of certain reports and materials on record. The action of the Government was, thus, in complete breach of the principles of natural justice as also the express provision of Rule 139 of the Bihar Pension Rules which provides that the power under that rule would not be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension. Once, the charges of misappropriation of Rs. 3,71,630/- and the amount of loss of Rs. 62,382/- were taken as established and he was held guilty of the misappropriation and the loss without any participative proceeding, the issuance of the show cause notice, dated 14.8.1996 was an empty formality and an order passed on that basis is, therefore, unsustainable. Further, from the facts of the case it appears that the Government had decided the whole issue before hand even before the show cause notice was issued to him. It also appears that in reality the concerned authorities have passed an order under Rule 43(b) trying to circumvent the bar of limitation by disguising it as a proceeding under Rule 139 of the Bihar Pension Rules.

9. For the reasons discussed above, I am of the view that the impugned decision to permanently reduce the pension of the petitioner''s husband by 10% and to forfeit the full amount of his gratuity is completely bad and unsustainable in law. The impugned direction as contained in Annexure 1, is accordingly set-aside and

the concerned authorities, including the Accountant General are directed to pay full pension and gratuity to the petitioner. The arrears of the balance pension and the full gratuity must be paid to her within two months from the date of receipt/ production of a copy of this order in the office of the Secretary, Primary and Adult Education, Bihar.

10. In the result, this writ petition is allowed, but, with no order as to costs.

