

(2013) 01 PAT CK 0101
In the Patna High Court
Case No : CWJC No. 11087 of 2010

Principal, Kailash Prasad Singh APPELLANT
Vs
The Vice-Chancellor and Others RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 300A

Citation : (2013) 3 PLJR 663

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Tuhin Shankar and Shashi Kant Kumar, for the Appellant; Harendra Kumar Tiwari for the University and Mr. Devendra Kumar Sinha for the State, for the Respondent

Judgement

Navaniti Pd. Singh, J.—The petitioner retired on 28.2.1999 as a Principal of D.C. College, Hajipur, a constituent College of B.R.A. Bihar University. By this writ petition, the petitioner has challenged the authority of the University to withhold an amount of Rs. 1,48,945/- from his retiral dues allegedly on account of alleged defalcation made by him while he was a Principal of the aforesaid College during his service tenure. Counter affidavit and reply thereto have been filed.

2. Heard the parties and with their consent this application is being disposed of at this stage itself.

3. On behalf of the University it is submitted that notwithstanding the petitioner having superannuated, in an enquiry the petitioner was found, prima facie, guilty of defalcation for which a criminal case was also instituted and is pending. The said amount has been thus authorizedly withheld.

4. Learned counsel for the petitioner submits that this fact is not controverted that in no departmental proceeding the petitioner has been found guilty of any alleged defalcation. The criminal case has now been pending for almost two decades with the prosecution taking no interest in the matter. There is no power

with the University for attachment before judgment nor is there any power akin to Rule 43-B of the Pension Rules with the University. In such a situation withholding of the said amount would be without authority of law and violative of Article 300A of the Constitution. It would also be arbitrary contrary to Article 14.

5. The facts, which are not in dispute, are that while the petitioner was acting as a Principal of a constituent College allegedly reports were received about his misdemeanour. The then Vice-Chancellor set up an Enquiry Committee and the petitioner was even noticed as far back as in the year 1994 to show cause. Allegedly, the Hon"ble Chancellor of the Universities was in receipt of various complaints against the then Vice-Chancellor, upon retirement of the said Vice-Chancellor, ordered that all orders passed by the Vice-Chancellor within a period of one month prior to his superannuation be cancelled. The enquiry was initiated as against the petitioner in 1994, thereafter nothing happened.

6. As noted above, the petitioner superannuated in 1999. Pertinent to note that on 7.7.1994 a criminal case was instituted against the petitioner, which is still pending. Thus, the petitioner has not been found guilty as yet. Yet, learned counsel for the University submits that the University statutes of B.R.A. Bihar University authorized the University to take action and recover the amount misappropriated by a teacher or an officer of the University. First thing I may note whether the petitioner defalcated the amount or not is a question of fact, which has to be determined in accordance with the procedure established by law. It cannot be based on any ipse dixit of any authority. Either there had to be a duly constituted departmental proceeding-finding the petitioner guilty or duly constituted suit or in a criminal proceeding the petitioner had to be found guilty. In absence of any finding by any of the aforesaid forums it cannot be said that the petitioner is guilty of defalcation. That whatsoever may be the case, convicting a person without trial is impermissible.

7. Now coming to the statute of B.R.A. Bihar University as relied by learned counsel for the University. He first refers to Chapter XIX, The Finance Committee and in particular clause 1(9) thereof, which is quoted hereunder:--

(9) Every University Officer or employee should realise fully and clearly that he will be held personally responsible for any loss sustained by the University through fraud or negligence on his part and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other University Officer or employee to the extent to which it may be shown that he contributed to the loss by his own action or negligence.

8. He then refers to Clause 10(ix) thereof, which is quoted hereunder:--

(ix) In all cases of fraud, embezzlement or similar offences, departmental proceedings should be instituted at the earliest possible moment against all the delinquents and conducted with strict adherence to the prescribed procedure upto the point at which prosecution of any of the delinquents begins. At that stage it must be specifically considered whether further conduct of the

departmental proceedings against any of the remaining delinquents is practicable. If it is, it should continue as far as possible (which will not as a rule include fining and sentence). If the accused is convicted the departmental proceedings against him should be resumed and formally completed. If the accused is not convicted the departmental proceedings against him should be dropped unless the authority competent to take disciplinary action in the case, is of the opinion that the facts of the case disclose adequate grounds for taking departmental action against him. In either case the proceedings against the remaining delinquents should be resumed and completed as soon as possible after the termination of the proceedings in the Court.

9. In addition thereto learned counsel for the University refers to clause 17 of the General Conditions of Service of Employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila & K.S.D. Sanskrit Universities, being the service statute of the Universities having been approved by the Chancellor, which is quoted hereunder:--

17. No order imposing the following penalties, viz.:-

(i) censure;

(ii) withholding of increments or promotion including stoppage at the efficiency bar;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders (other than an order based on facts which have led to his conviction in a criminal court or an order superseding him for promotion: to a higher post on the ground of his unfitness for that post) shall be passed on a university servant, unless he has been given adequate opportunity of making such submission as he may desire to make and the representation/representations if any, has/have been taken into consideration before the order is passed:

Provided that the requirement of this Article may, for sufficient reasons to be recorded in writing be waived where there is difficulty in observing them and they can be, waived without injustice to the University servant concerned.

10. With reference to the aforesaid three provisions having the force of statute, learned counsel for the university submits that they give the University the authority to withhold payments even after superannuation. He further submits that a criminal case is also pending and upon conviction the petitioner may be liable to pay the said amount.

11. Having heard the parties, at length, in my view, the stand of the university is not authorized by law. Firstly referring to the criminal case, all I can say is that if in course of trial it is found by the criminal Court that the petitioner was liable to be punished for defalcation then it is within the jurisdiction of the criminal Court to pass an order for recovery of the amount. It is then within the exclusive jurisdiction of the Criminal Court to enforce the recovery but certainly is not a

part of duty of the University to preempt any such finding. The jurisdiction is that of the criminal Court exclusively. The University could not find the petitioner guilty. Even the criminal court, without finding cannot retain or deprive the petitioner of his money.

12. Now coming to the three statutory provisions, as referred to above, firstly with reference to the University statute and in particular Chapter XIX and clause 1(9) thereof, as quoted above.

13. If one reads clause 1(9) aforesaid it will be clear that it only imposes answerability and creates responsibility with respect to an employee but does not create liability. Learned counsel for the petitioner is right in his submission that the procedure and the manner of fixing liability and its realisation is to be found in clause 10(ix) and clause 17 as quoted above. Even these clauses do not authorize the Universities to withhold any money or recover any amount even before the said clauses are fully complied. There is no power akin to attachment before judgment. In fact till date nothing has been crystallized in terms of clause 10(ix) or for that matter clause 17 as quoted above.

14. When the time was ripe and right no lawfully authorized steps were taken to establish and/or recover the liability, if any. University must blame itself for this lapse. It cannot now, after a decade and a half after superannuation withhold the amount in anticipation of some charge, not yet proved.

15. Here the pertinent question is firstly if there is a criminal offence, then a departmental proceeding has to be instituted. Then if in the criminal case he is convicted then order would have to be passed. It is only then the question of recovery would arise. Here in the facts, no departmental proceedings were initiated. As noted above, two decades back they were abandoned. The criminal case is still pending in such a situation the provision cannot be resorted to.

16. Then Clause 17 of the General Conditions of Service has been referred. Learned counsel for the petitioner very rightly points out that the very opening line of Clause 17 does not give the power to the University to take any step for recovery of the dues without a full-fledged departmental proceeding. It can only be realized as a matter of penalty. Thus, even this Clause 17 cannot come to the aid of the University.

17. Learned counsel for the University is unable to point out any other provision having statutory colour, which authorizes the University to take such a step, more so after the petitioner superannuated. It is well settled in service jurisprudence that once an employee superannuates the master servant relationship ceases. Once that happened, then the authority to initiate or continue any departmental proceeding as between the master and the servant comes to an end. The only exception being pension statute like Bihar Pension Rules which provides to the contrary in respect of payment of pension (Rule 43-B of the Bihar Pension Rules). Unfortunately there is no such statute or statutory provision so far as University is concerned. University teachers are admittedly

not a Government servant and not falling within the provisions of Bihar Pension Rules. It is equally well settled principle of law that when there is a procedure established by law for doing a thing than either that procedure has to be followed alone and no other procedure can be evolved for it.

18. That being so, I have no option but to hold that the university lacks the authority to withhold the money which is due to the petitioner as a part of his retrial benefits.

19. Thus, I direct the University to pay the said amount in full to the petitioner which was, in fact, due over almost a decade and half back within a period of one month from today. If the same is not paid, the University would be liable to pay the said amount alongwith interest at the rate of 9% per annum from the time it was due. The responsibility for timely compliance of order of this Court would be solely upon the Vice-Chancellor of the University. With the aforesaid observations and directions, the writ petition is disposed of.