
(1998) 11 PAT CK 0070
In the Patna High Court
Case No : C.W.J.C. No. 9639 of 1997

Punit Lal Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 3 PLJR 920

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : M. Chatterjee and S.K. Yadav, for the Appellant; P.K. Singh, for the State and S.M. Pathak, for Accountant General, for the Respondent

Judgement

S.N. Mishra, J.—In this writ application under Articles 226 and 227 of the Constitution of India the Petitioner has prayed for quashing the order dated 11.11.95 whereby the pension has been sanctioned in the scale of clerk after cancelling the promotion granted to him in the year 1971. Further prayer in this writ application is for a direction to- the Respondents to pay the retiral benefits legally payable to the Petitioner who retired as selection grade Head Assistant on 31st December, 1992. It is admitted position that the Petitioner was granted selection grade in the year 1971. In the year 1987 he was put under suspension on 20.10.87 on account of his long absence without leave and remained under suspension till 25.4.89 when his suspension order was revoked by the Respondent authority. The Respondent Regional Deputy Director thereafter sent a letter to the Director-in-Chief requesting him to pay the salary for the period of suspension. He has also opined that the Petitioner was not absent without leave, on the contrary he was granted leave by the competent authority, copy of such letter written to the Director-in-Chief, Health Services is made Annexure-3 to this writ application. In spite of the request-having been made by the Regional Deputy Director, the payment has not been made to the Petitioner. The Petitioner, thereafter, filed a writ application being C.W.J.C. No. 993/94 which was disposed of on 11.9.95 directing the Respondent authority to examine the claim of the

Petitioner and pass necessary order for payment of salary as well as the retiral benefits legally payable to the Petitioner, copy of the order is made Annexure-4 to this writ application. Pursuant thereto, the Respondent Regional Deputy Director, Koshi Division, Saharsa, has passed the impugned order, whereby the promotion granted to the Petitioner in the year 1971 is sought to be cancelled and, thereby, the salary drawn by the Petitioner on the basis of the promotion given to him is sought to be recovered from his retiral benefits.

2. In this case, a counter affidavit has been filed on behalf of the State Respondents, wherein, inter alia, it is stated that since the Petitioner remained absent without leave a departmental proceeding was initiated against him for alleged absence from the duties. It is further stated that since the Petitioner has not passed a particular examination he was not entitled the selection grade which was wrongly given to him in 1971 and, accordingly, the excess amount to the tune of Rs. 100694.37 drawn by the Petitioner is sought to be recovered from his retiral benefits, as it appears from Annexure-8 to this writ application. Having regard to the stand taken in the counter affidavit, the question falls for decision in this writ application is as to whether the State Respondent is justified in cancelling the promotion granted to the Petitioner as far back as in the year 1971 and thereby deprived from the retiral dues which is legally payable to the Petitioner. It is well settled principle of law by now that after superannuation the retiral benefits which is legally payable to such retired employee cannot be withheld and/or forfeited on the ground that he has not passed a particular examination while he was in service. In this connection, reference may be made to the decision in the case of Mohammad Shamsuddin and Ors. v. The State of Bihar and Ors. reported in 1983 P.L.J.R 347. That apart, this Court has repeatedly held that non-passing of such examination will not entitle the authority concerned to withhold the retiral benefits of such retired employee. Accordingly, relying upon the decision, the order dated 11.11.95, as contained in Annexure-5 is hereby quashed and the Respondent authorities are directed to issue sanction order with respect to all the retiral dues to be counted on the basis of the last pay drawn by the Petitioner within two weeks from the date of receipt/ production of a copy of this order and forward the same to the Accountant General who will issue authority slip within two weeks therefrom. Since the Petitioner retired in the year 1992 and even the admitted dues has not been paid to the Petitioner so far, he is entitled to interest at the rate of 10% per annum from the date of retirement till the date of respective payments along with cost which I assess at Rs. 1000/-. Both interest and cost shall be paid to the Petitioner along with the principal amount within the time aforesaid. However, it will be open for the State to recover the amount of cost and interest from the Officer concerned who is found responsible for delaying the payment and passing the order impugned.

This writ application is, accordingly, disposed of.