(2001) 06 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2309 of 2001

Rana Subodh Sharma — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 11-06-2001

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43
Bihar Service Code, 1952 — Rule 97

Citation : (2002) 92 FLR 73

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : B.P. Pandey and Sadhana Kumar, for the Appellant; P. Bidyarlai, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—Counsel for the petitioner is permitted to correct sub-group of writ petition as W.R (S) with new No. 2309 of 2001.

2. The office, particularly Computer Section is directed to correct the same.

3. The petitioner was in the services of the State and retired from the post of Accountant, Animal Husbandry Department. While he was in the services, the petitioner was suspended on 4.2.1996 and continued under suspension till he retired on 30.4.1998. He was paid subsistence allowance during the aforesaid period in the old scale of pay and after superannuation he received full payment of G.P.F., Group Insurance but 90% of the pension, gratuity and leave encashment amount.

4. In the aforesaid background, the petitioner has prayed for direction on the respondents to pay salary of the period of suspension alter adjusting the subsistence allowance in the revised scale as was allowed w.e.f. 1.1.1996 and finalisation of pension gratuity and leave encashment taking into consideration the revised scale as was allowed to the State Government employees w.e.f. 1.1.1996.

5. According to petitioner, no proceeding was initialed while he was in service, nor any proceeding under Rule 43(b) of the Bihar Pension Rules has been initiated after his retirement.

6. Counsel for the petitioner relied on the Division Bench of the Patna High Court in State of Bihar and Ors. v. Kameshwar Prasad Gupta, reported in 2001 (1) BLJ 310. In the said case, the Court taking into consideration the provision of Rule 97 of the Bihar Service Code, 1952 held that if an employee superannuated while he was under suspension and no order passed either to impose any punishment or to withhold retirement benefits in the departmental proceeding, the salary of the suspension period cannot be withheld. It further held that withholding of pension without holding guilty or passing order in terms of Rule 43(b) is not permissible.

7. Having regard to the facts and circumstances, I he case is remitted to the Regional Director, Animal Husbandry and Fisheries Department, Government of Jharkhand, Ranchi to decide and release the arrears of salary, if any, for the period of suspension (aking into account the revised scale as was allowed to State Government employees w.e.f. 1.1.1996 and the decision of the Patna High Court in State of Bihar and Ors. v. Kameshwar Prasad Gupta, (Supra). If no departmental proceeding was initiated while the petitioner was in service, they will release the full payment of salary of the period of suspension in terms with the aforesaid decision of the Patna High Court.

8. So far as finalisation of pension, gratuity and leave encashment is concerned, as the petitioner was placed under suspension, in terms with proviso to Rule 43(b) and explanation given thereunder, a proceeding under Rule 43(b) will be deemed to be continuing.

9. In the aforesaid background. If the respondent-State of Jharkhand intends to proceed in the matter, should frame charge-sheet and conclude the proceeding within three months and pass final order, failing which the deemed proceeding. Under Rule 43(b) shall stand quashed. The respondents will be liable to pay full pension, gratuity in the revised scale within one month from the date of deemed set aside of proceeding.

10. However, if any final order is passed in such proceeding, then in that case, they will have to pay pension and gratuity. The payment of pension and gratuity will depend on such decision but to be made in the revised scale of pay.

11. So far as leave encashment is concerned, in absence of any provision, the respondents cannot withhold the same pension.

12. Accordingly, the respondents are directed to release full leave encashment amount after adjusting the amount already paid taking into consideration the revised scale of pay as also the bonus of any year due within the aforesaid period of three months.

13. In any case, the order of this Court is to be complied by the respondents in its letter and spirit within the total period of four months from the date of receipt/

production of a copy of this order, failing which the respondents will be liable to pay interest @ 8% on such retiral benefits to be calculated from the date of retirement.

14. The writ petition stands disposed of, with the aforesaid observations.

15. Petition disposed of.

