(1996) 01 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No. 923 of 1994

Sachchida Nand Verma APPELLANT

Vs

The Sate of Bihar and Another RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:
Bihar Pension Rules, 1950 — Rule 139, 43
Penal Code, 1860 (IPC) — Section 409

Citation : (1996) 2 PLJR 421

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Amareshwar Sahay and Ritu Kumar, for the Appellant; V. Sheonath and P. Chandra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Deb, J.—The writ Petitioner while serving under the Chief Conservator of Forests as Section Officer, retired on 31.7.1991 on superannuation and after his superannuation and retirement, all his retirements dues including the pension was finalised by the State. But then there was an audit in the office where the Petitioner was serving and as per the audit report (annexure-G to the counter affidavit) it was found that the Petitioner during his service period had embezzled/ defalcated an amount of Rs. 98,499.01 and the Respondents went on recovering the amount from the C.P.F. ammount calculated and from the pension amount fixed in favour of the Petitioner. From annexure-4 to the writ petition, it appears that the G.P.F. amount calculated after all deduction at Rs. 41,713/- and the whole amount was meant to be adjusted towards a part of the alleged defalcated amount and the rest of the alleged defalcated amount Rs. 56.786.01 was to be recovered from the pension amounts fixed, the pension amount has been fixed at Rs. 1589/-. The grievance of the Petitioner is that the audit was made behind the back of the Petitioner and no departmental proceeding was initiated against the Petitioner. But only in the year 1993 i.e. 10.3.1993 a F.I.R. has been lodged against the Petitioner for alleged commission of offence u/s 409 of the I.P.C. and on the basis of the F.I.R. no chargesheet has yet been submitted and no departmental proceeding have been initiated against the Petitioner, but the State Government is going to recover the amount of alleged defalcation from the Petitioner from his retirement dues as mentioned earlier. The G.P.F. amount of the Petitioner has also said to be adjusted towards the alleged defalcation amount.

2. Mr. A. Sahay appearing for and on behalf of the Petitioner submits that the Petitioner''s case does not come under the Pension Rules as contained in Rule 43(a) or (b).

3. Rule 43 runs as follow:

43. (a) Future good conduct is an implied condition of every grant of pension. The provincial Government reserve to themselves the right of withholding; or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government If the pensioner is found In departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) Such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment:

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the Institutions of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) Judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause (ii) of Clause (a); and

(c) the Bihar Public Service Commission shall be consulted before final orders are passed.

4. Definitely, the case of the Petitioner does not come under the purview of Rule

43(a). Rule 43(b) is also not applicable in the case of the Petitioner as the Petitioner has not been found guilty of grave misconduct either in the departmental or judicial proceeding. Departmental proceeding have not been started against the Petitioner and practically it cannot be done so in view of the proviso to the Rule 43(b) because of the time limit mentioned.

5. Mr. Sahay in support of his contention has referred to the judgment of this Court as reported in 1989 PLJR 443 (Sheo Pujan Singh v. State of Bihar and Ors.) 1995 (1) PLJR 369 (Vindeshwari Mishra v. The B.S.R.T.C. and Ors.) and then State of Bihar and others Vs. Mohd. Idris Ansari, The ratio in all these cases that when the Bihar Pension Rules mainly Rules 43(b) and 139(a) are not applicable then the pension benefit or the retirement benefit cannot be withheld.

6. Mr. V. Sheonath appearing for and on behalf of the State has strenuously argued that the Respondents in the present case are not proceeding either under Rule 43(b) or Rule 139(a). But on the basis of the audit report the Respondents are only going to get back the amount due to the State from the Petitioner. It must be mentioned here that neither any departmental proceeding nor any show cause notice was issued to the Petitioner on the basis of the audit report as contained in annexure-G of the counter affidavit. So, on the basis of the audit report it has been unilaterally decided by the Respondents that the Petitioner had defalcated/embezzled the amount and went on recovering the same which Is against all norms and against natural justice and equity. The Petitioner was never subjected to any departmental proceeding. Only a criminal case has been filed wherein also no chargesheet has yet been submitted. Thus, the action of recovery is nothing but putting the cart before horse.

7. Lastly Mr. Sheonath has drawn the attention to a recent judgment of a Single Judge of this Court in C.W.J.C. No. 2950 of 1995 (R), disposed of on 12.12.1995. The facts and circumstances of the present case is in no way fitting with the facts and circumstances of the case decided. In that case, during the tenure of service defalcation was detected and the Petitioner was issued show cause notice and when reply of show cause notice was given by the Petitioner, the same was rejected. But In the meantime, the employee got retirement on superannuation and then the departmental proceeding was started and order was made to get the amount of defalcation recovered by certificate proceeding. The recovery through certificate proceeding was turned down, but the recovery was said to be justified in compliance of Rule 43(b) of the Pension Rules. But I have already mentioned that in the present case neither Rule 43(b) nor Rule 139(a) is applicable. Mr. V. Sheonath has also fairly submitted that these rules are not applicable in the present case but it is the submission of Mr. Sheonath that there is no other alternative to secure the government amount in the present case as the Petitioner had superannuated and the criminal case was filed against him. I do not find that the process applied in the case is the only recourse available to the Respondents to get recovery of the amount. If really there is finding to the effect of embezzlement against the Petitioner, the process initiated for recovery

of alleged embezzled amount is not legally sustainable. But the Respondents hands are not tight and they may proceed according to law to get the amount secured by the due process of law. Recovery cannot be done without specific finding of embezzlement through process of law.

8. In the result, this writ petition is allowed and annexures-4 and 6 should not be given effect to. The Petitioner shall be entailed to get his G.P.F. amount alongwith interest at the rate of 8% per annum from the date of retirement till the date of payment and the other retirement benefits including the pension amount should be made available to him forthwith preferably within two months nexts from the date of presentation of a copy of this order from the side of the Petitioner.

