
(2006) 06 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (S) No. 169 of 2004

Santosh Kumar Nayak

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-06-2006

Acts Referred:

Bihar Service Code, 1952 — Rule 76

Citation : (2006) 3 JCR 439

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : H.K. Mahato, S. Srivastava, for the Appellant; J.C. to S.C. II, for the Respondent

Judgement

Permod Kohli, J.—Petitioner is the son of late Bhagwan Nayak, who served as a Forester in Kolhan Division of the Forest Department of the erstwhile State of Bihar. Bhagwan Nayak died on 07.06.1970. Petitioner has approached this Court seeking a direction for the payment of family pension retiral benefits of his deceased-father. It is alleged that even the mother of the petitioner, namely, Sabitri Devi was not paid any family pension. She also died on 29th of June, 2002 without getting any family pension/retiral benefits. According to the averments made in the writ petition, deceased died while in service. A representation was made followed by a legal notice served on 20th of October (sic)

2. In the reply held it is stated that the deceased joined the Government service in the year 1945 and continued to service May, 1960. He was granted Medical leave from 04.04.1960 and thereafter did not join his service. Respondents have placed reliance upon Rule 76 of the Bihar Service Code which inter alia provides that an employee who remains on continuous absence from duty with or without leave, cease to be a Government employee. It is further mentioned that the department was not informed of death of the deceased in the year 1970 nor any claim was made for pension/retiral benefits either by the wife family.

3. There is nothing on record to show that any enquiry was conducted in regard to absence of the deceased employee or he was put to notice by the Department for the alleged absence from duty. Similar provisions like Rule 76 of the Bihar Service Code have been interpreted by the apex Court and it has been held that there is no automatic termination of service and the employer is required to put the employee to notice and principles of natural justice are required to be observed for initiating any action against the employee. It is a settled principle of law that absence from duty is a misconduct under the service jurisprudence and at least principles of natural justice are required to be observed. Nothing has been done in the present case. Assuming that the services of the deceased-employee were to be dispensed with in the light of Rule 76 of the Bihar Service Code, the deceased having served for about 15 years was still entitled to the retiral benefits/pension in accordance with the rules, In absence of there being any enquiry or specific order terminating the services, Respondents cannot withhold the retiral/pensionary benefits as permissible under the Rules.

4. In view of the above circumstances this writ petition is disposed of with the following directions:

(i) That the respondents will calculate the retiral benefits payable to the deceased employee till the year 1960 also assess the pension payable in accordance with the rules including revision, if any permissible under the law.

(ii) That the family pension retiral benefits shall be released in favour of the petitioner within a period of four months from today, failing which the petitioner shall be entitled to interest @ 6 per cent till the actual payment is made after the expiry of the aforesaid period.

(iii) Needless to say that if any statutory interest is payable on the retiral benefits the same shall also be paid.