(2015) 02 JH CK 0115

In the Jharkhand High Court

Case No : Writ Petition(S) No. 5840 of 2014

Satya Vijay Prasad Singh — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:
Constitution of India, 1950 — Article 300-A

Citation : (2015) 3 AJR 780

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; Sudarshan Shrivastava, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sujit Narayan Prasad, J.—Petitioner has approached this Court for two fold prayer

"i) for quashing of the resolution issued under memo No. 4721 dated 26.09.2014 whereby and whereunder a proceeding has been contemplated under the provisions of Rule-43(b) of the Jharkhand Pension rules in respect of events of year 2007-08.

ii) For issuance of appropriate writ or direction upon the respondents to release the balance amount of 25% of Pension and Gratuity with statutory interest."

2. Heard the parties and perused the documents on record.

3. The brief facts of the case is that the petitioner was appointed on 29.01.1979 as Assistant Engineer in Irrigation Department in the then State of Bihar. After bifurcation of cadre, the petitioner has been allotted the cadre for the State of Jharkhand. After the cadre bifurcation, the petitioner was posted as Assistant Engineer, in Water Resources Department, Jharkhand, Ranchi. On 02.11.2007, the petitioner was granted current charge of executive engineer in Minor Irrigation Division, Husainabad, Palamau on his own scale of pay and he was

relieved from the post of executive engineer in Minor Irrigation Division, Husainabad for joining the Head Quarter and he accordingly, he joined in the head quarter. The petitioner again was posted as executive engineer in current charge in Irrigation Division, Siketia, Deoghar and remained there from 30.12.2008 to 04.07.2011. On 21.02.2011, a show-cause notice was issued to the petitioner asking him reply with respect to irregularities having been committed by him in the execution of Scheme in Minor Irrigation Division, Hussainabad, Palamau. The petitioner submitted his reply on 21.04.2011 denying the entire irregularities. After submission of reply to the show-cause, no charge was framed nor was any departmental proceeding initiated against him. On 21.01.2013, the petitioner made a representation before the Joint Secretary (Management), Water Resources Department, Ranchi, for consideration of his case of promotion as he has already been acquitted in the pending criminal case including Amalpara P.S. Case No. 08 of 1998 vide judgment dated 21.12.2012, in Haider Nagar P.S. case no 25 of 2008 by judgment dated 30.03.2012 and in Amalpara P.S. Case No. 24 of 1997 vide judgment dated 28.02.2009.

4. The case of the petitioner for his promotion was not considered and in the meantime the petitioner was retired w.e.f. 30th September, 2013. After superannuating from service, the respondents have issued a resolution on 26.09.2014 under the signature of Under Secretary, Water Resources Department, Jharkhand, Ranchi as contained in memo No. 4271 by which a proceeding purported to have been initiated against the petitioner under rule 43(b) of Jharkhand Pension Rules. One Shree Ashok Kumar Mishra (Retired, I.A.S.), was appointed as Departmental Enquiry Officer. Along with the said resolution dated 26.09.2014, a memo of charge dated 18.09.2014 was passed with respect to commission of irregularities, while the petitioner was posted at Hussainabad, Palamau in respect for the period of 2007-08. The respondents in the meantime have not released the entire pensionary dues of 25% of pension and gratuity has been withheld.

5. The petitioner has challenged the order dated 26.09.2014 (Annexure-5) by which a proceeding under rule 43(b) of Jharkhand Pension Rules has been initiated on the ground that since the petitioner has already been retired on 30th September, 2013 and in course of his service no departmental proceeding has ever been initiated. Since the petitioner has retired on 30th September, 2013 and after his retirement, a proceeding under rule 43(b) of Jharkhand Pension Rules was initiated on 26.09.2014 which is beyond four years from the date of institution of departmental proceedings and is beyond the provision of rule 43(b) proviso (a)(ii) of pension rules. The submission regarding withholding of 25% pension and gratuity has been made by the learned counsel for the petitioner that till date no order has been passed under rule 43 (b) of Jharkhand Pension Rules and in absence of any order of a finding of misconduct of the petitioner under rule 43(b), withholding of 25% amounts of pension and gratuity is arbitrary exercise of the power of respondents.

6. On the other hand learned counsel for the respondents has submitted that a proceeding has been initiated under rule 43(b) of Pension Rule vide resolution dated 26.09.2014.

7. Learned counsel for the respondents with respect to decision of the department in terms of Circular dated 26.09.2014, fairly submitted that delay has been caused in passing order in the pending departmental proceeding.

8. After hearing the parties at length, the fact which is not in dispute is that the petitioner retired from service on 30th September, 2013. No departmental proceeding was initiated in course of the service period of the petitioner. However, a show-cause notice was issued on 21.02.2011 and in response to show-cause petitioner submitted his reply on 21.04.2011. After reply to show-cause no charge was framed or any Departmental Proceeding was initiated against the petitioner. Thereafter, a resolution was issued on 26.09.2014 wherein it was decided to initiate proceeding under Rule 43 (b) of Bihar pension Rules, with the said circular a memo of charge dated 18.09.2014 was issued.

9. The contention of the learned counsel for the petitioner is that the memo dated 26.09.2014 is without any jurisdiction as it is not in consonance with Rule 43 (b) proviso (a)(ii) of Bihar pension Rules 1950 10 12. Hence in order to decide the issue, it is necessary to see the provision of Rule 43(b) of Bihar Pension Rules, 1950 which is quoted herein below:--

"43(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 institution 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."

10. From perusal of proviso (a)(ii) appended to Rule 43(b) of the Jharkhand Pension Rules further provides that the proceeding shall be in respect of event which took place not more than four years before the institution of such proceeding.

11. Here as per the memo of charge the irregularities was alleged to have been committed by the petitioner in respect of period for 2007-08. The petitioner has retired from service on 30th September, 2013. The proceeding will be said to have been initiated on the date when the Circular dated 26.09.2014 was issued. The proceeding has been sought to be initiated in respect of alleged irregularities committed in the year 2007-08 itself whereas the proceeding sought to have been initiated in the year 2014 i.e. after a gap of 6 years i.e. beyond 4 years as stipulated in the said proviso, meaning thereby the memo of charge ought to have been issued with respect to irregularities committed up to the period of 26.09.2010. Then only as per the proviso a(ii) of Rule 43 (b), the proceeding will be said to be in accordance with law.

12. Here in the instant case, admittedly, as per the memo of charge period for which irregularities is alleged is certainly barred by provision to Rule 43(b) proviso (a)(ii).

13. From the perusal of record it appears that cause of action as per the memorandum of charge and the reply given by the petitioner in terms of the show cause notice appears to be arose between 17.2.2004 to 9.10.2004. The departmental proceeding was initiated on 28.7.2009 as would evident from Annexure-1 annexed to the writ petition.

14. In this regard, the judgment rendered in the case of State of Bihar and others Vs. Mohd. Idris Ansari, needs to be referred wherein at paragraph Nos. 9 and 10 the scope of the 43(b) has been discussed which is being quoted hereinbelow:--

"9. So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired government servant or not in the circumstances contemplated by the rule. The first circumstance is that if the service of the government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:

1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

2. Even if the service record of the officer concerned is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the officer concerned during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the

respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs."

15. If the facts of the present case of the petitioner is compared with the facts of the case of Mohd. Idris Ansari (supra) both are identical. Hence, in view of settled legal aspect as discussed above, I find support in the contention raised by learned counsel for the petitioner.

16. In that view of the matter the resolution dated 26.09.2014 cannot be said to be in accordance with law. Hence, the same is hereby quashed.

17. So far as the prayer made by the petitioner with respect to release of 25% pension and gratuity is concerned, from perusal of entire pleadings, I find that the department has not passed any order withholding of 25% pension and gratuity.

18. Here it is relevant to discuss the case rendered in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, wherein it has been held--

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property." Article 300-A of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law." Once we proceed on that on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encasement without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

19. Since the learned counsel for the respondents has not disputed the fact that when there is no order passed by the competent authority withholding 25% of

amount from pension and gratuity, hence, in absence of any order the decision of the respondent authority not to release 25% of pension and gratuity is without any authority of law.

20. In that view of the matter, the action of respondents cannot be said to be in accordance with law, hence, in the entirety of facts and circumstances, I, here by direct the respondent authorities to release 25% pension and gratuity of the petitioner within period of eight weeks along with statutory interest.

21. Writ petition stands allowed.

