

(2000) 03 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 7730 of 1997

Shiv Shankar Roy

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Army Act, 1950 — Section 93
Penal Code, 1860 (IPC) — Section 154, 302

Citation : (2000) 4 PLJR 168

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Subodh Kumar Jha, for the Appellant; Manu Shankar Mishra, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition the prayer on behalf of the petitioner is to issue an appropriate writ, order or direction commanding the respondents to pay his post retrial dues i.e., gratuity amounting to Rs. 29,905/- and commutation of pension amounting to Rs. 40,559/- forthwith along with interest thereon at the rate of 18% per annum. The petitioner retired from the Defense service as Nayak on 31.3.1997. He claims to have served the nation to the best of his ability and full satisfaction and during his service, no proceeding was ever initiated. However, there is a criminal case pending against him at Sasaram. The petitioner though is getting pension but his aforementioned amount of gratuity and commutation of pension have been kept withheld on account of pendency of the said criminal case not relating to discharge of his official duty against him.

2. In the counter affidavit filed on behalf of the respondents it is alleged that the petitioner while serving with 3 Air Formation Signal Regiment was involved in a criminal case u/s 154/302 of the Indian Penal Code and was arrested by civil police on 20th May, 1993 while he was on leave. The petitioner was released on

bail on 19th September, 1993. Pay and allowance of the petitioner for the period under arrest were withheld by Commanding Officer in terms of section 93 of the Army Act read with rule 194 of the Rules framed there under and casualty was published, vide D.O. Part II Order No. 98/02/94. The petitioner was attached to Bihar and Orissa Sub-Area Signal Company for defending the court case as per Army Order 89/81, which has not yet been finalized. It has, thus, been contended that on account of pendency of the said criminal case against the petitioner, grant of service gratuity and commuted value of pension can be considered only after canalization of criminal case/issue of suitable order from the court.

3. The question involved in the present case is as to whether the aforementioned dues of the petitioner can be legally withheld on account of pendency of criminal case not related to the discharge of his official duty.

4. Learned counsel for the petitioner has submitted that when the petitioner has been paid his pension, there cannot be any justification for withholding of gratuity and commutation of pension on account of pendency of a criminal case not related to the discharge of his official duty. He has submitted that there is no such power vested in the authority under any statutory provisions.

5. On the other hand, Mr. Mishra, learned Additional Standing Counsel has submitted that the petitioner was paid his pension provisionally subject to finalization of the criminal case. According to him, as per the instruction of the Ministry of Defense, contained in Memo No. 40410/AG/PS4 (c)/3212/B/P (Pension/ Sers) dated 28th September, 1983, while simplifying the earlier instruction and streamlining the existing procedure, it was decided that the payment of 100% provisional pension to retiring service personnel against whom any department of judicial proceedings are pending or were instituted after retirement, in respect of an event which took place not more than four years before such institution can be sanctioned and the same shall become final only after the proceedings are concluded and the Government has taken a decision and final orders are issued. As such, according to him, the petitioner cannot take advantage of sanction of full pension to get other retrial benefits. He further submitted that the Ministry of Defense, vide letter no. B/40410/AG/PS4 (c)/1252/B/D (Pen/Sers) dated 21st June. 1985, dealing with grant of DCRG and commutation value of pension, amended the said instruction dated 28th September, 1983 regarding grant of provisional pension and clause (a) of Para 2 of the said instruction was substituted, whereby CDA (Pensions) has been empowered to grant provisional pension without the orders of the General Officer Commanding in-Chief and equivalent authorities in the Air Force and Navy on an intimation from the Formation Headquarters that a service personnel below officer rank was involved in a disciplinary case or a judicator enquiry is in progress/pending against him. No gratuity (including DCRG), however, has been said to be admissible at this stage nor commutation of provisional pension is permitted. As such, in terms of the said provision, the payment of DCRG and

commutation of pension have been kept withheld. He further referred to the provisions, contained in regulation 74 of the Pension Regulations for the Army dealing with withholding in whole or in part of pension of a pensioner who is convicted of a serious crime or is guilty of grave misconduct not of a political nature and regulations 111 to 114 dealing with the payment of committed value of pension. He submitted that as per regulation 74 the payment of pension is not admissible as a matter of course in a case here pensioner is convicted to serious crime or is guilty of grave misconduct. The authorities have been vested with the power of withholding of pension in whole or in part from a date to be specified by him not earlier than the date of original suspension.

6. This Court is unable to appreciate as to how under the said provision the payment of pension can be withheld unless a pensioner is convicted of a serious crime or has been found guilty of grave misconduct not of a political nature. Thus, in the facts and circumstances of this case, there may be substance in the submission of the learned Additional Standing Counsel that the petitioner has been granted pension provisionally subject to the final outcome of the criminal case pending against him, but no statutory provision has been brought to the notice of this Court entitling for withholding of the amount of gratuity and commutation of pension except the aforementioned executive instruction, under which no gratuity (including DCRG) is to be paid at the stage of involvement of service personnel wherein a disciplinary case or a judicial enquiry is in progress/pending against him. Even in the said executive instruction of 21st June, 1985, the CDA (Pensions) has been empowered to grant provisional pension without the orders of the General Officer Commanding-in-Chief and equivalent authorities in the Air Force and Navy on an intimation from the formation Headquarters that a service personnel below officer rank is involved in a disciplinary case or a judicial enquiry is in progress/pending against him. No gratuity (including DCRG) shall be paid at this stage nor is commutation of pension permitted. This does not deal with the case of Army Personnel. However, this Court fails to appreciate as to how by the executive instructions, the benefit of the pension/gratuity/commutation of pension admissible under the statutory provision as per the regulation can be curtailed or amended. As per the regulation, withholding of the said benefit is only permissible in case where the pensioner is convicted of a serious crime or has been found guilty of grave misconduct not of a political nature and not on account of mere pendency of a disciplinary proceeding or judicial proceeding. Learned Additional Standing Counsel has failed to show any statutory provision under which executive instruction contrary to the statutory regulation could be legally issued.

7. With respect to commutation of pension, nothing is provided under regulations 111 to 114 that the same can be withheld on account of pendency of disciplinary case or judicial enquiry. Regulation 113 only provides that before the capitalized sum is paid, the Controller of Defense Accounts (Pensions) shall ascertain whether any public claim is outstanding against the applicant and deduct the amount of any such claim from the lump sum which would, but for the claim, be

payable to him/her. Regulation 114 provides for payment of further sum of the commuted value without appearing before the fresh Medical Board in the event of final pension being more than anticipatory/provisional pension. However, in view of the provisions contained in regulation 74, this Court is of the opinion that there is no bar that the authority can withhold pension in whole or in part from a date to be specified by him if the pensioner is convicted in the criminal case, in accordance with law.

8. A Division Bench of this Court in the case of Bajrang Deo Narain Singh vs. The State of Bihar and ors. (L.P.A. No. 124 of 1990, disposed of on 26.8.1999, reported in 1999 (3) PLJR 949) held that the pensioner dues payable to the appellant including gratuity, which is also pension within the meaning of Bihar Pension Rules, cannot be withheld till such time as an order is passed under Rule 43 (b) of the Bihar Pension Rules. This Court also in the case of Satyendra Narain Sinha alias Dr. Satyendra Narain Sinha vs. State of Bihar and ors. (C.W.J.C. No. 221 of 1999, disposed of on 17.9.1999) [1999 (3) PLJR 939] has considered in detail the scope of circular of the Finance Department, contained in F.D. Memo No. PC-11-40-28/74/9144F dated 22.8.74 read with Finance Department Memo No. PC.11- 40-98/74/11216-F dated 31.10.74 and Finance Department's Resolution No. 3014 dated 31.7.80 in which a provision has been made for payment of 90% provisional pension to such pensioner against whom a departmental or judicial proceeding is pending and also the provision, contained in Rule 139 (b) of the Bihar Pension Rules and negative the contention on behalf of the State that the pension can be kept withheld on account of pendency of departmental/judicial proceeding. Accordingly, this Court is of the view that the respondents were not legally justified in withholding the payment of the aforesaid post retrial dues payable to the petitioner. This writ petition is, thus, allowed and the respondents are hereby directed to issue necessary sanction order for payment of the aforementioned amount of gratuity and commutation of pension to the petitioner within a period of two weeks from the date of receipt/production of a copy of this judgment.