(1998) 10 PAT CK 0040

In the Patna High Court

Case No : C.W.J.C. No. 307 of 1990

Shreekant Pandey Sharma APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 PLJR 269

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Y.V. Giri, J. Saran, S.K. Giri and A.P. Singh, for the Appellant; Rakesh Kumar Singh and S.N. Pathak, for A.G., for the Respondent

Judgement

S.N. Mishra, J.—In this appliction under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for quashing of the order, dated 2.7.1977, passed by the Respondent Joint Secretary whereby his pension amount is sought to be reduced to the extent of 5 per cent and further deducted a sum of Rs. 48/- out of The gratuity amount. A copy of the said order is made Annexure-8 to this writ application.

2. Shortly stated, the case of the Petitioner is that he retired as a Sub-divisional Officer, Education, on 27.3.75. Prior thereto, he was posted as Principal of the Training College, Thawe, when he handed over the charge of the Principal to some other incumbent on 25.9.1974. After retirement, the Respondent sent a letter stating therein that a sum of Rs. 1,679.04 Ps., which was received from the students by way of Mess advance, had not been accounted for by the Petitioner. It is further alleged that a sum of Rs. 577.98 Ps., which had been received by the Petitioner on account of miscellaneous charges, were not refunded to his successor while handing over charge to him. The sum and Sub-stance of the allegation is that a sum of Rs. 2,257.20 Ps. remained due with the Petitioner. Subsequently, a similar letter was issued to the Petitioner on 11th February, 1976 stating therein that the library books of the training college worth. Rs. 53.30 Ps.

were not found in the library and the same must have been taken away by the Petitioner. Accordingly, the Petitioner was directed to either return the books or to pay the price thereof to the principal, who succeeded him. A copy of the said letter is made Annexure-4 to this writ application. Again on 20th December, 1976, the Respondent Deputy Secretary has issued a letter to the Petitioner reiterating the charges made in the earlier letters. A copy of the said letter is made Annexure-6 to this writ application. After receipt of the letters aforesaid, the Petitioner has sent a reply stating, inter alia, that the allegation made is uncalled for inasmuch as the account has been audited and no objection was raised by the auditor. It is further stated that the Principal, who succeeded him, did not find any lapse on the part of the Petitioner, which is apparent from Annexure-1 to this application. Regarding the Mess advance, it is stated that the same was refunded to the respective students after adjustment of the expenditure incurred during the said period. The sum and substance of the show cause filed by the Petitioner is that he is not, in any way, held responsible and/or liable to pay the said amounts.

3. Mr. Giri, learned Counsel appearing on behalf of the Petitioner has challenged the order and submits that no departmental proceeding was ever initiated against the Petitioner for realisation of the amount nor any inquiry was made against him while the Petitioner was in service. It is further submitted that the pension amount has been determined and fixed by the Accountant-General after going through all the legal formalities and, thereafter the Respondent Joint Secretary rejected the reply furnished by the Petitioner and by the impugned order, he has sought to recover the aforesaid amount from the monthly pension payable to the Petitioner. Mr. Giri, with reference to the statements made in the supplementary affidavit, has submitted that till date more than a sum of Rs. 24,000/- has been deducted from the pension of the Petitioner. In this case, no counter-affidavit has been filed on behalf of the State Respondents. Accordingly, this writ application is being disposed of on the basis of the averments made in the writ application and the submissions made by Mr. Giri learned Counsel appearing on behalf of the Petitioner.

4. It is admitted position that neither any departmental proceeding was ever initiated against the Petitioner nor any inquiry was held at any point of time against the Petitioner during the tenure of his service. It is submitted that the Accountant-General, after going through the legal formalities, has fixed the pension of the Petitioner and the Respondent Joint Secretary is not competent to interfere with the same, unless the alleged allegation is determined and proved in accordance with law. In this case, as stated above, neither counter-affidavit has been filed nor the submission made by Mr. Giri during the course of hearing is seriously disputed and/or controverted. The submission of Mr. Giri, in my view, is well founded. Accordingly, having heard learned Counsel for the parties and going through the pleadings on the record, the order, dated 2.9.1977 (Annexure-8) passed by the Special Officer-cum-Joint Secretary, Education Department, Bihar, Patna, is quashed and consequently this application is

allowed with a direction to the Respondent authority to pay the fulpension amounts as fixed by the Accountant-General and further refund the amounts so deducted till date to the Petitioner within six weeks from the receipt and/or production of this orde along with interest at the rate of 12 per cen per annum on the deducted amount be sides a cost of Rs. 1,000/-. Having regard to the order passed today, it goes without saying that the Petitioner is entitled to the full pension henceforth and the Respondent authorities will go on paying the same to the Petitioner in future.

