
(1999) 03 PAT CK 0058
In the Patna High Court
Case No : C.W.J.C. No. 6734 of 1998

Shri Mohd. Quasim Ansari	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Citation : (2000) 1 PLJR 566

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Manoj Priyadarshi, for the Appellant; D. Chaubey for the Accountant General and Mr. Arun Kumar for the State, for the Respondent

Judgement

N. Pandey, J.—Heard the parties. This writ petition has been filed for a direction to the respondents for payment of retirement dues as well as re-fixation of pension in the scale of 3180 by giving benefit of one increment in his regular scale.

2. It appears the petitioner retired from service with effect from 28th February, 1998. Although he has been paid provisional pension and other retirement dues to which he was legally entitled, but no final pension has been paid.

3. The grievance of the petitioner is that there cannot be any justification on the part of the respondents to fix pension at a lower rate, excluding one increment in the scale to which he was legally entitled.

4. It appears that while the petitioner was in active service he was placed under suspension and a departmental proceeding was started with relation to certain charges. Ultimately, by order contained in annexure 4 dated 31.12.1991 the order of suspension was revoked with a direction that the departmental proceeding shall continue. Thereafter, on 24.1.1994 by order contained in annexure 5 disciplinary authority imposed two punishments (a) that the petitioner would remain cautious in future and (b) no salary would be paid for the period he was under suspension, except subsistence allowance already paid.

With the aforesaid punishment departmental proceeding was closed. The petitioner, thereafter, filed appeal, review etc. but no relief was granted.

5. It is stated since there was no order of the disciplinary authority to withhold increment of the salary, there cannot be any justification on the part of the respondents to fix pension after reducing one increment of the scale to which he was legally entitled at the time of superannuation. It was further contended that petitioner is also entitled for payment of arrears of salary for the period he was under suspension, because by virtue of the order contained in annexure 11 dated 11.4.1998 it was already held that the period of suspension will be taken into consideration for payment of pension and there will be no break in service. The submission is that having regard to the facts and circumstances as stated above, the respondents be directed to make payment of the said amount.

6. A counter affidavit has been filed on behalf of the respondents that conducting officer had recommended for withholding two increments, therefore, it was not proper to grant increments of the petitioner. Hence, the pension was fixed without granting such increment. But in paragraph 17 of the same counter affidavit it has been admitted that no such order was passed by the disciplinary authority, therefore, if the Hon''ble Court so desire such increment will be paid in order to grant the pensionary benefits. In my view from bare perusal of the order of the disciplinary authority it would appear that no decision was taken to withhold increment of the petitioner. Recommendation of the conducting officer was not final unless it is accepted by the disciplinary authority. Therefore, there cannot be any justification on the part of the respondents to withhold the increment of the petitioner if it was due to him.

7. Accordingly, I direct the respondents to grant one annual increment to the petitioner in his scale and revise pension accordingly and also pay the difference of the salary in view of such increment. So far the prayer for payment of salary for the period of suspension is concerned, since the disciplinary authority had already withheld such payment by way of punishment, I am not inclined to grant such relief. This writ petition is, accordingly, disposed of.