
(1997) 12 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 3038 of 1996

Shri Ram Chandra Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Pension Rules — Rule 139, 43

Citation : (1998) 1 PLJR 376

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : B.P. Pandey and Sangita Laha, for the Appellant; V.N. Sinha and R.K. Sinha for State and Anil Kumar Jha, for Acctt. General, for the Respondent

Judgement

Nagendra Rai, J.—This writ application has been filed by the Petitioner for a direction to act according to the directions given by the apex court on 3.10.1994 in SLP No. 27132 of 1994, as contained in Annexure 2, and for quashing the show-cause notice issued under Rule 139 of the Pension Rules dated 18.2.1995 (Annexure 3), notice issued under Rule 43(b) of the Pension Rules dated 16.1.96 (Annexure 4) and the notice issued under Rule 139 of the Pension Rules dated 22.7.1995 (Annexure 5).

2. The facts necessary for disposal of the present writ application are that the Petitioner was appointed as an Engineer Assistant in the year 1958, promoted as an Assistant Engineer in 1961. In the year 1962, he was promoted as an Executive Engineer and in the year 1984, he was selected in the cadre of the Superintending Engineer and confirmed subsequently on the said post.

3. According to the Petitioner, he was entitled to be promoted to the post of Chief Engineer from 22.9.1992 on the ground that the junior to him was promoted to the said post on that date, but that was not done in the case of the Petitioner. The Petitioner, thereafter approached this Court in C.W.J.C. No. 3223 of 1993 and the same was disposed of by order dated 18.1.1994. At the time of disposal of the writ application, the Petitioner had already superannuated. It was brought to

the notice of the court that the Petitioner was facing prosecution in a criminal case registered by the Vigilance Department and this Court having noticed that no charge-sheet was submitted for five years held that on the ground of pendency of a criminal case, promotion could not be denied and, accordingly, directed the State Government to consider his case for promotion and in case the Petitioner was found fit, then promotion from the back date with monetary benefit should be given and on the said basis, the Petitioner's retiral benefit should also be calculated and amount due should be paid.

4. The State Government challenged the aforesaid order before the Supreme Court in S.L.P No. 27132 of 1994, which was disposed of by order dated 3.10.1994, a copy of which has been annexed as Annexure 2. While the matter was pending before the apex court, the charge-sheet was submitted and in that view of the matter, the apex court held that as the charge-sheet had been submitted, no useful purpose would be served to consider the case of the Appellant (State) for prosecution and if the Respondent (Petitioner) was acquitted on merit and the case became final, the State would consider the Petitioner's case for promotion as Chief Engineer according to the rules and in the event of his being found fit for promotion, he should be given benefit of promotion with effect from 22.9.1992-the date his junior was promoted, with all consequential benefits. The apex court also held that the Government should sanction the pension of the Petitioner on his superannuated scale of pay as Superintending Engineer and make payment pending trial.

5. Now the grievance of the Petitioner is two fold. According to the Petitioner, he is not being paid full pension in terms of the direction issued by the apex court and secondly the notices issued to him initiating the proceedings under Rule 139 of the Pension Rules (Annexures 3 and 5) as well as the notice issued under Rule 43(b) of the Pension Rules (Annexure 4) are wholly illegal and arbitrary as these proceedings are with regard to the misconduct or charges, which took place more than four years back and as such after retirement, no action can be taken either under Rule 43(b) or Rule 139 of the Pension Rules with regard to the alleged misconduct or charge.

6. The stand of the State, as appears from the counter-affidavit, is that there is no violation of the direction of the apex court as the apex court had directed to fix the pension of the Petitioner as the Superintending Engineer and 100 percent provisional pension has been fixed. As regards the objection of the Petitioner in connection with the notices contained in Annexures -3, 4 and 5, the stand of the State is contained in paragraphs 4 and 5 of the counter-affidavit, it is stated that apart from Vigilance Case No. 28 of 1989, the Petitioner is also responsible for other acts of omission and commission, while the Petitioner was posted as Superintending Engineer, Western Koshi Canal, Circle Nirmali, the Petitioner was found responsible for dereliction of duty and wilful negligence towards a criminal incident of theft of iron rods. A show-case notice was served on him vide memo dated 2.5.1990 and a proceeding was initiated. The Petitioner submitted his

reply, explanation on the matter remained pending and in the meantime, the Petitioner superannuated on 31.1.1993 and, accordingly, a show-cause (Annexure 3) was issued under Rule 139 of the Pension Rules. Again a notice was issued to the Petitioner under Rule 139 of the Pension Rules (Annexure 5). Later on, the department decided to proceed under Rule 43(b) of the Pension Rules as the proceeding was initiated in the year 1990 itself when the Petitioner was in service and the notice contained in Annexure 4 dated 16.1.1996 was issued.

7. The stand of the State is that the proceeding was initiated while the Petitioner was in service with regard to the charge of 1990 and since the proceeding continued even after his retirement, the issuance of the notice cannot be challenged on the ground of breach of provision of Rule 43(b) of the Pension Rules.

8. As stated above, the Petitioner's grievance is two fold, firstly that the direction of the apex court is not being carried out by the State Government and secondly that the notices issued under the Pension Rules are vitiated because of breach of the provision of Rule 43(b) of the Pension Rules.

9. In my view, none of the submissions advanced on behalf of the Petitioner is worth acceptance. The apex court had directed to sanction the pension of the Petitioner on his superannuated scale of pay as Superintending Engineer. 100 percent pension, which the Petitioner is entitled as Superintending Engineer, is being paid to him. Thus, only because of mentioning of provisional pension instead of a final or full pension, it cannot be said that the direction of the apex court has not been complicit with. In my view, the department has rightly termed the pension sanctioned to the Petitioner as provisional pension for the reason that according to the direction of the apex court, the pension was to be revised after acquittal of the Petitioner in the criminal case.

10. As regards the second submission, it appears that the proceeding was initiated while the Petitioner was in service as appears from the averment made in paragraph 5 of the counter-affidavit, which fact has not been denied by the Petitioner.

11. In that view of the matter, after retirement of the Petitioner, the proceeding under Rule 43(b) of the Pension Rules is maintainable. It is not a case where the proceeding has been initiated after his retirement with regard to a matter for more than four years before the initiation of the proceeding. As the final decision has been taken to proceed under Rule 43(b) of the Pension Rules the notices contained in Annexures 3 and 5 are not sustainable and as such they are quashed. Now, only the proceeding under Rule 43(b) of the Pension Rules will proceed. The Petitioner, if so advised, may file a show-cause or representation to the notice dated 16.1.1996 (Annexure 4), if he has not already filed, and the department is directed to consider the matter and take a final decision in the matter within four months from the date of production/receipt of a copy of this

order.

12. It is made clear that this Court has not expressed any opinion with regard to the merit of the case of the Petitioner. It is for the authority or the department to decide so far as the action in terms of Rule 43(b) of the Pension Rules is concerned.

13. With the aforementioned observation/direction, this writ application is disposed of.