
(2001) 02 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 2466 of 2001

Shyam Sunder Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2002) 4 PLJR 254

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

Bench : Single Bench

Advocate : Dhananjay Kumar, for the Appellant; J.C. to G.P. 9 for State, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition has been filed for quashing the departmental proceeding said to have been initiated by letter No. 2424 dated 16.11.2000 marked Annexure-5 to the petition.

2. The case of the Petitioner is that he superannuated from service on 31.1.97 and as the event with respect to which the charges relate had taken place four years earlier no proceeding for withholding pension etc. can be initiated in terms of the express bar contained in proviso to Rule 43(b) of the Bihar Pension Rules. In this regard a number of judgments were cited at the Bar. It must at the outset be clarified that by the aforesaid letter dated 16.11.2000, the Petitioner was merely asked to appear, before the concerned Superintending Engineer for inquiry, who had been appointed as Inquiry Officer on 22.8.2000 under memo No. 3202 of the Chief Engineer. Water Resources, Patna. As regards the charges it was submitted that two of three charges relate to period February 1996 whereas the third one relates to period after retirement. From the submission of the Counsel it appears, prima facie, that the misconduct constituting the charge was continuing in nature the effect of which continued till date of superannuation. One important aspect of the case is that inquiry is being

conducted pursuant to the order of this Court. It appears that the Petitioner had moved this Court for payment of the retiral dues in C.W.J.C. No. 9223 of 1999. A Bench of this Court while disposing the case observed as under:

It appears to me on perusal of the pleadings and the submission made at the Bar that the allegations against the Petitioner prima facie are of serious nature and require close scrutiny. However, I am not convinced on the basis of the statements made in the counter affidavit that the Respondents authorities have properly utilised the time in scrutinising the allegations against the Petitioner.

I hereby direct Respondent No. 5 Superintending Engineer, Design, Planning and Monitoring Circle, Anisabad, to examine all the allegations against the Petitioner and conclude as soon as possible, preferably within a period of six months from the production of a copy of this order before him. If he comes to the conclusion that the allegations against the Petitioner do not have merit, then he shall take steps for finalising of the pension papers expeditiously. In case he comes to the conclusion that the allegations were prima facie correct, then it will be open to him to take action against the Petitioner in accordance with law including action under the Bihar Finance (sic- Pension) Rules and initiation of criminal case against the Petitioner.

3. The above order of this Court concedes the matter. It is binding as much on the Respondents as the Petitioner. As inquiry is being held pursuant to the direction of this Court to find out whether the Petitioner is entitled to retiral dues, there is no question of staying the ongoing inquiry at this stage. The submission of the Counsel have to be rejected.

4. Before I part with the case, I must also observe that even though in the order reference is made to Rule 43(a) of the Bihar Pension Rules, it was submission of the Counsel for the Petitioner, the said rule does not contemplate any inquiry. It is well settled that the mention of the provision is not conclusive of the matter. What is material is the source of power and the validity of exercise of it. In that view of the matter, it is premature to say if the action is being taken under Rule 43(a) or Rule 43(b) of the Pension Rules. This is a matter which should be sorted out at later stage, should such occasion arise in future.

5. In the result, the petition is dismissed.