

(1995) 09 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2727 of 1995

Smt. Vidya Sinha

APPELLANT

Vs

The Sate of Bihar and Others

RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43, 97(2), 97(3)
Bihar Service Code, 1952 — Rule 97, 97(3), 97(5)

Citation : (1995) 2 PLJR 616

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

Bench : Single Bench

Advocate : Ajay Kumar Thakur, for the Appellant; N.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition was filed for quashing the notice dated 7.3.95 asking the Petitioner to show cause as to why an order denying salary during the suspension period in terms of Rule 97(3) and (5) of the Bihar service Code, be not passed against her. During the pendency of the case, order was passed on 30.6.95 directing that the Petitioner will not be paid salary and other allowances except subsistence allowance during the period of suspension from 25.8.93 to 30.4.94.

2. The Petitioner was placed under suspension with respect to certain charges relating to her conduct as the Superintendent incharge, Remand Home, Patna, on 25.8.93. She challenged the order in this Court in C.W.J.C. No. 10657 of 1993. A Bench of this Court by order dated 24.1.94 declined to interfere with the order but directed the Respondents to conclude the departmental proceeding at an early date. It was directed that if the proceeding is not concluded within a period of three months, the order of suspension shall stand revoked. It appears that the proceeding was not concluded within the stipulated timeframe and, accordingly, the suspension was revoked with effect from 1.5.94. The Petitioner during the pendency of the proceeding superannuated from service on 30.11.94.

However, punishment of censure was awarded to her later on 3.1.95.

3. Although the validity of the order dated 3.1.95 has not been challenged, fairness to the Petitioner I must say that the departmental proceeding which was pending on the date of her superannuation must be deemed to have become infructuous for the purpose of awarding any penalty. The point for consideration of this writ petition, however, is whether after superannuation of a Government servant any order denying salary for the suspension period can be passed.

4. Rule 97 of the Bihar Service Code lays down the conditions in which a Government servant, who has been dismissed, removed or suspended is entitled to salary and allowances for the suspension period at the time of his reinstatement. This is evident from Clause (1) of the Rule, which runs as follows:

When a Government servant, who has been dismissed, removed or suspended is reinstated, the authority who is competent to order reinstatement shall consider and make specific order-

xx xx xx xx

There is no doubt that the provision is applicable only where the Government servant is to be reinstated in service. Where the Government servant has already superannuated, there is no question of his reinstatement and, therefore, the provision, in terms, is not applicable. However, that does not mean that on his superannuation from service, the Government servant under suspension on the date of superannuation, will ipso facto become entitled to full salary and allowances for the suspension period. If it were a question of reinstatement and the provisions of Rule 97 were to apply it would follow, having regard to the provisions of Sub-rules (2) and (3) of the Rule, that where the competent authority is; of the opinion that the Government servant has been fully exonerated of the charge or the suspension was wholly unjustified, he shall be entitled to full pay and allowance to which he would have been entitled to had he not been dismissed, removed or suspended as the case may be and in other case i.e. where the Government servant concerned is not fully exonerated or the suspension is not found to be wholly unjustified, the competent authority will be required to take a decision as to the proportion of pay and allowance which the Government servant will receive.

5. Where the delinquent superannuates from service in a state of suspension, the proceeding cannot be continued except for the purpose of withholding of pension (or gratuity) under Rule 43(b) of the Bihar Pension Rules. For other purposes it comes to an end. Therefore, there is no question of his being exonerated or the suspension being found to be unjustified for the purpose of his entitlement to pay and allowances under Rule 97(2). That would not, however, mean that the charges which he was facing-whether a formal proceeding was pending or not would automatically get wiped out. In my opinion, in such a situation it would be permissible to the competent authority to consider whether the person should be paid salary and allowances for the suspension period after, of course, giving

opportunity of hearing to him. There cannot be any doubt that any order denying salary and allowances for the suspension period is not a penalty within the meaning of the service rules but, nevertheless is penal in nature and effect and, therefore, cannot be passed except after giving opportunity of hearing. While in the case of Government servants in service, the order is to be passed under Rule 97 of the Service Code, after his superannuation, it will be deemed to be an independent order and not under Rule 97 but the consideration will more or less be the same. I would, accordingly, hold that the State Government is competent to deny salary for the suspension period on valid grounds even after superannuation after giving opportunity of hearing. No law has been brought to my notice prohibiting the State Government from passing such an order. As a matter of fact, a learned Judge of this Court, on difference of opinion between the Judges, in the case of Dr. Laxmi Narain Singh v. The State of Bihar (1989 BBCJ. 147), has taken a similar view.

6. For the reasons stated above, I do not find any merit in the grievance of the Petitioner that the State Government was incompetent to issue notice asking her to show cause why salary during the suspension period be not denied. It is true that in the notice reference has been made to Rule 97. But it is well settled that wrong mentioning of the provision is not conclusive. What is of essence is the substance and not the form.

7. It appears that despite coming to this Court against the show cause notice the Petitioner had filed her show cause which has been considered. The suspension period has been held as not amounting to break in service and to be counted as period spent on duty for the purpose of pension, gratuity etc. In that view, I do not find any error in the order dated 30.6.95.

8. In the result, I do not find any merit in the writ petition. It is, accordingly, dismissed.