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(1999) 09 PAT CK 0008

In the Patna High Court

Case No : C.W.J.C. No. 4554 with 8964 of 1998

Syed Shafique Mohsin — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Citation : (2000) 1 PLJR 163

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Bijoy Kumar Sinha and Ramapati Kumar Verma, for the Appellant; Pravin Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—Heard learned counsel for the parties. Since both the writ petitions are connected matters and have been filed by the same petitioner, with consent of the parties, they have been heard together and are being disposed of by this common order.

2. In C.W.J.C. No. 4554 of 1998 the petitioner has prayed for quashing the order dated 20.6.1995 (Annexure-4) for feiting his entire gratuity and part pension by way of punishment and further sought for a direction to the Government in Health Department to pay the gratuity and full pension with all consequential benefits.

3. In C.W.J.C. No. 8964 of 1998 the petitioner has prayed to direct the Respondent-authorities to make payment of all pay and allowances to the petitioner for the period of suspension from 31.1.1991 to 4.1.1993 with all other consequential benefits, which was revoked in pursuance of the order of this Court in C.W.J.C. No. 2173 of 1992(R).

4. In short the relevant facts are that the petitioner was working as District Extension Media Officer in the Department of Health and Family Welfare, Government of Bihar. He was suspended on the charge relating to some financial

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irregularities from 31.1.1991 to 4.1.1993 and when no departmental proceeding was initiated against the petitioner he filed the aforesaid C.W.J.C. No. 2173 of 1992(R), in which there was some controversy on the question as to whether any departmental proceeding had been initiated against the petitioner or not. Under such circumstances the Ranchi Bench of this Court vide order dated 29.9.1992 directed that if it is a fact that no departmental proceeding was initiated against the petitioner the respondents should revoke the order of suspension within fifteen days. However, when no final order was passed the petitioner again moved this Court in C.W.J.C. No. 8573 of 1993 and by order dated 31.1.1995, contained in Annexure-3, this Court directed the Respondents State to pass an appropriate final order after considering the case of the petitioner in accordance with law within four weeks positively from the date of its production, failing which the petitioner was given liberty to move this Court afresh. The State Government thereafter vide order dated 20.6.95 contained in Annexure-4 passed the final order imposing penalty of forfeiture of entire gratuity and part pension totalling Rs. 2,72,948/-. According to the case of the petitioner he submitted the account in detail for Rs. 2,72,948/-, which was spent in Government work. It is alleged that he was not given copy of the enquiry report. The petitioner claims to possess unblemished service record throughout his long period of service. It is alleged that the petitioner has since retired on 31.1.1995 yet he has been kept deprived of the pensionary benefits till date, and further that during the long suspension period from 31.1.1991 to 4.1.1993 he received only subsistence allowance, as a result of which he has been financially crippled, suffering mental torment and his health is affecting.

5. In the counter affidavit filed in C.W.J.C. No. 4554 of 1998 on behalf of Additional Director, Health Services, Medical Education and Family Welfare Directorate Bihar, (Respondent no. 3), it is stated that the allegation against the petitioner were under active consideration of the Department vide departmental proceeding memorandum memo no. 140(2) dated 22.6.1992 and were found to be true. The Government decided to recover Rs. 2,72,948/- from his pensionary benefits i.e. gratuity, leave encashment and pension. It is further alleged that the petitioner has not submitted the application for pension/gratuity in due form along with all required no dues certificate and that on receipt of the same the sanction order for the same shall be issued in the light of the decision, contained in the impugned order.

6. It is, thus, obvious that no action was taken against the petitioner in the aforementioned proceeding till the date of his retirement on 31.1.1995. It is, however, not the case of the Respondents that the so-called proceeding initiated while the petitioner was in service was ever converted into a proceeding in terms of Rule 43(b) of the Bihar Pension Rules. It is by now well settled that after retirement Government Servant ceases to be a Government employee and any order of punishment passed thereafter would be unsustainable unless it was permissible under the law to the State Government to revoke the order of retirement and to reinstate him in his former status as Government Servant. A

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reference in this regard may be made to the decision of the Apex Court in the case of Kirti Bhushan Singh Vs. State of Bihar and Others, . This view also finds support from the decision of the Apex Court in the case of High Court of High Court of Punjab and Haryana Vs. Amrik Singh, in which the order of dismissal was sought to be made operative from the date of the order of dismissal and the Supreme Court held that "..... But it would appear that the Chief Justice was not apprised that the delinquent had already retired from service on completion of two years'' period of extended service of re-employment with effect from 31.8.1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service on that day."

7. Learned counsel for the State has placed reliance on the decision of the learned Single Judge of this Court in the case of Ram Nandan Singh Vs. The State of Bihar and Others, . This Court fails to appreciate as to how even the said decision of the learned Single Judge is of any help to the Respondents. In the said case also the departmental proceeding was admittedly initiated against the petitioner while he was in service and after his retirement the proceeding was ordered to be continued to determine the guilt of the misconduct of the petitioner for the purpose of passing an order in terms of Rule 43(b) of the Bihar Pension Rules and under such circumstances, this Court held that if a proceeding is instituted from before and only there is continuance of the proceeding after superannuation in terms of Rule 43(b) of the Bihar Pension Rules, there is no requirement that it must relate to an event which took place not more than four years before the date of either initial institution of the proceeding or conversion of the proceeding under Rule 43(b). As it has already been noticed above that it is not even the case of the Respondents that after retirement of the petitioner, the proceedings initiated earlier was converted into a proceeding in terms of Rule 43(b), the impugned order of punishment passed after the petitioner ceases to be a Government employee, in my opinion, cannot be sustained. Since the earlier proceeding did not culminate into a valid order passed during service, in my opinion, the petitioner will be entitled for full salary for the period of suspension i.e. from 31.1.1991 to 4.1.1993. Both the writ petitions are, accordingly, allowed. The impugned order, contained in Annexure-4, is quashed and the Respondents are accordingly directed to release the entire remaining salary and pensionary benefits of the petitioner within two weeks of the receipt/production of a copy of this order.

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