

(2005) 04 PAT CK 0023
In the Patna High Court
Case No : CWJC No. 9427 of 2004

S.Z.H. Jafri

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Citation : (2005) 3 PLJR 166

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Syed Arshad Alam, for the Appellant; S.S. Mishra, for the Respondent

Judgement

Barin Ghosh, J.—Heard learned counsel for the parties. On 29th December, 1990, the petitioner was put under suspension in contemplation of a disciplinary proceeding. On 30th September, 1991 the petitioner retired. On 16th December, 1991, the order of suspension was revoked. After the retirement of the petitioner, he can only be punished by withholding full or a part of his pension. This power can only be exercised, as provided in the statutory rules, only after it is judged in the disciplinary proceeding that the petitioner is guilty of charges levelled against him or when the petitioner is convicted by a criminal court. The statute does not authorise withholding of full or a part of the pension until such time the guilt is proved. After the petitioner retired, 90% of his pensionary dues have been paid as by way of provisional pension. The remaining 10% has not been paid to the petitioner for no just reason. From time to time, administrative orders were issued to release 90% of the pension in case where either disciplinary proceedings or criminal proceedings were pending against the pensioner. A Division Bench of this Court held that such circulars were valid. Rule 43 of the Bihar Service Code is clear in terms. There is no ambiguity therein. It has authorised withholding of full or part pension only after proof of guilt. It has not authorised withholding of full or a part of the pension during the time the processes of proving guilt is in progress.

2. After the Division Bench pronounced that those circulars as valid, the

Government reconsidered the matter and found that the rules do not permit it to withhold a part of the pension before the guilt is proved and accordingly through the Chief Secretary of the Government a circular was issued on 28th July, 2003 stating therein that in case where disciplinary proceedings are pending or a criminal case is pending against the pensioner, but guilt has not yet been proved, full pension in the form of provisional pension shall be released in favour of such pensioner. This decision of the Government issued through Chief Secretary of the State has been noted by a Single Judge of this Court in a judgment delivered in the case of Baliram Pandey Vs. The State of Bihar and Others, .

3. In any event, there is no just reason for not concluding a disciplinary proceeding which is said to have been initiated prior to 30th September, 1991 even after expiry of almost 14 years. As yet in no criminal proceeding the petitioner has been held to be guilty. It is absolutely mala fide on the part of the respondents in not releasing full pension to the petitioner. At this juncture, it is important to mention that on 11th April, 2000, the vigilance case, which was pending against the petitioner, was closed and on 12th July, 2001, the respondents themselves held out that the petitioner should be paid his other lawful dues but despite that the petitioner has not been paid his lawful dues, which he has earned.

4. By reason of the policy of the Government, one of the benefits, to which a retiring employee is entitled is commutation of a part of his pension. A retiring employee can only commute a part of his pension when his final pension is sanctioned. Therefore, even if 100% of the pension is released and paid to a retiring employee by way of provisional pension, the employee suffers for he would not be entitled to the benefit of commutation of a part of such pension.

5. It must be kept in mind that no one can be made to suffer without establishing that he is guilty of an offence. If after sanctioning full pension by way of provisional pension, the matter is kept in the cold storage and no step is taken to prove the guilt of the person concerned, he suffers. That is improper. In the instant case, 14 years have passed since the petitioner has retired but he has not yet been proved to have committed an offence and his guilt has not been proved and no step has been taken to have the guilt proved.

6. The direction of the Government through the Chief Secretary that 100% pension in the form of provisional pension shall be released can remain for a period reasonably required to conclude the proceeding pending against the employee concerned and the same cannot be converted for an indefinite period. It goes without saying that under no circumstances 14 years can be said to be reasonable time to conclude a proceeding to prove the guilt of an employee.

7. In those circumstances, the writ petition is allowed with a direction upon the Government to forthwith settle the pension of the petitioner to the extent he is entitled to according to law to its full extent i.e. to the extent of 100% and to release the same to the petitioner together with interest at the rate of 5% per

annum, as has been directed by the Government itself, as quickly as possible but not later than twelve weeks from the date of service of a copy of this order upon the appropriate respondent. It is made clear that in terms of the Service Code by which the petitioner is covered pension includes gratuity. The petitioner should be permitted to commute that part of the pension to which the petitioner is entitled to commute in accordance with his entitlement.

8. Neither this order nor grant of full pension to the petitioner will prevent the State from withholding a part or full of the pension of the petitioner in the event guilt is proved either in the disciplinary proceeding against the petitioner or if the petitioner is convicted by the criminal court. It goes without saying that under no circumstances, the Government can withhold the lawful dues of the petitioner on account of leave encashment and accordingly if the same has not been released, let the same be released within the period as mentioned above. In the event, the disciplinary authority has not passed as yet an order under Rule 97 of the Bihar Service Code in relation to the period the petitioner was put under suspension, within the aforementioned period, it must pass such an order strictly in accordance with the provisions contained in Rule 97 of the Bihar Service Code and pay to the petitioner such sum which the petitioner is entitled to receive in terms of the said order.