
(2000) 11 PAT CK 0048
In the Patna High Court
Case No : L.P.A. 1397 of 1999

The State of Bihar and Others

APPELLANT

Vs

Bhima Nand Jha

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43
Central Civil Services (Conduct) Rules, 1964 — Rule 3

Citation : (2001) 1 PLJR 59

Hon'ble Judges : S.K. Chattopadhyaya, J;N. Pandey, J

Bench : Division Bench

Advocate : Ramesh Kumar Dutta and C.M. Jha, for the Appellant; Ajit Kumar and Krishna Mohan Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal on behalf of the State of Bihar under Clause 10 of the Letters Patent of the Patna High Court has been filed against the order dated 17.8.1999 in CWJC No. 9710 of 1998 for adjudication; whether the Respondent (writ Petitioner) having been allowed to retire during the pendency of the departmental proceeding, could such a proceeding continue in terms of Rule 43(b) of the Bihar Pension Rules (In short "the rules") for withholding pension as a major of punishment or in absence of a specific order of the Government or competent authority this proceeding stands tested?

2. (sic), as would appear from the materials on record, at the time of superannuation of the writ Petitioner--Respondent, departmental proceeding with relation to certain charges was pending against him. This is also not in dispute that the impugned, decisions for withholding the pensionary benefits was taken by the competent authorities after the retirement of the Petitioner. While quashing the above order, the learned Writ Court has held since no order either in terms of Rule 43(b) of the Rules or any order for the continuity of the departmental proceeding was passed by the State Government, it was not open

to the disciplinary authority to impose punishment on the same facts which were the subject matter of the disciplinary proceeding initiated during service of the Respondents. The moment a Government servant is allowed to superannuate, he ceases to be in the employment of the State and, therefore, no order of punishment can be passed against him unless the rule specifically provides.

3. To consider the question noticed above, it is pertinent to quote Rule 43(b) of the Rule in extenso:

43. (a) xxxxxxxxx

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on reemployment after retirement:

Provided that--

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause (ii) of Clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

From a reference to the above rule, it would appear that there is no express provision that a pending departmental proceeding may continue or it will come to an end automatically after superannuation of the Government employee. But from the expression as used under Clause (a) of proviso to Rule 43(b), it is clear that such departmental inquiry, if initiated before the superannuation of the Government employee may be continued even after superannuation. True it is in such circumstance, no punishment as prescribed under the provisions of Classification, Control & Appeal Rules can be imposed but certainly punishment for withholding punishment (sic--pension?) etc. as contemplated under Rule 43 of the Rule can safely be imposed.

4. The view which we have expressed above is fully supported by a decision of the Full Bench of this Court in the case of Shambhu Saran v. The State of Bihar and Ors. 2000 (1) PUR 665. It was held that in a situation like present one, no punishment of dismissal etc. can be imposed upon the delinquent as provided under the Classification, Control & Appeal Rules, after his retirement. But a punishment of stoppage of pension or recovery etc. can safely be imposed as prescribed under the provisions contemplated under Rule 43(b) of the Rules. For a proper appreciation, it would be appropriate to quote the relevant finding of the judgment in extenso:

only point involved before us is whether Rule 43(b) is attracted in the facts of this case and whether under the said Rule, even when such disciplinary proceeding was initiated before the retirement, whether it could be continued after the retirement under the provisions of Rule 43(b). It is true that Rule 43 does not say expressly that such proceeding may be continued after such superannuation. However, in our opinion, it is inherent in the said Rule. The opening words of proviso (a) state that such departmental proceedings if not instituted while the Government Servant was on duty either before retirement or during reemployment". In our opinion such expression makes it quite clear that such enquiry if initiated before may be continued even after such retirement. In any event, by necessary implication also it is quite clear that continuance of such enquiry after superannuation is permitted by the said Rules. In this context, it may be pointed out that if the Government servant is in service, the disciplinary proceeding can be initiated against him and certain punishments may be imposed upon him as provided in the relevant Classification, Control and Appeal Rules. However, such punishments cannot be imposed upon him if retired from service. After his retirement he cannot be punished otherwise but pension can be withheld and other steps taken as contemplated by the said Rule 43. Punishments, major or minor, like dismissal or removal from service or withholding of increments etc., which contemplates that he is still in service, cannot be imposed upon him. In such view of the matter if such a person has committed some wrong, merely because he retires and no remedy remains available to the Government even if there was good case against him, then it would be incongruous. Accordingly, such a provision was made to that effect. It is in order to fill up this lacuna that provisions like Rule 43(b) has been introduced.

5. That apart, from a bare reference to Rule 43(b) it would appear that a direction has clearly been made between the case where a disciplinary enquiry is already pending at the time of superannuation of the Government employee and where no such enquiry is pending on the day of superannuation. Certain safeguards have also been provided so that there may not be unnecessary harassment to a Government employee after retirement when no proceeding was initiated during his service. Limitations have also been provided against the powers of the authority to initiate a fresh proceeding after retirement where no proceeding was initiated before retirement. But these limitations in the instant

provisions will not attract if a disciplinary proceeding is already pending at the time of superannuation of the Government servant otherwise once a retirement takes place, the concerned employee can easily take a plea that he was beyond the scope of any action whatsoever.

6. A reference in this regard can also be usefully made to a decision of the apex Court in a case of *D.V. Kapoor Vs. Union of India and others*, where on identical facts, while examining the import of Rule 3 of the Civil Services Conduct Rules, 1964, it was held that a departmental proceeding, if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of such a Government servant, be deemed to be a proceeding under the said rule and shall continue. Merely because the Government employee was allowed to retire, the Government is not lacking jurisdiction or power to continue the proceeding already initiated to the logical conclusion.

7. In the case of *Ram Ekbal Sharma v. The State of Bihar and Ors.* 1997 (1) All PLR 61 also, which has been relied upon in the instant cases, it was held that merely because a Government servant is allowed to retire, the Government is not lacking jurisdiction. But a view was taken that in order to continue the enquiry after retirement of the Government servant, there must be a specific order of the competent authority for continuity of such proceeding failing which the proceeding shall stand abated.

8. In our view, the last part of the decision in the abovementioned case is in direct conflict to the decision of the Full Bench in the case of *Shambhu Saran v. The State of Bihar and Ors.* (*supra*) which can be noticed as under:

In our opinion, once such proceeding is started, even if the person concerned retires from service, such proceeding can be continued and it is not required that there must be any Government order to that effect before it can be allowed to continue. No such condition has been laid down in Rule 43 in respect of a case where such a proceeding has already been initiated as required by the three conditions in respect of initiation of a fresh proceeding after such retirement. We cannot import the requirement of such a condition which is not in the rules.

Thus once a proceeding is started against a Government servant even after his retirement such proceeding shall continue and it is not required that there should be any Governmental order to the effect to allow the proceeding to continue. No such condition has been laid down under Rule 43(b) of the Rules in respect of a case where such a proceeding has already been initiated as contemplated by the three conditions in respect of initiation of a fresh proceeding after the retirement. Therefore, in our view it would not be safe to import the requirement of such a condition which is not available in the rules. It is well settled that a statutory provision must be so construed, if possible, so as to achieve the obvious intention of the maker. The Court should normally try to produce a rational construction so as to avoid unnecessary violence to the purpose behind it.

9. In the background of the facts noticed above, in our view, the decision of the learned Single Judge in the case of Ram Ekbal Sharma v. State of Bihar and Ors. (supra) that in case of a pending departmental proceeding after the retirement of the Government servant, the authority will be required to pass a specific order for its continuity is certainly against the views expressed by the Full Bench.

10. Accordingly, for the reasons stated above, we are constrained to hold that the impugned order cannot sustain. It was quite open to the disciplinary authority to pass an order for withholding pension of the Respondent since in this case, departmental proceeding was already initiated before the superannuation.

11. In the result, the appeal is allowed and the impugned order is set aside. But, in the facts and circumstances of the case, there shall be no order as to costs.