

Ram Prasad Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-01-1999

Judge : J.N. Dubey, J.

Acts : Bihar Pension Rules - Rule 43

Appeal No. : C.W.J.C. No. 3812/1998

Appellant : Ram Prasad

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Prior history : J.N. Dubey, J. 1. Petitioner has approached this Court for issuing a writ of mandamus commanding the respondents to pay his retiral benefits. 2. The case of the petitioner is that he retired from the post of Section Officer, Home (Special) Department, Government of Bihar on August 31, 1995 but has not been paid his entire retiral benefits. The case of the respondents is that the retiral benefits of the petitioner have been withheld for his committing embezzlement during the period 1984-91. The

Judgement :

J.N. Dubey, J.

1. Petitioner has approached this Court for issuing a writ of mandamus commanding the respondents to pay his retiral benefits.
2. The case of the petitioner is that he retired from the post of Section Officer, Home (Special) Department, Government of Bihar on August 31, 1995 but has not been paid his entire retiral benefits. The case of the respondents is that the retiral benefits of the petitioner have been withheld for his committing embezzlement during the period 1984-91. Their further case is that a F.I.R. in this regard has also been lodged against the petitioner on April 30, 1998 and, therefore, he is not entitled for any relief.
3. Heard the learned Counsel for the parties and perused the record.
4. Learned Counsel for the petitioner contended that the petitioner has not yet been found guilty of any misconduct either in the disciplinary proceedings or in the criminal proceedings and, therefore, the respondents are not legally justified in withholding his retiral benefits. According to him, while no departmental proceedings was ever initiated against the petitioner, the criminal proceeding is in a very initial stage. He further submitted that mere pendency of the criminal proceeding does not entitle the respondents to withhold his retiral benefits.
5. I find substance in the argument of the learned Counsel. Admittedly, no disciplinary proceeding has been initiated against the petitioner so far and in view of Clause (ii) of proviso (a) to Rule 43 (b) of the Bihar Pension Rules, no disciplinary proceeding can be initiated against him now. Similarly, the respondents cannot withhold the retiral benefits of the petitioner on the ground that a F.I.R. has been lodged against him for the alleged embezzlement. My this view finds support from two decisions of this Court in *Bail Ram Thakur v. Bihar State Electricity Board and Anr.*, 1995 (2) PUR 609 and *Dayanand Sahay v. State of Bihar and Ors.*, 1996 (1) PLJR 260, in which it was held that mere pendency of the criminal proceeding is not a ground for withholding pension of an employee under the Bihar Pension Rules. Retiral benefits of an employee can be withheld under Rule 43 (b) of the Bihar Pension Rules if he is found guilty of grave misconduct in a departmental or judicial proceedings. Admittedly, the petitioner has not been found guilty of misconduct in either of the two proceedings. As stated above, while

no disciplinary proceedings have at all been initiated against the petitioner, the criminal proceeding is in a very early stage. Moreover, admittedly no order for withholding the retiral benefits of the petitioner under Rule 43 (b) of the Bihar Pension Rules has been passed against him and, as such, he is entitled for his entire retiral benefits.

6. In the result, the writ petition succeeds and is allowed. The respondents are directed to pay the entire retiral benefits of the petitioner within three months from the date of production of a certified copy of this order on the Respondent No. 3, the Home Secretary, Government of Bihar, with statutory interest.

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