

Ram Charitar Prasad Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-12-2000

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 2675 of 1997

Appellant : Ram Charitar Prasad

Respondent : State of Bihar and ors.

Disposition : Appeal Allowed

Judgement :

Radha Mohan Prasad, J.

1. In this writ petition the petitioner, who retired from service of the State Government on 1.3.1997 while working as Supply Inspector in the Department of Food and Civil Supplies, is aggrieved by non-release of his post retiral dues and also by order dated 16.4.1998 contained in Annexure-9, validity of which has been challenged in the interlocutory application (I.A. No. 4833/98). By the said order contained in Annexure-9, it has been held that the petitioner shall not be entitled for any other amount except the amount of subsistence allowance during the period of his suspension, i.e. from 10.12.1985 to 14.5.1992. The learned Counsel for the parties have rightly pointed out that the said period of suspension has been wrongly mentioned in the said order. In fact, the petitioner was placed under

suspension during the period from 23.6.1986 to 14.5.1992.

2. The learned Counsel for the petitioner has further submitted that the petitioner was not paid any thing by way subsistence allowance and also his salary for the period 10.12.1985 to 23.6.1986.

3. In short, the relevant facts are that the petitioner was placed under suspension with effect from 23.6.1986 vide order contained in Annexure-2 in contemplate of a departmental proceeding, which was later initiated vide order dated 9.6.1993 contained in Annexure-1. However, the said proceeding admittedly did not terminate till the petitioner was allowed to superannuate from service on 1.3.97.

4. In view of the law settled in the case of Sachchidanand Singh v. State of Bihar and Ors. reported in 1999.(3) P.L.J.R. 513, the learned Standing Counsel No. 8 appearing for the State, has fairly not been able to resist the claim of the petitioner for payment of his post retiral dues on account of the said proceeding. He, however, submitted that there is no infirmity in the order contained in Annexure-9, which has been passed in exercise of the power vested under Rule 97 of the Bihar Service Code (hereinafter to be called as 'the Code'). On the other hand, the learned Counsel for the petitioner submitted that Rule 97 of the Code will not be applicable in the present case where the petitioner was allowed to superannuate without terminating the proceeding initiated before his retirement and invoking the power under Rule 97 of the Code for determining as to what amount shall be paid to the petitioner for the period of his suspension.

5. This Court finds substance in the submission of the learned Counsel for the petitioner. The power under Rule 97 of the Code in the instant case could be invoked only at the time when the petitioner was reinstated on revocation of the order of his suspension or in case of passing of final order after the proceeding before his retirement. The petitioner was allowed to superannuate from service and the proceeding initiated before his retirement stood terminated without passing any final order. It is not a case where the petitioner was exonerated by final order passed in the proceeding-on which the competent authority was empowered to exercise power under Sub-rule (2) of Rule 97 of the Code for determining as to whether he shall be entitled for full pay and allowances had he

not been suspended. In fact, any order passed after retirement of the petitioner affecting his emoluments amount to imposing penalty for which the power can only be invoked either in terms of Rule 43 or Rule 139 of the Bihar Pension Rules. Thus, in my opinion, it has rightly been submitted by the learned Counsel for the petitioner that the impugned order contained in Annexure-9 cannot be sustained.

6. With respect to the claim of the petitioner for payment of salary, it is submitted by the learned Standing Counsel No. 8 that the same is not tenable as the petitioner did not challenge the validity of the order passed in this regard long back on 1.9.1992 (Annexure 6). This Court finds substance in the submission of the learned Standing Counsel for the State. By order contained in Annexure-6, it was held that the petitioner shall not be entitled for any salary for the said period and the validity of the said order was never challenged by the petitioner. However, the learned Counsel for the petitioner has failed to show that any leave of the petitioner was due against which even the said period of his unauthorised absence can be adjusted. Under such circumstance, this Court does not find any justification to direct the authority to pay salary for the period of his unauthorised absence from duty.

7. Accordingly, this writ application is allowed to the extent as indicated above, the impugned order contained in Annexure-9 is hereby quashed and the respondents are directed to calculate the entire post retiral dues and pay the same along with salary for the period of suspension of the petition and also the consequential arrears of salary and other post retiral/pensionary dues of the petitioner at the revised rate by issuing necessary sanction order/authorisation within two weeks of the receipt/production of the copy of this order. However, there shall be no order as to costs.