

Kunj Bihari Thakur Vs. State of Bihar

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Court : Patna

Decided On : Mar-15-2005

Judge : Mridula Mishra, J.

Acts : Bihar Pension Rules, 1950 - Rules 27 and 43B

Appeal No. : CWJC No. 13803 of 2002

Appellant : Kunj Bihari Thakur

Respondent : State of Bihar

Advocate for Def. : R.K. Datta, SC IV, Piyush Lal, JC to SC IV and P.K. Rajgrihar,
Adv. for Accountang General

Advocate for Pet/Ap. : Ganesh Pd. Singh, Sr. Adv., Sharad Kumar Sinha and
Manish Kumar, Adv.

Judgement :

Mridula Mishra, J.

1. The petitioner is the retired member of Bihar Finance Service and on 31.1.1998, i.e. his date of superannuation, he was holding the substantive post of Assistant Commissioner of Commercial Taxes.

2. This application has been filed by the petitioner for a direction to the respondents authorities to make payment of post retiral dues i.e. full pension, gratuity, leave encashment, remaining amount of group instance as well as the rent and allowances which were payable to him from 3.2.1996 to 31.1.1998 with statutory and penal interest. The petitioner has been paid full amount of G.P.F. but only 90% of provision pension was sanctioned to him and no gratuity or leave encashment has been paid to the petitioner.

3. The petitioner entered the Bihar Finance Service after being declared successful in the 19th Combined Competitive examination conducted by the Bihar Public Service Commission. While posted as Treasury Officer, Ranchi, he was suspended on 3.2.1996. A criminal case was lodged against him relating to the Animal Husbandry Department. Vide order bearing No. 274 dated 26.2.1998, issued under the signature of the Commissioner of Commercial Taxes-cum-Special Secretary, Finance in the name of Governor of the State, the petitioner was dismissed from service with immediate effect. He challenged his dismissal in CWJC No. 3693 of 1996 which was disposed of by order dated 26.8.1997 with an observation that the competent authority may take a fresh decision in accordance with the relevant rules. Since the suspension order passed against the petitioner vide memo No. 154-C dated 3.2.1996 was not vacated, the petitioner filed CWJC No. 9280 of 1998 which was dismissed by order dated 4.7.2000. Against this order petitioner filed LPA No. 1098 of 2000. LPA No. 1098 of 2000 was allowed and the suspension order was quashed and the respondents were directed to pay full salary for the period during which he was being treated under suspension i.e. from 1996 to 1998. During this period the petitioner retired on 31.1.1998 while under suspension: After the order of this Hon'ble Court, the petitioner was paid full amount of GPF but only 90% provision pension was sanctioned. However, the gratuity and leave encashment was not paid. Now the present application has been filed for a direction to make payment of all retiral dues which has not been paid to the petitioner.

4. Petitioner for this relief has placed reliance on the case of Bajrangdeo Narain Sinha v. The State of Bihar and Ors., 1999 (3) PLJR 949. In this decision the Division Bench relying on the decision reported in AIR 1990 SC 1923, has allowed

the case of the petitioner holding that the State cannot withhold the pension or any part thereof till such time an order is passed under Rule 43-B of the Bihar Pension Rules. It is only the case of proved misconduct that a part of whole of pension can be withheld. This plea has been taken by the petitioner that against him no proceeding under Section 43B of the Bihar Pension Rule is pending. No charge of misconduct has been proved. Simply a criminal proceeding is pending against him as such the respondents cannot withhold part or whole of his pension. Since the pension includes gratuity under Rule 27 of the Bihar Pension Rules, the respondents have illegally withheld his gratuity, leave encashment and other benefits.

5. Mr. R.K. Datta Standing Counsel No. 4, appearing for the State has submitted that the petitioner is one of the named accused in fodder scam and a criminal case has been filed against him. 90% ad-hoc pension of the petitioner has been sanctioned, but the amount of gratuity has been withheld in pursuance of Finance Department Circular No. 9144 dated 22.8.1974 as a criminal case is pending against him which provides that a Government servant against whom departmental or judicial proceeding or enquiry has not been completed on the date of retirement in such cases payment of gratuity can be with held and shall not be paid till the conclusion of these proceedings and issuance of final order thereof. So far the final withdrawal of GPF is concerned, it has been sanctioned. The amount of Group Insurance has been sanctioned, the house rent for the period 3.2.1996 to 31.1.1998 has also been sanctioned. So far the unutilised leave salary of the petitioner is concerned, it has not been encashed as per Finance Department Letter No. 4564 dated 6.7.1993. This circular is applicable in case of such Government servant against whom departmental proceeding, criminal case or judicial enquiry has not been concluded and even if there is little chance of recovery, the competent authority can with hold payment of full or certain part of it. The payment will be made after final disposal of enquiry, but if there is any decision to recover any amount as a result of enquiry then the remaining amount will be realised only after making such recovery. It has also been stated that by a reasoned order dated 2.9.2002 vide order No. 4211 the petitioner has already been communicated that which amount will be sanctioned or paid and what amount has been kept with held under the order of the Government or competent

authority.

6. Counsel appearing for the respondents has submitted that the petitioner's case cannot be allowed relying on the decision reported in 1999 (3) PLJR 949 (supra). In this case the Division Bench while allowing the case of the petitioner in that application has placed reliance on a decision of the Supreme Court reported in AIR 1990 SC 1923 and by that time the aforesaid decision has already been over ruled by the Supreme Court in a decision reported in AIR 1994 SC 1484, Jarnail Singh v. Secretary, Ministry of Home Affairs and Ors.. Attention of Division Bench was not drawn towards this and without taking notice of the decision reported in AIR 1994 SC 1484 the decision reported in 1999 (3) PLJR 949, was passed as such no reliance can be placed by the petitioner on this decision, Mr. R.K. Datta has further placed reliance on the Division Bench decision reported in 2001 (4) PLJR 435, whereby the decision reported in 1999 (3) PLJR 949, has been distinguished. It was also argued that decision reported in 1999 (3) PLJR 949, has been passed without considering the earlier Division Bench decision reported in 1994 (2) PLJR 724. In this decision relevant rules of the Bihar Pension Rules as well as the circulars of the Government were considered and it was held that it cannot be said that the gratuity cannot be withheld by the State Government under Rule 43-B of the Bihar Pension Rules. Since the Division Bench decision reported in 1999 (3) PLJR 949, did not take notice of earlier Division bench decision of 1994 (2) PLJR 724, the later decision is per incuriam of the earlier decision and it is not a good law.

7. However, Mr. Ganesh Prasad Singh has submitted that the decision reported in 2001 (4) PLJR, has been passed without maintaining the judicial discipline one Division Bench could not have held that the view taken in another Division Bench is not correct. There is a judicial discipline and without maintaining this the Division Bench decision reported in 2001 (4) 435, has been passed which should not have been done as held by the Apex Court in several decision. He placed his reliance on 2003 (3) PLJR SC 70.

8. Considering the fact that there are three Division Bench decisions of this Court on the same point and all three decisions have been passed without taking notice

of the earlier decision. Two Division Bench i.e., 1994 (2) 725 and 2001 (4) PLJR 415, have held that gratuity and pension can be withheld during the pendency of the departmental or a judicial proceeding pending against a retired person but in 1999 (3) PLJR 949, it has been held that only in a case of proved misconduct under 43-B of the Bihar Pension Rules, the pension or gratuity can be withheld otherwise the retired Government servant is entitled for all his retiral dues. So far 1999 (3) PLJR 949, is concerned, this decision has been passed relying on AIR 1990 SC 1983, which has been overruled in *Jarnail Singh v. Secretary Ministry of Home Affairs and Ors.*, AIR 1994 SC 1484:

9. Considering two different decision on the same point I find it proper to refer this matter before a larger bench so that this issue may be decided finally, as to whether the pension and gratuity of a retired person can be withheld only in case of proved misconduct under Section 43-B or during the pendency of the departmental as well as a judicial proceeding or during the pendency of some enquiry in this respect, which of the view the three Division Bench decisions should be held to be the correct and final view in this matter.

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