

Moti Raj Devi and ors. Vs. State of Bihar and ors.

Moti Raj Devi and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/515584

Court : Jharkhand

Decided On : Feb-20-2004

Reported in : [2004(2)JCR94(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : Service Law; [Constitution of India](#) - Article 226; Bihar Pension Rules, 1950 - Rule 43(B)

Appeal No. : CWJC No. 3716 of 1997 (R)

Appellant : Moti Raj Devi and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Rita Kumari, J.C. to G.P. II and; Sunil Kumar, Adv. for respondent No. 2

Advocate for Pet/Ap. : V. Shivnath, Adv.

Disposition : Application allowed

Judgement :

Amareshwar Sahay, J.

1. The Original writ petitioner Suresh Singh, died during the pendency of the writ application and as such by order dated 4.1.2001 his heirs i.e. his wife and sons

were allowed to be substituted in his place.

2. The prayer of the husband of the petitioner No. 1 in this writ application is for direction to the respondents to pay all retrial benefits and other dues including Provident Fund. Gratuity, Leave Salaries, Group Insurance etc. and also to fix his pay in the revised scale from September 1972.

3. The original writ petitioner was posted as Branch Manager of Hazaribagh. Central Co-operative Bank Ltd. and he was transferred to Bokaro Steel City in the month of January, 1972. For certain charges, he was suspended on 18.9.1972 and ultimately he was dismissed from services on 10.10.1975 which was challenged before this Court in CWJC No. 2548 of 1975 and this Court set-aside the order of dismissal from service with a direction to complete the departmental enquiry in accordance with law after following the principles of natural justice.

4. It is stated by the petitioner that inspite of the above order of this Court, the writ petitioner was not re-instated and he was kept under suspension and thereafter again by order dated 24.6.1977 he was dismissed from service. This order of dismissal for the second time was also challenged before this Court. High Court in CWJC 335 of 1977(R) and a Division Bench of this Court by order dated 24.6.1977 as contained in Annexure-1 to the present writ application, allowed the said writ application and quashed the dismissal order with an observation that if the Managing Committee of the Bank decides to proceed against the petitioner it may pass a final order after giving opportunity to the petitioner to file his show cause and after holding domestic enquiry into the charges.

5. Thereafter the original petitioner was re-instated in service by issuance of Annexure-2 dated 14.9.1984 with a condition that departmental proceeding would be initiated against him but in the meantime he will not be paid his arrears.

6. The grievance of the petitioner in the present writ application is that thereafter no enquiry was ever conducted/held against the husband of the petitioner No. 1 and ultimately, he retired from service on 31.7.1997 and thereafter he continued to write to the respondents but no action was taken by the respondents for fixation of pay on revised scale and for payment of his retrial benefits such as arrears of

salary. gratuity and leave salary for 240 days and group insurance. However, a sum of Rs. 34,432/- was only paid to the petitioner on the account of Provident Fund though, on that account he should have been paid a sum of Rs. 38,402.

7. The learned counsel for the petitioner has submitted that the respondents cannot withhold the amount legally payable to the petitioner by way of retiral due and as such the action of the respondents with, holding the legal dues are illegal, arbitrary and without jurisdiction. In support of his contention he has relied on the decision in the case of Gopal Prasad v. The State of Bihar and Ors. reported in 2000(1) PLJR 169 and in the case of Rana Subodh Sharma v. State of Jharkhand and Ors. reported in 2001(2) JLJR 102.

8. It has been submitted by learned counsel appearing for the respondents that the Bank filed a money suit being Money suit No. 17/1976 in the Court of Sub-Judge, Second Court, Dhanbad for realisation of Rs. 2.76.388.76 paise against the original petitioner and one another which was decreed and the same is pending for execution before the Sub-Judge-1 at Chas being Execution case No. 2/85. It was further stated that a criminal case lodged by the Bank against the petitioner was also pending and therefore, there is no question of payment of retiral benefits to the petitioner as the case against the petitioner are sub-judice before the different Courts.

9. Admittedly neither any departmental proceeding was initiated against the husband of the petitioner while he was in service for the alleged mis-conduct nor any proceeding. Rule 43(B) of the Bihar Pension Rules was initiated against the husband of the petitioner even after his retirement. In the case of Gopal Prasad v. The State of Bihar and Ors., reported in 2000(1) PLJR 169 in the similar facts the High Court held that without holding any departmental proceeding regarding the alleged mis-conduct withholding of the retiral benefits was illegal, arbitrary and without jurisdiction. In the case of Rana Subodh Sharma v. State of Jharkhand and Ors., reported

10. In the case of the State of Bihar and Ors. v. Kameshwar Prasad Gupta, reported in 2001 (1) BLJ 310, the Division Bench of the Patna High Court has held that if any employee superannuated while he was under suspension and no order

passed either to impose any punishment or to withhold retirement benefits in the departmental proceeding, the salary of the suspension period cannot be withheld. It was further held that withholding of pension of a person without holding him guilty, is not permissible.

11. Having considered the rival contention of the parties and relying on the aforesaid decisions I allow this application 2 and direct the respondents, to issue sanction order with regard to all retirement benefits legally payable to the petitioner within the period of four weeks from the date of receipt/ production of a copy of this order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com