

**Basant Kumar Vs. Bihar State Electricity Board and ors.**

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**Court :** Jharkhand

**Decided On :** Sep-24-2003

**Reported in :** [2004(2)JCR617(Jhr)]

**Judge :** M.Y. Eqbal, J.

**Acts :** Bihar Service Code, 1952 - Rule 139; [Constitution of India](#) - Article 226

**Appeal No. :** WP (S) No. 1787 of 2003

**Appellant :** Basant Kumar

**Respondent :** Bihar State Electricity Board and ors.

**Advocate for Def. :** Ajit Kumar, Adv.

**Advocate for Pet/Ap. :** M.M. Banerjee,; M.K. Sinha and; D.K. Pathak, Adv.

**Disposition :** Application allowed

**Judgement :**

ORDER

**M.Y. Eqbal, J.**

1. Heard Mr. M.M. Banerjee, learned counsel for the petitioner and Mr. Ajit Kumar, learned counsel for the respondent-Bihar State Electricity Board, Patna.

2. Petitioner has approached this Court for a direction upon the respondents to release leave encashment amount and the commutation of pension amount forthwith, as the same has not been paid to him.

3. Petitioner superannuated from the service with effect from 31.3.2001 while working as Electrical Executive Engineer at Ranchi. After retirement, he was paid other retiral dues but leave encashment and commutation of pension was not released.

4. A counter-affidavit has been filed by the respondent BSEB wherein it is stated that because of some audit objection, the leave encashment and commutation of pension was not sanctioned. Petitioner was asked to submit reply to the show cause on the charges of audit objection under Rule 139 of the Bihar Service Code. A copy of the notice has been annexed as Annexure-B to the counter-affidavit.

5. In the notice (Annexure-B) it is stated that in 1992-93 some explanation was sought for from the petitioner for the non-supply of power in the Patna City. It is further mentioned in the letter that petitioner's explanation was found satisfactory and he was exonerated from the charges. It is also alleged in the notice that petitioner submitted connection report of one consumer at a belated stage sometime in the year 1992 thereby Board sustained a loss of Rs. 1,85,731/- and that charge was prima facie found true'. The Board therefore decided to proceed under Rule 139 of the Bihar Service Code. There is nothing mentioned in the said notice that for the omission or commission any charge-sheet was issued or a departmental proceeding was initiated in the year 1992 or even thereafter till the date of superannuation of the petitioner.

6. As noticed above, petitioner retired on 31.3.2001 and when leave encashment and commutation of pension amount was not paid, petitioner filed writ petition, after serving copy of the same to the counsel appearing for the respondent-Board. Copy was served on 11.2.2003. It is therefore clear that after receiving copy of the writ petition and having knowledge of filing of writ petition by the petitioner claiming leave encashment and commutation of pension, the impugned notice was issued on 7.4.2003. This shows the illegal and mala fide intention of the respondent-Board to harass the petitioner. The said notice (Annexure-B) has been challenged

by the petitioner by filing a petition for amendment of the writ petition.

7. Taking into consideration the entire facts of the case, I am of the opinion that issuance of notice by the respondent-Board purported to be under Rule 139 of the Bihar Service Code that too 3-4 years after superannuation is wholly unjustified.

8. For the reasons aforesaid, this writ application is allowed and the impugned notice and so-called proceeding initiated by the respondent-Board against the petitioner is quashed. Respondent-Board is directed to release the amount of leave encashment and commutation of pension to the petitioner within a period of six weeks from the date of receipt/production of copy of this order.

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