

(2002) 12 JH CK 0007

Jharkhand High Court

Case No: Writ Petition (S) No. 3159 of 2001

Ram Dayal Rai

APPELLANT

Vs

Jharkhand State Electricity Board
and Others

RESPONDENT

Date of Decision: Dec. 19, 2002

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 43
- Constitution of India, 1950 - Article 226

Citation: (2003) 1 JCR 525

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: M.K. Jha and Ajit Kumar, Nilesh Kumar, for the Appellant; I. Sen Choudhary, for J.S.E.B., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

The petitioner has challenged the order No. 2970 dated 15th June, 2001 issued by the Joint Secretary, Bihar State Electricity Board (B.S.E.B. for short), Patna communicated vide letter No. 365 dated 22nd June, 2001 by the Electrical Executive Engineer Transmission, Division Ranchi, whereby and whereunder, the respondents have issued penal order, withholding 5% of the pension permanently.

2. It appears that even after petitioner's retirement on 28th February, 1998, he having not vacated the Board's quarters, the impugned order dated 15th June, 2001 was issued after notice and hearing the petitioner, on the basis of evidence.

3. The main plea taken by petitioner is that as Rule 43(b) of the Bihar Pension Rules, 1950 relates to misconduct if committed during the service period so, the

respondents have no jurisdiction to pass any order under Rule 43(b) for retention of quarters after his retirement.

4. It is not in dispute that the B.S.E.B. adopted Bihar Pension Rules, 1950 mutatis mutandis for its employees.

5. Under Chapter III of Bihar Pension Rules, 1950 "general provisions relating to grant of pension" has been laid down. While under Rule 43(b) the competent authority reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period, future good conduct is also implied condition for every grant of pension under Rule 43(a) of the Pension Rules, which reads as follows :

"Rule 43(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

Rule 43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the petitioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement : Provided that--

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings;

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause (ii) of Clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed."

6. Admittedly, the petitioner after retirement did not choose to vacate the Board's quarters. He initially moved before this Court in CWJC No. 1405/1998 (R), wherein this Court vide order dated 19th February, 1999 directed the petitioner to vacate the Board's quarters within one month from the date of receipt of retiral benefits. Thereafter, the petitioner having not vacated the quarters, this Court vide order dated 31st August, 1999 in CWJC No. 1405 of 1998 (R) directed the petitioner to vacate the Board's quarters by 30th September, 1999 as per earlier order.

7. Admittedly, the petitioner, even thereafter, did not choose to vacate the quarters and filed a petition for extension of period. Taking humanitarian view, this Court extended the period up to 1st November, 1999 vide order dated 4th, October, 1999 and directed the petitioner to vacate the Board's quarters by 1st November, 1999. Even thereafter, the petitioner being not satisfied moved in LPA No. 460 of 1999 (R). In the said case a Division Bench of this Court vide order dated 15th December, 1999 observed that if the appellant (petitioner herein) had not vacated the quarters by 1st November, 1999, the authority should have taken immediate steps for vacating the quarters, if necessary with the help of police. The petitioner's prayer for further extension was also rejected by the Division Bench.

8. Thereafter the petitioner vacated the quarters only on 6th January, 2000. The Court's order having violated and such action of petitioner being misconduct, the impugned penal order was issued on 15th June, 2001 after giving opportunity to petitioner, on the basis of the evidence.

9. It is true that the action as alleged against petitioner does not relate to any misconduct while the petitioner was in service. Therefore, Rule 43(b) of the Bihar Pension Rules, 1950 is not applicable in the case. However, as "future good conduct" is an implied condition for every grant of pension under Rule 43(a) of the Bihar Pension Rules, 1950, the competent authority has a right to withhold or withdraw a pension or any part of it, if the pensioner is found guilty of serious and grave misconduct. The impugned order dated 15th June, 2001, thus, can be saved under the aforesaid Rule 43(a) of the Bihar Pension Rules, 1950. Mere citation of a wrong provision of law will not render the order illegal.

10. There is no merit in this writ petition, it is accordingly, dismissed.