

(2009) 12 JH CK 0026
Jharkhand High Court
Case No: None

Sant Lal Sahni

APPELLANT

Vs

Bihar State electricity Board and
Others

RESPONDENT

Date of Decision: Dec. 9, 2009

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

The petitioner is aggrieved by the resolution dated 26/08/2000, contained in Annexure-2 to the writ petition as well as the resolution of the Bihar State Electricity Board dated 13/12/2002, contained in Annexure-8.

2. By resolution dated 26/08/2000 (Annexure-2) a penalty of censure was imposed to be entered in his service book in the year 1999-2000 and to withhold one annual increment, whereas by resolution dated 13/12/2002 (Annexure-8) a decision was taken for recovery of amount received by the petitioner as salary for the period 01/02/1999 to 15/09/2000 and also to deduct 5% of his pension.

3. The facts, in short, are that the petitioner retired as Junior Electrical Engineer from Electric Supply division, Giridih. According to the Respondent electricity Board the petitioner was to retire from the service on 31/01/1999 on attaining the age of superannuation but in spite of knowing his date of retirement, the petitioner continued in service and, ultimately, he was made to retire by asking him to stop from working by issue of letter dated 15/09/2000 contained in Annexure-1.

4. The petitioner, thereafter, was served with a charge sheet, contained in Annexure-3 dated 29/11/2000, for his alleged continuation in the service after his actual date of retirement. The petitioner submitted his reply stating that he never

misrepresented nor he committed any fraud and he was paid in lieu of work performed by him during the period 01/02/1999 to 15/09/2000.

The petitioner was served with second show cause notice alongwith enquiry report, proposing punishment of recovery of the payment of salary made to him during the period 01/02/1999 to 15/09/2000 and for deduction of 5% from his pension. Thereafter, by issue of letter dated 08/03/2003 the Respondent No. 3, i.e. the Financial Controller, Bihar State Electricity Board directed the Respondent No. 4 Deputy Director of Accounts, B.S.E.B. to deduct a sum of Rs. 89,565/- from the Gratuity amount of Rs. 96,135/- payable to the petitioner.

5. It is contended on behalf of the petitioner that since the petitioner had already retired from the service even as per the Respondents on 15/09/2000, therefore, he could not have been imposed any such punishment without initiating any proceeding under the provision of Bihar Pension Rules. He was never served with any notice under Rule 43 (b) of Bihar Pension rules and, therefore, issuance of Annexure- 5 dated 05/11/2002, i.e. the second show cause notice proposing punishment as well as issuance of Annexure-8, i.e. the resolution dated 13/12/2002 imposing punishment for recovery of the amount paid towards salary etc. to the petitioner during the period from 01/02/1999 to 15/09/2000 and also for withholding 5% of his pension is wholly illegal and without jurisdiction.

6. According to the Respondents Bihar State Electricity Board, the service condition of the petitioner was governed by the Bihar State Electricity Board service Regulation 1976 and as per the Regulation-78, on the date an employee reaches the age of superannuation, he has to demit of his office immediately on his own even without being asked or directed to do so and failure to demit office on reaching the age of superannuation shall not entitle any employee to any pay and allowances beyond the date of superannuation and, therefore, the petitioner should have demitted his office on 31/01/1999 and having not done so he was liable for disciplinary action and further he was not entitled to any pay and allowances beyond 31/01/1999.

7. There is no dispute of the fact that the Bihar Pension Rules is applicable in the case of the employee of Bihar/Jharkhand State Electricity Board.

8. It is a settled law that after the Government Servants retires from service, the relationship of the employer and employee ceases to exist and the Government Servant goes beyond the disciplinary control of the Government. If any action is to be taken against the said retired servant then it can be done only under Rule 43 (b) of the Bihar Pension Rules. It is also a settled law that no order can be passed for recovery of any excess payment made to the Government Servant after his retirement without taking action under Rule 43 (b) of the Bihar Pension Rules. Reference in this regard may be made to the Full Bench decisions of this Court in the case of "Smt. Normi Topno v. State of Jharkhand and Ors. reported in 2007 (4) JLR

466 (FB), The State of Jharkhand and Ors. v. Padamalochan Kalindi and Anr. reported in 2007 (4) JLR, 451 (FB) and in the case of Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.

9. In the present case, admittedly, no proceeding under Rule 43(b) of the Pension Rules was initiated against the petitioner and even the charge sheet dated 29/11/2000 and the order of recovery of the amount said to be paid in excess and for withholding 5% of his pension was served on 13/12/2002, contained in Annexure-8, after the petitioner retired from service on 15/09/2000. Therefore, all such action taken by the respondents after the retirement of the petitioner including the charge sheet dated 29/11/2000 (Annexure-3), as well as the resolution dated 13/12/2002, contained in Annexure-8 are held to be illegal and without jurisdiction.

9. Consequently, this application is allowed and the resolution dated 13/12/2002, contained in Annexure-8 is hereby quashed and the respondents Bihar State Electricity Board/Jharkhand State Electricity Board are restrained for deducting or from recovering any amount already paid to the petitioner towards salary or allowances during the period from 01/02/1999 to 15/09/2000.

However, in the facts and circumstances of the case, there shall be no order as to cost.