IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.592 of 2017
IN
Civil Writ Jurisdiction Case No. 8343 of 2015

Ram Bilas Prasad @ Ram /Vilas Prasad, Rtd. Executive Engineer, S/o late Wazir Mahto, Resident of West Jai Prakash Nagar, P.S. Takkanpur, P.O.- G.P.O. District-Patna.

.... Petititioner/Appellant

Versus

1. The President Cum Managing Director, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
2. The Managing Director, South Bihar Power Holding Company Ltd, Bailey Road, Patna.

.... Respondent/Respondent/s

Appearance :
For the Appellant/s : Mr. Ran Vijay Kumar, Mr. Raj Shekhar
For the Respondent/s : Mr. Vinay Kirti Singh

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 19-12-2017

Seeking exception to an order passed by the learned Writ Court on 27.02.2017 in CWJC No. 8343 of 2015 this appeal has been filed under Clause 10 of the Letters Patent.

The petitioner was working as Electrical Executive Engineer in Electric Supply Division, South Bihar Power Holding Company Limited (hereinafter referred to as 'the Company') and after his retirement he is granted only 90% amount of pension and gratuity and the remaining 10% has been withheld due to a pending vigilance case against him.

This appeal has been preferred after the writ petition filed was dismissed and the employee retired from the service on 30th June, 2009. The learned Writ Court on the basis of Rule 43(c) of the Bihar Pension Rules upheld the action of withholding of 10% of the pension and gratuity. However, while doing so, the learned Writ Court lost sight of the fact that Rule 43(c) was brought into force with effect from 2012. It does not have retrospective effect and will not be applicable in the case of the appellant who had retired on 30th June, 2009. In the case of the appellant Rule 43(b) of the Bihar Pension Rules would apply which reads as under :-

> **“43.** (a) ….. ………..
>
> (b) The State Government further reserves to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for 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 pensioner is found in departmental or judicial proceedings 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; and

(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 or 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."

The provision, inter alia, permits withholding of forfeiture of pension if the employee has been punished in the proceeding. The provision for withholding part of the pension in a pending proceeding was introduced by Rule 43(c) with effect from 2012. It does not have retrospective effect and, therefore, action taken for withholding pension for pending proceeding under Section 43(c) was wholly unsustainable and as there was no power with the State Government or the respondents to withhold pension under Section 43 (c) in a case which is still pending. The learned Writ Court committed an error in dismissing the writ petition.

The issue in question has already been decided by us in the case of Ram Sevak Ram vs. The State of Bihar (LPA NO. 2036 of 2016) and we see no reason to take a different view. Accordingly, we allow the appeal, quash the order dated 27.02.2017 passed by the learned Writ Court and direct that the entire pension and gratuity in its totality be released to the appellant within 45 days from the date of receipt of a certified copy of this order.

With the aforesaid this appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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