

S/L 19
15.07.2024
Court. No. 551
Suwayan

WPA 9828 of 2002

**Sri Ganapati Mahato
Vs.
Union of India & Ors.**

*Mr. Vinay Misra
Mr. Shambhunat Bhattacharya*

...for the petitioner.

Ms. Chandreyi Alam

...for the UOI.

1. Heard learned Advocates for the writ petitioner and the respondents/Union of India.
2. In course of his submission, the learned Advocate for the writ petitioner submits before this Court that though the writ petitioner in the instant writ petition has prayed for quashing of the order of dismissal of service as passed by the respondent authorities but for the present he is making a prayer before this Court for disbursal of pension to which he is entitled.
3. Learned Advocate for the writ petitioner has placed his reliance upon the reported decision of ***Deokinandan Prasad vs. The State of Bihar and Others*** reported in ***1971(2) SCC 330***.
4. Ms. Alam, learned Advocate for the respondents/Union of India and its officials at the very outset draws attention of this Court to page No. 6 of the affidavit-in-opposition as filed by her client. It is submitted that in such affidavit-in-opposition it has been specifically averred on behalf of the respondents that the present writ petitioner who is a dismissed member of

CRPF has already received all his terminal benefits. It is further submitted that under the rule a dismissed employee is not entitled to get pension.

5. In considered view of this Court the reported decision of **Deokinandan Prasad (Supra)** as cited from the side of the writ petitioner is no way favourable to the writ petitioner and on the contrary it supports the case of the respondents since in paragraph Nos. 24 to 25 of the reported decision of Deokinandan Prasad's case the Hon'ble Supreme Court held thus:

“24. In the case before us even according to the respondents a continuous absence from duty for over five years, apart from resulting in the forfeiture of the office also amounts to misconduct under Rule 46 of the Pension Rules disentitling the said officer to receive pension. It is admitted by the respondents that no opportunity was given to the petitioner to show cause against the order proposed. Hence there is a clear violation of Article 311. Therefore, it follows even on this ground the order has to be quashed.

24-A. The further question is about the legality of the order, dated June 12, 1968, purporting to be passed under Rule 46 of the Pension Rules. The petitioners wrote a letter, dated July 16, 1967, requesting the Director of Public Instructions to arrange for payment of his pension as he had attained the age of superannuation. The order, dated June 12, 1968, was passed in reply to the said request of the petitioner. In this order it is stated that under Rule 46 of the Pension Rules, the

Department is unable to grant pension to the petitioner. Rule 46 of the Pension Rules is as follows:

“46. No pension may be granted to a Government servant dismissed or removed, for misconduct, insolvency or inefficiency, but to Government servants so dismissed or removed compassionate allowance may be granted when they are deserving of special consideration, provided that the allowance granted to any Government servant shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate.”

25. It will be seen that under the said rule a Government servant who has been dismissed, or removed for misconduct, insolvency or inefficiency is not eligible for pension (emphasis supplied by me). The respondents have admitted in their counter-affidavit that the order, dated August 5, 1966, purporting to be under Rule 76 of the Service Code is an order of removal and it is further pleaded by them that the petitioner's absence for over five years itself amounts to misconduct and inefficiency in service. We have already held that the order, dated August 5, 1966, is illegal. If that is so, it follows that the petitioner has not been continuously absent from duty for over five years and he is not guilty of any misconduct or inefficiency in service. Therefore, it will further follow that withholding of pension under the order, dated June 12, 1968, on the basis of Rule 46 of the Pension Rules, is illegal.”

6. In view of the clear observation of the Hon'ble Supreme Court as discussed (Supra) and in view of the fact that the present writ petitioner has been dismissed from his service mainly on account of his long absence and that too, he has been dismissed following a departmental proceeding, this Court finds no reason to grant any relief as prayed for in this writ petition.

7. Accordingly, the instant writ petition being WPA 9828 of 2002 is dismissed.

8. There shall be no order as to costs.

9. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)