

A
RAM DAYAL RAI
v.
JHARKHAND STATE ELECTRICITY BOARD AND ORS.

MARCH 9, 2005

B [ASHOK BHAN AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

C *Pension—Bihar Pension Rules, 1950—Rule 43(a) and (b)—Government accommodation—Retention of by ex-employee, after retirement—Extension of time by High Court—Vacation of quarter not within the specified period but two months later—Departmental proceedings—Penal order withholding permanently 5% of the pension for the misconduct committed—On appeal held : Occupation of quarter during period extended by Court is litigious possession—Deduction of pensionary benefit disproportionate to the misconduct alleged—Balance of convenience and prime facie case in favour of ex-employee as he would suffer irreparable loss and injury—However, occupation after the period allowed by High Court illegal—Employee directed to pay Rs. 500 p.m. as rent for the period of illegal occupation to meet ends of justice—Constitution of India, 1950—Article 136.*

E Appellant-ex employee of the respondent-Electricity Board did not vacate the Board's quarter after retirement. High Court issued directions for vacation and thereafter, on humanitarian ground granted extension upto 1.11.1999. Appellant sought further extension of time. Division Bench of High Court rejected the same. Appellant vacated the Board's quarter F on 6.1.2000 and also informed the respondents. Thereafter, respondent-Board issued penal order withholding permanently 5% of pension of the appellant under Rule 43(a) of Bihar Pension Rules, 1950. Appellant challenged the penal order. Single Judge of High Court dismissed the writ petition. Division Bench also dismissed the Letter Patent Appeal. Hence G the present appeal.

Disposing of the appeal, the Court

HELD : 1.1 The extension of time granted by High Court and the occupation of the quarter during that period as per the orders of the Court

cannot be treated as or construed as an unauthorized occupation. The continuance thereof in the quarter can, therefore, be treated only as litigious possession. Furthermore, the balance of convenience and the *prima facie* case is also in favour of the appellant. If the pensioner's benefit is cut by 5% , the appellant will suffer an irreparable loss and injury since after the retirement, the pensionary benefit is the only amount available to eke out livelihood for the retired employees of the Government.

[583-C, E]

1.2. Also the penal order directing 5% cut in pensionary benefits under Rule 43(a) of Bihar Pension Rules, 1950 is disproportionate for the misconduct alleged against the appellant. But the fact remains that the appellant-ex employee vacated the Board's quarter on 6.1.2000 whereas as per order of the High Court he ought to have vacated the same on 1.11.1999. The occupation of the quarter after 1.11.1999 is illegal. Justice would be amply met if the appellant is directed to pay a sum of Rs. 500 per month for the period of illegal occupation. [583-A-B, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1599 of 2005.

From the Judgment and Order dated 10.4.2003 of the Jharkhand High Court at Ranchi in L.P.A. No. 88 of 2003.

A.N. Deo and Ms. S. Janani for the Appellant.

S.B. Upadhyay, Pawan Upadhyay, Shiv Mangal Sharma and Gopal Prasad for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

This appeal is directed against the final judgment and order dated 10.4.2003 passed by the High Court of Jharkhand, Ranchi in L.P.A. No. 88 of 2003 dismissing the appeal filed by the appellant against the judgment and order dated 19.12.2002 passed by the learned single Judge in W.P.(S) No. 3159 of 2001.

Before proceeding to consider the matter on merits, the facts can be stated briefly for the purpose of the present appeal.

The appellant is an ex-employee of the respondent-Board. He retired on 28.2.1998 from the post of Foreman, Grade I. The appellant after retirement did not choose to vacate the Board's quarter. He initially moved before the

A High Court in C.W.J.C. No. 1405 of 1998 (R) wherein the High Court by order dated 19.2.1999 directed the appellant to vacate the quarter within one month from the date of receipt of the retiral benefits. Thereafter, the appellant having not vacated the Board's quarter, the High Court vide order dated 31.8.1999 by which date all retiral benefits including gratuity stood paid, directed the appellant to vacate the Board's quarter by 30.9.1999 as per the earlier order.

The appellant even thereafter did not choose to vacate the quarter and filed a petition for extension of period. The High Court, taking humanitarian view, extended the period up to 1.11.1999 vide order dated 4.10.1999 and directed the appellant to vacate the Board's quarter by 1.11.1999 observing as under:

“However, taking a humanitarian view of the matter, this Court, as a matter of last chance, extends the time. Under the order of this Court passed today, the petitioner is directed to vacate the quarter in question by 1st November, 1999. It is made clear that if the petitioner does not vacate the quarter by that date, the respondents are entitled to take, if necessary, the help of the police.”

The appellant being not satisfied filed an L.P.A. No. 460 of 1999 (R) In the said L.P.A., the Division Bench of the High Court observed that if the appellant had not vacated the Board's quarter by 1.11.1999, the authority should have taken immediate steps for vacating the quarter, if necessary with the help of police. The appellant's prayer for further extension of time was also rejected by the Division Bench. The Bench also observed that once the appellant has retired, he has no right to remain in the quarter after the statutory period and therefore, there is no question of extending the period.

The appellant wrote a letter to the Executive Engineer, Transmission Division, Ranchi on 4.1.2000 requesting him to take charge of the articles belonging to the Board. On 6.1.2000, the Board took the charge of the articles lying in the quarter and issued receipt for the same. On 17.1.2000, the Executive Engineer, Electricity Board, Ranchi filed a petition for eviction of the appellant from quarter in question before the sub-Divisional Officer, Sadar, Ranchi which was registered as Eviction Case No. 95 of 1999. The appellant informed the Court that he has already vacated the Board's quarter and information to this effect was already given to the Executive Engineer. On such application filed by the appellant, the S.D.O. Sadar, Ranchi dropped the proceedings on 17.1.2000 and matter came to an end.

On 22.6.2001, the Electrical Executive Engineer vide his letter No. 365 A dated 22.6.2001 informed the appellant about the Office Order No. 2970 of the Joint Secretary contained in Memo No. 788 dated 15.6.2001, whereby the Joint Secretary, Bihar State Electricity Board, Patna passed an order directing permanent deduction of 5% from the total amount of pension payable to the appellant under the provisions of Rule 43(a) of the Bihar Pension Rules, 1950 without taking into consideration the fact that the appellant was permitted B by the High Court to continue his stay in the quarter in question and vacate the same by 1.11.1999 and the appellant vacated the quarter on 1.11.1999 itself and informed the authorities of the Board in writing on 2.11.1999. The appellant submitted his representation to the General Manager for granting the benefit of fixation of new pay scale and also requested him to pay the C pension after determining the quantum of pension which becomes payable after fixation of new pay scale applicable from 1.4.1997. The appellant submitted that the order under challenge is unreasonable, unwarranted, without jurisdiction and beyond the scope of Rule 43(a) and (b) of the Bihar Pension Rules, 1950. The appellant filed W.P.(S) No. 3159 of 2001 in the High Court D of Jharkhand, Ranchi. The main plea of the appellant before the High Court was that Rule 43(b) of the Bihar Pension Rules, 1950 relates to misconduct committed during the service period and thus the respondents have no jurisdiction to pass any order under Rule 43(b) for retention of quarter after his retirement. The learned single Judge by order dated 19.12.2002 dismissed the writ petition filed by the appellant holding as under: E

“It is true that the action as alleged against the 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.” F G

Aggrieved thereby, the appellant filed L.P.A. No. 88 of 2003 in the High Court of Jharkhand, Ranchi. The Division Bench of the High Court vide impugned order dated 10.4.2003 dismissed the L.P.A. filed by the appellant holding as under: H

A “Admittedly, after retirement, the appellant did not choose to vacate the quarter of the Electricity Board even inspite of repeated direction of this Court and, ultimately, it was got vacated through police force. The learned single Judge considered this aspect of the matter in detail in the impugned order and rightly held that violation of orders of this Court certainly amounted to misconduct on the part of the appellant and as such penal order issued on 15.6.2001 after giving sufficient opportunity to him was justified. We also find no reason to interfere with the said order. There is no merit in this appeal. It is dismissed.”

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C Aggrieved by the said order, the appellant filed an appeal by way of special leave petition in this Court.

C

We have heard Mr. A.N. Deo, learned counsel for the appellant and Mr. S.B. Upadhyay, learned counsel for the respondents and perused the orders and annexures filed along with the appeal by both the parties.

D

Learned counsel appearing for the appellant made the following submissions:

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(a) Rule 43(b) of the Bihar Pension Rules, 1950 is not applicable to a retired employee of the State.

(b) The earlier orders of the High Court granting extension of time for vacating the quarter was binding upon the respondents.

(c) The respondents were not justified in initiating the departmental proceedings when the appellant had complied with the order of the High Court and vacated the quarter.

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(c) The respondents cannot withhold the retiral dues and benefits of pension after fixation of new pay scale by the Board when there was no misconduct on the part of the appellant in not vacating the quarter in question in obedience to the order passed by the High Court.

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(d) The punishment imposed is excessive.

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Learned counsel appearing for the respondents submitted that the appellant did not vacate the Board's quarter as directed by the High Court and within the specified period mentioned in the order and, therefore, instituting the departmental enquiry was justified. He would further submit that the action alleged against the appellant does not relate to any misconduct

while the appellant was in service. But 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. Therefore, he submitted that the impugned order dated 15.6.2001, thus can be saved under the aforesaid Rule 43(a) of the Bihar Pension Rules, 1950.

The main plea taken by the appellant is that as per Rule 43(b) of 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 quarter after his retirement.

Rule 43(a) - and (b) of the Bihar Pension Rules, 1950 are reproduced hereunder for the sake of convenience :

“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;

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

D As already noticed, the respondents have issued the penal order withholding permanently 5% of the pension of the appellant. It is not in dispute that the BSEB adopted Bihar Pension Rules, 1950 *mutatis mutandis* for its employees. Under Chapter III of Bihar Pension Rules, 1950, “general provision 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 as a condition for every

E grant of pension under Rule 43(a) of the Bihar Pension Rules, 1950. Admittedly, the appellant, after retirement, did not choose to vacate the Board’s quarter. He initially moved before the High Court by filing a writ petition and the High Court vide order dated 19.2.1999 directed the appellant to vacate the Board’s quarter within one month from the receipt of retiral benefits. Even thereafter, the appellant having not vacated the quarter, the High Court

F vide order dated 31.8.1999, directed the appellant to vacate the Board’s quarter by 30.9.1999 as per earlier order. Admittedly, the appellant, even thereafter, did not choose to vacate the quarter and filed a petition for extension of period. Taking humanitarian view, the High Court extended the period up to 1.11.1999 and directed the appellant to vacate the Board’s quarter by

G 1.11.1999. Even thereafter, the appellant being not satisfied moved L.P.A. No. 460 of 1999. The Division Bench of the High Court rejected the prayer for further extension of time. Thereafter, the appellant vacated the Board’s quarter only on 6.1.2000. Therefore, it is thus crystal clear that the Court’s order was violated and such action of the appellant being a misconduct, the impugned penal order was issued on 15.6.2001 after giving opportunity to

H the appellant on the basis of the evidence.

In the instant case, the appellant vacated the quarter in question within the period specified by the High Court and he informed the respondents about the vacation of the quarter and even after this information the appellant was penalized. The punishment of 5% cut in pensionary benefits, in our opinion, is disproportionate for the misconduct alleged against the appellant. The appellant vacated the Board's quarter on 6.1.2000 whereas he ought to have vacated the same on 1.11.1999 as per order dated 4.10.1999 of the High Court. The High court, on various occasions, ordered extension of period on humanitarian grounds. Therefore, extension of time granted by the High Court and the occupation of the quarter during that period as per the orders of the Court cannot be treated as or construed as an unauthorized occupation. The continuance thereof in the quarter in question can, therefore, be treated only as litigious possession. But the fact remains that he has not vacated the quarter on 1.11.1999 but in fact vacated only on 6.1.2000.

We are, therefore, of the opinion that the impugned order does call for interference by this Court and modification of the same in order to meet the ends of justice. The occupation of the quarter after 1.11.1999 is illegal. When a question was put, the learned counsel appearing for the appellant submitted that he was paying the monthly rent of Rs. 25. Justice would be amply met if we direct the appellant to pay a sum of Rs. 500 per month for the entire period of illegal occupation (from 1.11.1999 to 6.1.2000). The balance of convenience and the *prima facie* case is also in favour of the appellant. If the pensioner's benefit is cut at 5% out of the total amount of pension payable to the appellant, the appellant will suffer an irreparable loss and injury since after the retirement, the pensionary benefit is the only amount available to eke out livelihood for the retired employees of the Government.

For the aforesaid reasons, we set aside the order passed by the High court in L.P.A. No. 88 of 2003 dated 10.4.2003 and modify the order as indicated above. The appeal is disposed of accordingly. However, there shall be no order as to costs.

The rent now fixed at Rs. 500 per month shall be deposited with respondents within two weeks from the date of receipt of the copy of the judgment failing which the penal order dated 15.6.2001 whereby 5% cut out of total pension amount payable to the appellant was withheld permanently shall come into force.

N.J.

Appeal disposed of.