

Umesh Kumar Sinha

v.

State of Bihar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.V. RAVEENDRAN HON'BLE MR. JUSTICE R.M. LODHA

Umesh Kumar Sinha v. State of Bihar & Others

Civil Appeal No. 3398 Of 2010 | 16-04-2010

1. Leave granted.

2. The appellant retired on 31.3.1998 while serving as the Managing Director of Bihar State Pharmaceutical and Chemical Development Corporation Ltd. (for short 'the Corporation'). He was suspended pending inquiry and disciplinary proceedings were initiated against him, when he was in service. The disciplinary proceedings were continued after his retirement on 31.3.1998. The Enquiry Officer submitted a report holding that five out of the nine charges were proved. Thereafter, the disciplinary authority by order dated 1.10.2002 imposed the punishment of forfeiture of entire gratuity under Rule 43(b) of the Bihar Pension Rules ('Rules' for short). The appellant filed a writ petition praying that the said order dated 1.10.2002 be quashed. The writ petition was dismissed by a learned Single Judge of the Patna High Court on 23.5.2006. The Letters Patent Appeal was also dismissed on 16.1.2007. The Special Leave Petition filed by the appellant was dismissed by this Court on 10.7.2007. However, as the appellant submitted that the High Court had not considered the issue whether gratuity of the appellant could not be forfeited, this Court observed that if he so desires, the appellant may file a review petition before the High Court.

3. Appellant accordingly filed a review petition which was rejected on 22.1.2008. The said order is challenged in this appeal by special leave. Notice was issued on the said SLP, limited only to the quantum of punishment.

4. Rule 43(b) of the Bihar Pension Rules provides that the State Government could withhold or withdraw the pension wholly or any part of it and that the State Government has 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 the 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. Rule 27 of the Rules provides that pension includes gratuity. It is therefore evident that gratuity could be forfeited by way of punishment under Rule 43(b) of the Pension Rules.

5. The appellant contended that withholding of the entire gratuity was a harsh punishment which was highly disproportionate to the gravity of the charge that was held to be proved. The principal charge which was held to be proved was in regard to purchase of machinery, part payment for which was made by him even before its delivery. The appellant had defended himself by stating that the purchase order for the said machinery had been placed by his predecessor and having regard to the terms of the

contract he was bound to make payment and accordingly he made the payment of Rs. 72,387/-. Be that as it may. Having regard to the nature of misconduct for which the punishment was imposed, the forfeiture of the entire gratuity appears to be excessive and disproportionate. Forfeiture of half of the gratuity would serve the ends of justice.

6. On the facts and circumstances, we are of the view that the punishment should be reduced to forfeiture of only 50% of the gratuity. The balance of the gratuity should therefore be released to the appellant. The appeal is allowed in part accordingly.

Umesh Kumar Sinha v. State of Bihar & Others