IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.518 of 1999

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Bachchan Prasad Singh, son of Late Kamrup Prasad Singh, resident of village-Pandui, P.S. Jehanabad District-Jehanabad

.... Petitioner/s

Versus

1. The Bihar State Road Transport Corporation through its Managing Director, Bihar State Road Transport Corporation, Patna
2. The Managing Director, Bihar State Road Transport Corporation, Patna
3. The Chief of Operation, Bihar State Road Transport Corporation, Patna
4. The Works Manager, Central Works Shop, the Bihar State Road Transport Corporation, Patna.

.... Respondent/s

with

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Miscellaneous Jurisdiction Case No. 145 of 2004

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Bachchan Prasad Singh, son of Late Kamrup Prasad Singh, resident of village-Pandui, P.S. Jehanabad District-Jehanabad

.... Petitioner/s

Versus

1.The Bihar State Road Transport Corporation through its Managing Director, Bihar State Road Transport Corporation, Patna
2.The Managing Director, Bihar State Road Transport Corporation, Patna
3. The Chief of Operation, Bihar State Road Transport Corporation, Patna
4. The Works Manager, Central Works Shop, the Bihar State Road Transport Corporation, Patna.

.... Respondent/s

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Appearance :
(In CWJC No. 518 of 1999)
For the Petitioner/s : Mr. Siya Ram Shahi & Ms. Shally Kumar
For the Respondent/s : Mr. P.K.Verma, Sr. Advocate With Mr. Nand Kr. Singh
(In MJC No. 145 of 2004)
For the Petitioner/s : Mr. Siya Ram Shahi & Ms. Shally Kumari
For the Respondent/s : Mr. P.K.VERMA

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 07-04-2015

1. Heard Mr. Siya Ram Shahi, learned counsel for the petitioner and Mr. P.K. Verma, learned senior counsel appearing on behalf of the respondents Bihar State Road

Transport Corporation, Patna.

2. The petitioner has sought for following reliefs in the present writ application:-

> "a) For issuance of an appropriate writ commanding the respondents to give notional promotion to the petitioner on the post of Divisional Accountant from the date i.e. 24.8.1992, the date on which the Juniors to the petitioner have been so promoted with consequential benefits and further commanding the respondents to pay the post retirement benefits to the petitioner i.e. C.P.F., Gratuity, Unutilized Leave encashment with statutory interest of 18%.
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> b) For issuance of an appropriate writ commanding the respondents to pay the full salary of the suspension period i.e. from 24.6.1996 to 31.12.1998."

3. During the pendency of the writ application, the Corporation appears to have passed two orders dated 6.12.1999 which has been brought on record through counter affidavit by the respondents Corporation. By the said two orders punishments of recovery to the tune of Rs. 44,420.24 and Rs. 20,699.00 respectively has been imposed on the basis of the findings of the Inquiry Officer in a disciplinary proceeding. It is to be noted that the petitioner had already retired prior to institution of the writ application. These orders dated 6.12.1999

came to be passed much after the petitioner retired upon attaining the age of superannuation, from the service of the Corporation.

4. By way of amendment, these orders are sought to be challenged in the present writ application. By an order dated 11.1.2000, this Court had stayed recovery of the said amount from his retirement benefits. I. A. No. 13064 of 1999 seeking amendment in the writ application in order to challenge the two orders dated 6.12.1999 is formally allowed. The averments in the said I. A. No. 13064 of 1999 have been treated to part of the writ application.

5. From the relief sought for in the writ application, it will appear that the petitioner sought for two directions from this Court. Firstly, he has sought a direction to the respondents to give him notional promotion on the post of Divisional Accountant with effect from 24.8.1992. i.e. the date on which persons junior to the petitioner were so promoted. The second relief is for direction to the respondents to pay the post retirement benefits to the petitioner i.e. Contributory Provident Fund, Gratuity, Leave Encashment equivalent to unutilized

Earned Leave with interest at the rate of 18%. He has also sought for a direction for payment of full salary for the period 24.6.1996 to 31.12.1998.

6. The petitioner, who was working as Accounts Superintendent had attained the age of superannuation on 31.12.1998 when he was under suspension. The suspension was revoked on the date of retirement and he was allowed to retire.

7. As regards the petitioner's claim for grant of notional promotion on the post of Divisional Accountant with effect from 24.8.1992, I am of the view that such relief cannot be granted in exercise of power under Article 226 of the Constitution of India after so much of delay. Such claim being belated one cannot be entertained and the relief to that extent cannot be allowed.

8. A question has arisen, in the facts and circumstances of the case, as to whether the Corporation had any jurisdiction to take any disciplinary action against the petitioner after he was allowed to retire, upon attaining the age of superannuation, there being no provision under the Regulations of the Corporation conferring upon it any

jurisdiction to continue with the disciplinary proceeding, initiated when an employee was in the service of the Corporation.

9. From the pleadings in the writ application, it appears that through letter dated 28.12.1993 (Annexure-4), the petitioner was asked to explain his position with regard to several vouchers worth Rs. 61,076.67 which was shown as pending when he was posted at Biharsharif as Cashier. It was mentioned in the said letter that several vouchers were missing from the Divisional Office of the Corporation and, therefore, they remained unadjusted. The petitioner replied to the said communication through letter dated 16.3.1994 and appeared before the Chief Conductor of the Corporation taking a plea that he had in fact sent the vouchers to the Divisional Office. Thereafter, through memo no. 1536 dated 25.6.1996, the petitioner was put under suspension and a disciplinary proceeding was initiated against him with the service of charge-sheet. The charge related to misappropriation of money belonging to the Corporation. There was another charge-sheet served upon the petitioner in the year 1996. The allegation of

misconduct related to the period 1.9. 1988 to 30.9. 1994 when the petitioner was posted at Phulwarisharif. Till the petitioner attained the age of superannuation on 31.12.1998, no order could be passed against the petitioner in two departmental proceedings initiated against him. The suspension order was revoked by an order dated 31.12.1998 passed by the Managing Director of the Corporation, which is Annexure-10 to the writ application.

10. The petitioner filed the present writ application on 13.01.1999 seeking direction, inter alia, for payment of his post retirement benefits as well as salary for the period during which he had remained under suspension during the pendency of the writ application, as indicated above. On 6.12.1999 the Administrator of the Corporation passed two separate orders in two separate departmental proceedings, imposing upon the petitioner punishment of recovery of the amount which was said to have been misappropriated by him. Vide Memo No. 355 dated 6.12.1999 punishment of recovery of a sum of Rs. 44,420.20 has been imposed whereas through Memo no. 344 dated 6.12.1999 punishment of recovery of a sum of Rs. 20,599

has been imposed. It has further been clarified in the order through memo no. 355 dated 6.12.1999 that the petitioner shall not be entitled for any amount over and above the subsistence allowance for the period during which he remained under suspension.

11. Mr. Siya Ram Shahi, learned counsel appearing of the petitioner has submitted that the departmental proceedings against the petitioner came to an end after the petitioner was permitted to retire upon attaining the age of superannuation with effect from 31.12.1998. He has contended that there is no such provision under the Bihar State Road Transport Corporation Act, 1950 or under the regulations framed under Section 45(2) (c) of the said Act conferring jurisdiction upon the Corporation to continue with a departmental proceeding initiated prior to retirement of an employee, after his retirement. He has submitted that there is no such provision akin to Rule 43(b) of the Bihar Pension Rules under the said Regulation of Corporation on the basis of which a departmental proceeding initiated against an employee could be allowed to continue after superannuation of an employee. He has

submitted that the employer and employee relationship in case of Bihar State Road Transport Corporation completely ceases after an employee is allowed to retire. He has accordingly, submitted that the Corporation looses with entire disciplinary control over an employee after his superannuation. According to him, Bihar Pension Rules, 1950 are not applicable to the employees of the Corporation.

12. Mr. P.K. Verma, learned Senior counsel appearing on behalf of the respondents Bihar State Road Transport Corporation on the other hand, has submitted that Rule 43(b) of the Bihar Pension Rules is applicable to the employees of the Corporation and has relied upon decision taken by the Board of Directors of the Corporation in its first meeting held on 2.5.1959, a Photostat copy of the proceeding of which has been produced by him for my perusal. He has submitted with reference to the said proceeding that it was resolved in the first meeting that until the Corporation had framed its regulation under Section 45(2) (c) of the State Road Transport Corporation Act, 1950 the rules of Bihar Service Code, Bihar Tranvelling Allowance Rules, The Discipline and Appeal Rules, Conduct

Rules, Medical Attendance Rules and ***similar other Rules*** as normally applied to the Bihar State Government Servant would apply *mutatis mutandis* to all categories of Officer and Staff of the Corporation. He has submitted that in terms of the said decision of the Board of Directors taken in the first meeting, at least procedural part of Bihar Pension Rules would apply to the employees of the Corporation. He has also produced before me a copy of the clarification issued vide memo no. 7517 dated 13.12.2001 issued by the Administrator of the Corporation wherein, with reference to the said first meeting of the Board of Directors held on 02.05.1959, he has clarified that provisions of Rule 43(b) of the Bihar Pension Rules are applicable mutatis mutandis in Bihar Road Transport Corporation in so far as they relate to payment of gratuity.

13. Mr. Verma, learned Senior counsel, referring to the said clarification has submitted that the decision of the Corporation to impose punishments upon the petitioner through impugned order dated 6.12.1999 even after his superannuation cannot be faulted with. He has submitted that though it is true that Bihar Pension Rules, 1950 are not

applicable to the employees of the Corporation for the purpose of payment of pension and gratuity but since gratuity has been treated to be pension under the Bihar Pension Rules, 1950, the procedure prescribed under Rule 43(b) of the said Rules can be applied for the employees of the Corporation for the purpose of withholding of gratuity or any part of it. He has further submitted that the Administrator of the Corporation, at the relevant point of time had the power to make regulations and he was well within his jurisdiction to issue the clarification dated 13.12.2001.

14. To me, submission made on behalf of the Corporation that the Corporation has jurisdiction to continue with a disciplinary proceeding initiated against its employees after his superannuation on the basis of clarification issued by the Administrator dated 13.12.2001 (supra) to the effect that only 43(b) of the Bihar Pension Rules shall be applicable to the employees of Corporation, appears to wholly illogical. In my opinion, on the strength of the said clarification dated 13.12.2001, no departmental proceeding can be allowed to continue after superannuation of an employee as admittedly,

Bihar Pension Rules, 1950 are not applicable to the employees of the Corporation. I have no hesitation while holding it totally unjustified and arbitrary action on the part of the Administrator of the Corporation to have issued a clarification referring to the decision taken in the first meeting of the Corporation that the rules governing the service condition of the employees of the State Government shall apply mutatis mutandis to the employees of the Corporation and, therefore, Rule 43(b) of the Bihar Pension Rules, 1950 shall be applicable to the employees of the Corporation; despite the fact that Bihar Pension Rules have no application in case of employees of the Corporation.

15. The relevant portion of the decision in the first meeting of the Board of Directors of the Corporation is being reproduced hereinbelow, on which much emphasis has been given by learned senior counsel appearing for the Corporation:-

> "2. Resolved that until the Corporation has framed its Regulations under Section 45(2) (c) of the State Road Transport Corporation Act, 1950, the Rules of Bihar Service Code, the Bihar Travelling Allowance Rules, the Discipline and Appeal Rules, the Conduct Rules, Medical Attendance Rules and similar other rules, as normally apply to the Bihar State Government Servants shall apply mutatis mutandis to all categories of officers and staff of the Corporation."

16. A bare reading of paragraph 2 as quoted above, shows that it was decided that until the Corporation framed its Regulations under Section 45(2) (c) of the Act, Rules applicable to the Government servants were to be made applicable mutatis mutandis to all categories of the Officers and staff of the Corporation. There is no dispute about the fact that various regulations have been framed by the Corporation dealing with the service conditions of the employees of the Corporation. It has been submitted Mr. Verma, learned Senior Counsel appearing on behalf of the Corporation that the Corporation has its own scheme for payment of provident fund and gratuity to its employees. Under the said scheme, the employees of the Corporation are not entitled to monthly pension. In such circumstance, it was highly arbitrary on the part of the Administrator to have issued a clarification to the effect that Rule 43(b) of the Bihar Pension Rules were applicable mutatis-mutandis to the Bihar State Road Transport employees. It is true that the Corporation by way of Regulations could have made similar provision as contained in Rule 43(b) of the Bihar Pension Rules or even could have framed Regulations with

reference to Rule 43(b) of the Bihar Pension Rules but in no circumstance, by way of clarification, the Administrator could have issued the said memo dated 13.12.2001 to the effect that Rule 43(b) of the Bihar Pension Rules was applicable to the employees of the Corporation despite the fact that Bihar Pension Rules, 1950 itself are admittedly not applicable in case of the employees of the Corporation, by invoking paragraph 2 of the decision taken in first meeting of the Board of Directors of the Corporation.

17. Accordingly, I am of the view that no disciplinary action could have been taken against the petitioner once he retired from service after attaining the age of superannuation on 31.12.1998, in the absence of any statutory provisions or regulations in this regard. The Corporation was free to recover the amount alleged to have been misappropriated by the petitioner in accordance with law but not by invoking any power which the Corporation did not have. The Corporation could not have imposed punishment in a proceeding which came to an end upon the retirement of the petitioner. The orders dated 6.12.1999 as contained in Annexures-A and B to

the counter affidavit are accordingly, quashed.

18. Since the respondents allowed the proceeding to lapse without any final decision till the date of petitioner's superannuation, he will be entitled for full salary during which he remained under suspension i.e. from 24.6.1996 to 31.12.1998. The Court directs the Bihar State Road Transport Corporation, Patna to pay the entire salary for the said period after adjusting subsistence allowance, if already paid, within a period of three months from the date of receipt/production of a copy of this order. The petitioner will be entitled for interest at the rate of 8% per annum from 1.1.1999 till the date of actual payment on the aforesaid amount of remaining salary. If any amount is still payable to the petitioner against his retiral benefits it must be paid to him within the aforesaid period of three months.

19. I have taken note of the fact that by an interim order dated 11.1.2000, passed by this Court in this case, the recovery from the petitioner's retirement benefits was stayed. For the present, the Court does not intend to proceed with the contempt matter alleging disobedience of the said order dated 11.1.2000 though it appears that the said order has been

violated. It is made clear, in the background of the conduct of the respondents, that if the amount which the petitioner is entitled to in the light of the present order is not paid within the period as prescribed, this Court will take serious note of it and will consider initiating contempt proceeding against the concerned officials of the Corporation.

20. CWJC No. 518 of 1998 is accordingly allowed and M.J.C. No. 145 of 2004 is disposed of.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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