

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.846 of 2008**

**IN**

**Civil Writ Jurisdiction Case No. 11667 of 2005**

=====

Dhirendra Nath Majee, S/o Late Bihari Lal Majee, R/o Ganga Villa Apartment, Flat  
No. C/F Floor, B.M. Das Road, P.S. Pirbahore, District-Patna-800 004.

.... .... Appellant/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineer.
2. The Commissioner-cum-Secretary, Public Health Engineering Department,  
Government of Bihar, Patna.
3. The Additional Secretary, Public Health Engineering Department, Government  
of Bihar, Patna.
4. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering  
Department, Government of Bihar, Patna.
5. The Accountant General (A/E) Birchand Patel Path, Bihar, Patna.
6. The Deputy Secretary, Public Health Engineering Department, Government of  
Bihar, Patna.
7. The Joint Secretary, Public Health Engineering Department, Government of  
Bihar, Patna.

.... .... Respondent/s

=====

**Appearance :**

|                            |   |                                                                 |
|----------------------------|---|-----------------------------------------------------------------|
| For the Appellant/s        | : | Mr. Binod Kumar Singh, Advocate<br>Mr. Vagisha Pragya Vacaknavi |
| For the State              | : | Md. Anis Akhtar, A.C. to G.A.1                                  |
| For the Accountant General | : | Mr.Rabindra Kumar Priyadarshi, Adv.                             |

=====

**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**  
**and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**  
**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 08-05-2015**

By this Intra Court Appeal, the appellant, who was  
the writ petitioner, challenges the Judgment and Order of the  
learned Single Judge dated 13.08.2008 passed in C.W.J.C. No.  
11667 of 2005 (*Dhirendra Nath Majee Versus The State of Bihar &  
Ors.*), whereby and whereunder the writ petition was dismissed by  
the learned Single Judge.



The writ petitioner had sought quashing of the order dated 17<sup>th</sup> August, 2005, which order was communicated to the writ petitioner by the Deputy Secretary to the Government in the Public Health and Engineering Department (for brevity, PHED), whereby the Government held that the writ petitioner wrongly continued in service from 01.06.1996 to 02.03.1998 and treating it to be a grave misconduct, directed payment of only 90% pension, meaning thereby the pension was withheld permanently to the extent of 10%.

We have heard learned counsel for the writ petitioner/appellant and the learned counsel for the State. There is no controversy in relation to facts.

The writ petitioner was an Engineer in PHED. On 15.03.1996, he was posted as Technical Secretary to the Regional Chief Engineer at Bhagalpur. The writ petitioner/appellant does not dispute that as per service record, he should have superannuated on 31.05.1996, his date of birth being 08.05.1938. It is normally expected that being a Gazetted, Senior Class-I Officer, on crossing the date of superannuation, he should have handed over charge and gracefully left office, but that did not happen. He continued. Not only that, on 02.08.1996, he, as Technical Secretary to the Regional Chief Engineer, was entrusted with certain enquires in relation to a



starred question raised in the Legislative Assembly. The writ petitioner continued to work. Then on 14.01.1997, a notification was issued by the State Government transferring the writ petitioner and appointing him as In-charge, Chief Engineer, PHED, Bhagalpur Region in his own pay-scale. Then by notification dated 05.04.1997, in view of administrative exigency, in addition to being In-charge, Chief Engineer, PHED, Bhagalpur, he was made *Ad hoc* Regional Chief Engineer, PHED, Muzaffarpur Region as well. It goes without saying that on such notification, the writ petitioner joined and assumed duty, as assigned to him, without demur or protest and without, at any point of time, bringing notice to the authority that he had, in fact, superannuated on 31.05.1996. Then by notifications dated 06.05.1997 and 24.12.1997, the writ petitioner was appointed as Inquiry Officer by the State in two departmental proceedings against officers of the PHED. On 20.10.1997, the Accountant General Office brought to the notice of the State Government that the writ petitioner had superannuated with effect from 31.05.1996 but substantial money was due from him which were being deducted in installments and there were still large amounts to be recovered. The Accountant General looked forward for direction and guidance of the State in this regard. Thereafter, the writ petitioner was asked to produce his



matriculation certificate to verify his date of birth in order to ascertain his date of superannuation. The writ petitioner and the State agreed that thereafter the writ petitioner did not turn up in office in response to the same nor submitted anything in writing in response thereto. In due course of time, in the year 2001, the writ petitioner, for the first time, filed his papers for payment of retiral dues which were also found to be incomplete. He then moved this Court in a writ proceeding claiming pensionary benefits and order being passed thereafter, 90% pensionary benefits were provisionally sanctioned on 10.01.2003. Then writ petitioner was issued a notice on 31.12.2003 pointing out that writ petitioner should have retired on 31.05.1996 but knowing fully well this fact, he wrongfully continued in service till 02.03.1998. He was a Class-I Officer who was fully aware of his date of superannuation and as such, he had committed gross irregularity and misconduct, why action should not be taken in terms of Rule 139 of the Bihar Pension Rules to curtail his pensionary benefits? The writ petitioner replied by his show-cause dated 13.01.2004 *inter alia* stating that he had not deliberately continued in Government service. He was asked to continue by superior officers, which he was bound to obey. He had never claimed any salary for the period of overstay nor did he draw any salary. He admitted that after the due date of

superannuation, no salary slip was issued by the Accountant General, Bihar to him and as such, it was not a case for penalizing him by way of curtailment of his pensionary benefits.

He further stated that he was being victimized because he moved the High Court for claiming his pensionary benefits. He signed the show-cause as retired In-charge, Chief Engineer. State not being satisfied, issued the impugned order dated 17.08.2005 holding that though the writ petitioner had not claimed any salary for the period of overstay, yet the deliberate act of overstaying without informing the authorities was a grave act of misconduct and as such, 10% of pensionary benefits were ordered to be withheld. It is this order that was challenged in the writ proceedings.

The learned Single Judge dismissed the writ petition upholding the order of the State Government curtailing pension *inter alia* holding that the writ petitioner, being a Senior Class-I Officer, was supposed to be aware of his date of retirement. He managed to continue in office trying to hold on to high post. Learned Single Judge placed reliance on a purported letter dated 13.03.1996 (not very clear in the Annexure) purported to have been written to the Secretary, PHED, Department of Government of Bihar, Patna by the writ petitioner laying claim for promotion to the



post of Chief Engineer in which letter he had stated that his date of birth is 08.02.1943 and therefore, he had more than 3 years service still left and he should, accordingly, be considered for the post of Chief Engineer, being the Senior most in his cadre. Learned Single Judge held that this letter is a clear indication as to how the writ petitioner misled the Government in two extended period only to get the coveted post of Chief Engineer.

Learned counsel for the writ petitioner/appellant has submitted that this document was brought on record by the State by a counter affidavit on the last day of hearing of the case with no chance to the writ petitioner to file rejoinder. Therefore, he submits that the learned Single Judge ought not to have relied on such a document without granting chance to the writ petitioner to rebut the authenticity or correctness thereof.

In our view, the submission, as made by the writ petitioner on this technical aspect, is correct. But, in our view, it makes little or no difference, for we have examined the entire records all over again and heard the parties in detail choosing to ignore this alleged communication of the writ petitioner. We still come to the finding that the curtailment of pensionary benefits cannot be questioned and the writ petition was still liable to be dismissed. The reasons are obvious.



First, so far as facts are concerned, writ petitioner/appellant strongly contended that his date of birth is not in dispute nor does he dispute. He was to superannuate on 31.05.1996. We must not forget that writ petitioner was one of the Senior most Class-I Officers of the State. He was of the rank of Chief Engineer. He cannot be ignorant of the consequences of superannuation. On fact, there would be three pertinent questions; first, knowing that he was to superannuate on 31.05.1996 why did he not demit office on the next day to his superannuation. It is neither petitioner's case nor is it a fact that on the date of his superannuation or immediately thereafter, he was asked to continue. Still he continued. There is no answer as to why? We say this because the first letter assigning him new work was issued on 02.08.1996 when he was asked to enquire into a starred question in the Legislative Assembly. This was more than two months after his date of superannuation which was undisputed on 31.05.1996. He never informed the authorities that he had already superannuated rather he was still in the office to receive the letter as Technical Secretary. Why? In the show cause, he has stated that he did not claim any salary. The question would be, why? If he was made to continue in service, he had legitimate claim to salary. Why did he never claim his salary but claimed only post. The third is that even

though he knew he was to superannuate on 31.05.1996 and he was, as per procedure required, to submit his pension papers for finalization 8 months before superannuation, why he did not do so and he did it for the first time in 2001 and that too in an incomplete manner. There is no answer.

From the post of Technical Secretary to the Chief Engineer at Bhagalpur, he then was made In-charge, Chief Engineer, Bhagalpur. Any officer of Class-I would know that after superannuation, even if it is re-employment, there cannot be such a promotion. He did not either protest or did he bring to the notice to the authority that he had superannuated and could not be made In-charge, Chief Engineer. That was not the end. He was then favoured with dual charge and made In-charge, Chief Engineer, Muzaffarpur as well. Surely, even in normal course, such a thing does not happen. How this happened, we are surprised. Again, he did not inform the authorities. He did not claim any payments. He was fully aware and conscious so as to not demand pay slips after superannuation but even then he accepted the higher post. He chose not to ask any remuneration. The reason is simple, because the Accountant General has already communicated to the State that he had already superannuated and pay slips could not be issued. This was in relation to certain recoveries that had to be made from him.



Thus, in the aforesaid facts, to say that the writ petitioner was not aware of the date of superannuation or he did not intentionally continue or he did not dishonestly continue cannot be accepted.

Though we have noted that we would not refer to the alleged letter of the writ petitioner by which he had changed his date of birth from 08.05.1938 to 08.02.1943 but if this letter is taken into account then it answers all the queries because he then would be continuing in service for almost another five years and that explains why all these promotions and responsibilities were given. He was trying to mislead for holding high office. However, we do not rest our judgment on that.

The facts, noted above, are eloquent in our view to speak about the misdemeanour on part of the petitioner. Factually, it is inescapable that writ petitioner deliberately remained in office accepting higher responsibility without demur, not commonly given and therefore, factually it amounts to gross misconduct.

However, learned counsel for the writ petitioner submitted that in terms of Rule 139(c) of the Bihar Pension Rules, two things are to be kept in mind; one is gross misconduct must be while in service and secondly, any such misconduct by virtue of Rule 43(b), after superannuation must be within 4 years when proceedings are started. In this case, action that was proposed to be



taken by issuance of the show-cause notice was on 31.12.2003. We regret our inability to accept the submissions. The charge here is not of any misconduct during the period of service. Rule 43(b) read with 139(c) of Bihar Pension Rules deals with a delinquency in course of service which would have adverse effect on pensionary benefits. The present case does not deal with any such matter. Therefore, the case law and the judgments in relation to either Rule 43(b) or Rule 139(c) of the Bihar Pension Rules have no relevance to the submission that unless the delinquency is of service period, pensionary benefits cannot be curtailed. The answer is no. One may make reference to Rule 43(a) of the Bihar Pension Rules, which is quoted herein below:

*43(a). Future good conduct is an implied condition of every grant of pension. The Provincial Government reserves 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.*

Therefore, these, being statutory rules, provide that future good conduct, i.e. conduct even upon superannuation, would also be a condition for receiving full pension. It then provides that curtailment of pensionary benefits can be done because of any act even after superannuation when it provides that the Government may themselves have a right to withhold or withdraw a pension or part thereof if the pensioner is convicted of a serious crime or found guilty of grave misconduct. This grave misconduct would be a misconduct post superannuation. The submission of the learned counsel then is that the show cause notice has been issued with reference to Rule 139 and not to Rule 43(a) of the Bihar Pension Rules. In my view, it is well settled that mere wrong nomenclature of a Rule or the other makes little difference if the power is otherwise available to the authorities. Learned counsel does not dispute the true import of Rule 43(a) and thus, does not dispute the power of the State to curtail pensionary benefits for a dereliction committed after superannuation. If that be so, then the power being there, misquoting a wrong provision in the show cause does not invalidate or take away the jurisdiction or otherwise which is there.



The learned counsel for the writ petitioner submits that even Rule 43(a) talks of a grave misconduct and therefore unless there is a finding of grave misconduct in any proceeding, the provisions cannot be invoked. He is correct. But does it necessarily have to be a departmental proceeding, for the writ petitioner, who is no more an employee. The master-servant relationship broke with the superannuation. The only requirement, to us, appears to be an enquiry consistent with procedural fairness, that is, in compliance with principles of natural justice. Writ petitioner does not deny that a detailed show cause was issued to him clearly pointing out the fact that he had deliberately overstayed. Writ petitioner did reply, as we have noticed above. Upon consideration of his reply, orders curtailing his pensionary benefits were passed. Can it be said that any prejudice was caused to the writ petitioner. In our view, there was no prejudice. The writ petitioner knew what was required of him, what was the allegation against him and he also took stand in the show cause as filed by him. It was then for the authorities to take a view whether to accept it or not. The facts, as indicated above, show that the authorities did not commit any wrong by rejecting the defence as put forward by the writ petitioner. The expression “guilty of grave misconduct” is not a magic expression. It is essential that he should have committed a grave misconduct. If



continuing in office for almost two years after the date of superannuation can it not be said that it is a grave misconduct. Accepting higher responsibilities as an In-charge Chief Engineer, Bhagalpur and then in addition thereto In-charge Chief Engineer, Muzaffarpur, without pointing out that he had since long superannuated, can it be said that he was not conscious of his default on his part? Why did he not ask his salary? For the reason that post was more important than the salary, obviously. Why he did not put his pension papers, because he knew that the day he signed his pension papers, he would not get the post. All these clearly show that he was all along knowing that he was to superannuate, but somehow he managed to continue and get coveted post of not one but two regions as Chief Engineer.

To the contention of the writ petitioner/appellant that when the Government appointed the writ petitioner to make enquiry or when the Government appointed the writ petitioner as an enquiry officer or when the Government appointed the writ petitioner as In-charge Chief Engineer, it was the fault of the Government and not that of the writ petitioner and writ petitioner cannot be made to suffer for that, we are unable to accept the submission for the simple reason that being a Senior Class-I Officer, once he knew that he had crossed the date of

superannuation, even if the Government by mistake or otherwise had issued those letter of appointment, he should have at least informed the Government that he was past his service period and could not take such orders from the Government requesting the Government to withdraw those orders or at least sought re-employment. He took no steps in this regard, rather he waited and did not file his retiral papers for finalization.

Thus, in view of the aforesaid facts and circumstances, we are not inclined to interfere in the matter even though we feel that the writ petitioner has been let off rather lightly, in the facts and circumstances.

This appeal is, accordingly, dismissed.

**(Navaniti Prasad Singh, J.)**

**(Rajendra Kumar Mishra, J.)**

Shail/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|