

Letters Patent Appeal No 1091 of 2012
IN
Civil Writ Jurisdiction Case No 20156 of 2011

In the matter of an appeal under Clause 10 of the Letter Patent of the Patna High Court's Rule.

1. The State Of Bihar through Chief Secretary Old Secretariat Building, Patna
2. The Principal Secretary Animal and Fisheries Department (Animal Husbandry), Govt. Of Bihar, Old Secretariat Building, Patna
3. The Special Secretary Animal and Fisheries Department (Animal Husbandry), Govt. Of Bihar, Old Secretariat Building, Patna
4. The Under Secretary Animal and Fisheries Department (Animal Husbandry), Govt. Of Bihar, Old Secretariat Building, Patna

.... Appellant/s

Versus

Dr Bimal Kant Das S/O Shri Jitendra Nath Das R/O Village-Dakharam, P.S.- Bahera, District- Darbhanga
2. The Accountant General, Bihar, Beer Chand Patel Path, Patna

.... Respondent/s

Appearance :

For the Appellant/s : Mr Mithilesh Kr Pathak, SC VII &
M/s Anuj Kr, Arun Kr Pd, ACs to SC VII

For Accountant General : Mr Manikant Mishra, Advocate

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Inspite of notice having validly been served on respondent No 1, who was the writ petitioner, no one had appeared in

the matter yesterday inspite of repeated calls. Having heard the learned counsel for the State and the Accountant General, we ordered for listing the matter under the heading For Orders today giving yet another opportunity to the private respondent to appear but inspite of there being a vakalatnama and having waited sufficiently, no one has appeared. We, accordingly, proceed to decide this appeal.

2 The writ petitioner was a Touring Animal Husbandry Officer in the Department of Animal Husbandry, Government of Bihar. He is alleged to be one amongst the hundreds who were involved in the infamous AHD Scam. The first information report was instituted against him amongst others at the behest of the Central Bureau of Investigation and Regular Case was registered. Writ petitioner was arrested. He was put under suspension on 02.03.1996. He continued under suspension and superannuated on 31.07.2002. The criminal proceedings against the writ petitioner culminated in his conviction and being sentenced to rigorous imprisonment of different terms upto four years, he filed an appeal before the Jharkhand High Court which has been admitted and after about two years, he was released on bail. Having been convicted as such, the Department invoked Rule 43 (a) of the Bihar Pension Rules, 1950 (hereinafter referred to as the Rules) and orders were passed forfeiting all his pensionary benefits. It is challenging this action of

the Government that the writ petition was filed.

3 After hearing the parties, the learned Single Judge, by his judgment and order dated 14.02.2012 as passed in CWJC No 20156 of 2011, set aside the order of forfeiture of pensionary benefits solely on the ground that the writ petitioner having preferred criminal appeal against his conviction, appeal being continuation of the original proceedings, it would be deemed that the guilt of petitioner was a matter still subjudice and, therefore, resort to Rule 43 (a) or for that matter (b) of the Rules could not be taken.

4 Learned counsel for the State, which is in this intra-Court appeal, vehemently submits that this analogy of appeal, being continuation of the proceedings, has absolutely no application. He further points out that several similar employees, under similar circumstances, had filed different writ petitions in this Court. All writ petitions had been dismissed. The contentions on behalf of the writ petitioner were all the same. In those cases, the employees' intra-Court appeal also did not change the situation. In such a situation, the order of the learned Single Judge cannot be sustained.

5 We have heard the matter and considered the same. We are afraid, the learned Single Judge was not correct in the legal perspective.

6 Firstly, a reference to Rule 43 of the Rules would

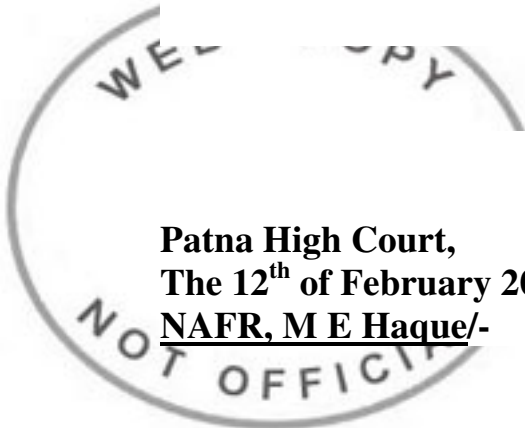


show that no sooner a Government employee is held guilty by a criminal court of an offence of embezzlement of Government money, it would be in conflict with the first part of Rule 43 (a) of the Rules which states that future good conduct is an implied condition of every grant of pension. Thus, upon a trial by a Court of competent jurisdiction, the writ petitioner was found guilty. He filed an appeal. The appeal was admitted For Hearing and ultimately the High Court of Jharkhand released him on bail.

7 Admitting an appeal and releasing a person on bail is of no consequence in respect of conviction inasmuch as mere preferment of appeal does not amount to either stay or annulment of the judgment of conviction. For this, there is Section 389 in the Criminal Procedure Code where and where alone the appellate Court has authority to suspend the sentence and the conviction. That having not been done, the conviction cannot be wished away and once the conviction continues, it cannot be held, by any stretch of imagination, that the powers under Rule 43 (a) or (b) could not be invoked by the State.

8 Thus, on this short issue itself, we have to allow the appeal of the State and set aside the order of the learned Single Judge holding that the writ petition was not maintainable and ought to have been dismissed as such. This appeal is allowed. The order of the

authorities forfeiting the pensionary benefits of the writ petitioner is restored.



**Patna High Court,
The 12th of February 2015,
NAFR, M E Haque/-**

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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