

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15484 of 2008

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Kedar Nath Rai, Son of Late Ramashish Rai, Resident of Village- Rup Sagar,
Police Station- Nawa Nagar, District- Buxar. Petitioner.

Versus

1. The State of Bihar through the Secretary, Home (Special) Department,
Government of Bihar.
 2. The Commandant General, Bihar Home Guards, Chhajubagh, Patna.
 3. The Addl. General, Bihar Home Guards, Chhajubagh, Patna. Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Verma, Sr. Advocate
Mr. Anil Kumar Dwivedi, Advocate
For the Respondent/s : Mr. (SC1)

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 04-07-2016

Heard learned counsel for the petitioner and the State.

2. The petitioner seeks quashing of the order, dated 18.07.2007, issued vide Memo no. 1774, dated 03.08.2007, by which respondent no.3 has compulsorily retired the petitioner in exercise of power under 43 (b) of the Bihar Pension Rules.

3. The short facts necessary for disposal of the case is being indicated herein below:

In the year 1988, the petitioner was holding the post of Inspector in Bihar Grih Raksha Vahini. In the year 1988, a departmental proceeding, being Departmental proceeding no. 11/88 was initiated against him for as many as four charges. The enquiry officer held the petitioner guilty of three charges, while he was exonerated of one charge.



4. On the basis of the enquiry report, the disciplinary authority awarded punishment of compulsory retirement on 22.10.1992 after issuing second show-cause notice. An appeal preferred by the petitioner was also dismissed on 12.03.1999. During the pendency of the appeal, the petitioner had superannuated w.e.f. 31.10.1998. The petitioner challenged the order of punishment by filing CWJC No. 5122 of 1999. The learned Single Judge allowed the writ application and quashed the order of punishment, dated 22.10.1992, as the petitioner was not served copy of the enquiry report along with the second show-cause. The learned Single Judge disposed of the writ application in the following terms, which is quoted herein below:

“In the given facts and circumstances of the case, the case of the petitioner was required to be scrutinized with great care and caution and, in my opinion, full opportunity could have been given to the petitioner in accordance with the principles of natural justice.

Suffice it to say that non-service of enquiry report upon the petitioner, in this background, has prejudiced his case at great length and on this ground alone, the order of punishment is held to be violative of the principles of natural justice.

In the result, this application is allowed. Order impugned as contained in Annexure-7 is set

aside and at the same time the initial order of punishment dated 22.10.1992 is also set aside and the matter is remitted back to the authorities concerned to proceed in the matter in accordance with law after giving opportunity of hearing to the petitioner.

No costs.”

5. It is lamentable that neither the petitioner nor the State brought to the notice of this Court during the hearing of the writ petition, in the year 2004, that the writ petitioner had already superannuated w.e.f. 31.10.1998. Consequent to directions contained in the order, dated 07.10.2004, passed in CWJC No. 5122 of 1999, a show-cause notice was issued to the petitioner after a lapse of more than 2 ½ years on 04.06.2007. After providing an opportunity of hearing, the petitioner was again awarded the punishment of compulsory retirement by order, dated 18.07.2007 by the Director General-cum-Additional Commandant General, Bihar Home Guard.

6. The petitioner has assailed the impugned order on more than one ground. He submits that he has already retired in the year 1998 and as such no order of punishment of compulsory retirement could have been passed in any circumstances.

7. He next submits that after retirement even a pending proceeding has to be conducted in terms of Rule 43 (b) of the Bihar Pension Rules. Rule 43 (b) of the Bihar Pension Rules does not



authorize the appointing or disciplinary authority to inflict punishment of compulsory retirement or dismissal. He submits that conscious of the aforesaid position that Bihar Home Guard Headquarter issued a notice to the petitioner as to why a proceeding under Rule 43 (b) of the Bihar Pension Rules be initiated against him. Unfortunately, thereafter impugned order was passed without any proceeding under Section 43 (b) of the Bihar Pension Rules.

8. On the aforesaid grounds, the petitioner seeks quashing of the order of compulsory retirement, dated 18.07.2007 communicated on 03.08.2007 with all consequential benefits.

9. On the other hand, counsel for the State has justified the impugned order of compulsory retirement passed against the petitioner. He submits that there is no bar to passing of order of compulsory retirement even subsequent to retirement, if the proceeding has started prior to retirement of the employee and is in continuance of the same proceeding. He next submits that the petitioner has not preferred statutory appeal provided against the order of compulsory retirement passed by the Director General-cum-Commandant General, Bihar Home Guards.

10. I have heard the counsel for the parties and perused the materials on record.

11. Counsel for the State has raised the issue of maintainability of the writ application, as an alternative remedy is



available to the petitioner before the Government. I am not inclined to accept the plea of the State on the point of maintainability on the following grounds: Firstly; The writ application has been filed in the year 2008, and we are now in the year 2016, as such at this stage, I do not consider it appropriate to remit the matter to the forum of appeal. Secondly; This is second round of litigation and petitioner had already reached the superannuation age on 31.10.1998, as such the issue of maintainability is rejected on the aforesaid ground.

12. This takes me to the main issue of the case whether the authority could have passed an order of compulsory retirement against the petitioner after his retirement, even if the proceeding has been started much before his retirement. The Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA, Rules, 2015') vest power with the disciplinary authority to inflict both minor and major penalties. Rule 14 part (v) of the CCA, Rules, 2005 states that for good and sufficient reasons, both minor as well as major penalties can be imposed on a government servant. The punishment of compulsory retirement is one of the five punishments mentioned under the heading "major penalties". The relevant extract of Rule 14 of the CCA, Rules, 2015 is quoted herein below for easy reference:

"14. Minor and Major Penalties.- The following penalties may, for good and

sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties:-

- (i) xx
- (ii) xx
- (iii) xx
- (iv) xx
- (v) xx

Major Penalties:-

- (vi) xx
- (vii) xx
- (viii) xx
- (ix) xx
- (x) removal from service which shall not be a disqualification for future employment under the Government;
- (xi) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;”

13. It is evident from mere perusal of Rule 14 that the punishment can be inflicted only on a government Servant. After retirement, a person ceases to be a government servant and the relationship of master and servant comes to an end unless he continues to be so in view of deeming fiction or express provision under a law. In absence of any such provision to the contrary, a government servant, who has retired cannot be dismissed or compulsory retired, irrespective of the fact whether the proceeding



was continuing before the date of his superannuation, as Rule 14 of Bihar CCA Rules, 2005 would have no application after retirement. Nonetheless, the State respondents are not without any remedy. Rule 43 (b) of the Rules vests sufficient power with the authority to withhold/withdraw any pension or any part of it, whether permanently or for a specified period, and the right of ordering recovery from the pension of the whole or part of any pecuniary loss caused to Government, if pensioner is found in departmental or judicial proceeding to be guilty of grave misconduct or negligence. Rule 43 (b) of the Bihar Pension Rules, which is relevant in the context is quoted herein below:

“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 recovery from a pension of the whole or part of any pecuniary loss caused to Government if pensioner 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.”

14. The Deputy Commandant General, Bihar Home Guards vide his letter, dated 08.07.2005 rightly issued notice to the petitioner as to why a proceeding be not carried under Rule 43 (b) of

the Bihar Pension Rules. The respondents after proceeding in accordance with law under Rule 43 (b) of the Bihar Pension Rules could have imposed punishment mentioned under the Rules. The Rules do not authorize the respondent to pass an order of compulsory retirement. Thus under the existing law, though a Government servant can be proceeded even after retirement, but he can be subjected to punishment mentioned under Rule 43 (b) of the Bihar Pension Rules and not under Section 14 of the Bihar CCA Rules, 2005.

15. In the backdrop of the aforesaid discussions, the impugned order imposing punishment of compulsory retirement by the Director General-cum-Commandant General, Bihar Home Guards is not sustainable in law and is accordingly set aside. However, the disciplinary authority would be at liberty to proceed under Rule 43 (b) of the Bihar Pension Rules in accordance with law. The petitioner would duly co-operate.

16. The writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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