

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14250 of 2016

=====

Vishwanath Pandey, Son of Late Hira Lall Pandey, Resident of Village- Desari,
P.O.- Desari, P.S.- Desari, District- Vaishali.

.... Petitioner

Versus

1. The State of Bihar, through the Director, Primary Education, New Secretariat,
Bihar, Patna.
2. The District Education Officer, Vaishali.
3. The Block Education Officer, Vaishali.
4. The District Programme Officer (Establishment), Vaishali.
5. The Headmaster, Prathamik Vidyalaya, Kailabad, P.S.- Mahnar, District-
Vaishali.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Mishra, Advocate
Mr. Ajay Kumar, Advocate

For the Respondent/s : Mr. P. Sarthi GA-4
Mr. Mrigendra Kumar, AC to GA-4

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-11-2016

In the present writ petition the petitioner has prayed
for quashing of the Memo No. 6143 dated 14.08.2013 as well as
Memo No. 8161 dated 12.11.2013 issued and passed by the District
Programme Officer (Establishment), Vaishali whereby the claim of
the petitioner for grant of pension etc. has been rejected.



2. The petitioner was an Assistant Teacher in Primary School Kailabad, Mahnar, Vaishali. While in service, he was convicted in Sessions Trial No. 225 of 1985 / 130 of 1987 with life imprisonment by a court of session for a charge under Section 302 of the Indian Penal Code. His appeal against the judgment of conviction before this Court was also dismissed. In connection with the aforesaid criminal case, he was remanded to judicial custody during investigation on 20th March, 1987 and was subsequently released on bail on 18th January, 1988. After completion of trial, the trial court held him guilty of the charge. He was sentenced to rigorous imprisonment for life vide order dated 11th July, 1990 and was again sent to judicial custody on 11th July, 1990. After having served out the sentence, he was released from custody on 4th of December, 2003.

3. Thereafter, the petitioner claimed for his retiral benefits. It is not in dispute that the amount of GPF, Group Insurance and Earned Leave has already been paid to the petitioner as per rule. However, the claim of the petitioner for grant of pension was rejected vide impugned office order No. 6143 dated 14.08.2013 issued by the respondent no.4. Since there was typographical error in the order dated 14.08.2013, another office order was issued vide impugned Memo No.8161 dated 12.11.2013 respondent no.4 issued

a supplementary order whereby, it was intimated to the petitioner that the petitioner would also not be entitled for payment of gratuity.

4. Learned counsel for the petitioner has submitted that once the petitioner was released from custody after completing the sentence awarded to him by a criminal court, the State could not have refused to grant him pensionary benefit, as the offence alleged was not committed in discharge of his official duty. It is also submitted that since the petitioner was to retire on 31st of January, 2004, the respondents ought to have allowed him to submit his joining on the post after he was released from custody on 4th December, 2003.

5. *Per contra*, Learned counsel for the State has submitted that the petitioner was convicted by court of session on a serious charge under Section 302 of the Indian Penal Code and his appeal against the judgment of conviction and sentence has also been dismissed by this Court. He has served out the sentence and got released only after remaining in jail for fourteen years. He has contended that the Rule 43 (a) and (b) of the Bihar Pension Rules (For short 'Rules') disentitles an employee from getting pension if he is convicted of a serious charge in a judicial proceeding. The State has also taken a plea that the writ petition has been filed for

grant of pensionary benefits only. The issue of joining over the post after being released from jail was never raised by the petitioner and the petitioner cannot be allowed to raise such issues after 13 years.

6. I have heard learned counsel for the parties and perused the record.

7. Rule 43(a) and (b) of the Rules read as under:-

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

(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 the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the 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:

Provided that-

- (a) such departmental proceeding, if not instituted while the Government servant was on duty either before retirement or during re-employment;
 - (i) shall not be instituted save with the sanction of the State Government;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;
- (b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and
- (c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

8. The aforesaid Rules separately enable the State to withhold entire pension or any part of it if the pensioner is convicted of serious crime or held guilty of grave misconduct. Rule 43(b), however, prescribes conditions in which such proceedings, departmental or judicial, can be instituted if not instituted while the

Government servant was in service. In the present case, it is an admitted position that a criminal case was instituted against the petitioner while he was in service. Therefore, the case of the petitioner would be governed by Rule 43(a) of the Rules.

9. Rule 43(a) and (b) of the Rules clearly vest powers in the State Government to withhold or withdraw pension or any part of it, if the petitioner is convicted of serious crime or if he be guilty of grave misconduct.

10. The petitioner has been held guilty of charge of murder. No fault can be found in the action of the State if it has decided to forfeit the pension and gratuity of the petitioner on this ground.

11. This Court is not only a court of law, but is also a court of equity and good conscious. In **Shangrila Food Products Ltd. vs. Life Insurance Corporation of India and another [1996 (5) SCC 54]**, it has been observed that in exercise of jurisdiction under Article 226 of the Constitution, the High Court can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give parties complete and substantial justice. It has also observed that the writ jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of equity is to promote

honesty and fair play.

12. Keeping those principles in mind, this Court cannot allow the prayer of the petitioner. This Court is also of the opinion that an issue of not allowing the petitioner to join after being released from jail in 2003 cannot be permitted to be raised at this belated stage in 2016. Furthermore, public interest certainly demands that a government servant convicted of murder should not continue in service.

13. The writ petition, being devoid of any merit, is dismissed. However, there will be no order as to costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	30.11.2016
Transmission Date	NA