

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7321 of 2016

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1. Mahesh Jha Son of Late Krishna Jha Resident of village and P.O. Nagwas, P.S. Arer, District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna
2. Principal Secretary, Education Department, Government of Bihar, Patna
3. Director, Primary Education, Bihar, Patna
4. Regional Deputy Director of Education, Patna Division, Patna
5. District Programme Officer (Establishment) Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur, Adv.

For the Respondent/s : Dr. Anil Kr. Upadhyaya, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-11-2016

Heard Mr. Baidya Nath Thakur learned counsel for the petitioner and Dr. Anil Kumar Upadhyaya, learned S.C. 2 for the State.

In the nature of the order which this Court proposes to pass I would not be required to delve deep into the merits of the case.

Briefly stating, the petitioner feels aggrieved by the order bearing Memo No. 205 dated 2.4.2015 whereby in exercise of powers vested under Rule 43(a) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Pension Rules'), the pension payable to the petitioner has been forfeited as a whole.

Short facts leading to the impugned order is that the petitioner was proceeded against departmentally on charges of misconduct



following institution of a Vigilance Case bearing no. 59 of 2013. The vigilance case as well as the disciplinary proceeding proceeded along side and before the disciplinary proceeding could reach its conclusion, the petitioner superannuated with effect from 31.1.2015 without any final order being passed in the disciplinary proceeding. The disciplinary proceedings so initiated against the petitioner ultimately concluded in a dismissal order bearing No. 145 dated 25.2.2015 passed by the Director, Primary Education impugned at Annexure-12 but soon thereafter the Director realized his mistake and the serious error in the order of dismissal passed against a superannuated employee. Consequently he recalled the same by the impugned order bearing Memo No. 205 dated 2.4.2015 impugned at Annexure-13 whereby the pension of the petitioner has been forfeited. The issues raised by Mr. Thakur to question the order is that :

- (a) No proceeding under 'the Pension Rules' was initiated against the petitioner.
- (b) The petitioner was not put to notice on any such proceeding contemplated under 'the Pension Rules'.
- (c) Even if the department intended to proceed against the petitioner under 'the Pension Rules', it required a notice under the Rules; and
- (d) The appropriate authority under 'the Pension Rules' is the State Government and not the Director.



A counter affidavit is on record and Dr. Upadhyay learned State counsel while admitting to the legal position submits that the issue as regarding the conversion of a disciplinary proceeding initiated against a delinquent on his retirement into a proceeding under ‘the Pension Rules’ stands well settled and it does not require a formal order to be passed in this regard. Dr. Upadhyaya learned State counsel, however, is not able to contest the arguments of Mr. Thakur on the other issues advanced.

In view of the uncontested position reflecting from the impugned order, the forfeiture of pension of the petitioner passed in purported exercise of power under Rule 43(a) of the Pension Rules by the Director, Primary Education impugned at Annexure-13 cannot be upheld and is accordingly quashed and set aside. This Court, however, would not preclude the respondents to proceed in the matter in accordance with law and considering that the matter relates to a superannuated employee this Court would expect the respondents to conclude the proceedings within three months from today, in case they intend to proceed against the petitioner.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

AFR	
CAV DATE	
Uploading Date	03.12.16
Transmission Date	

