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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.323 of 2009

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Ram Dhani Singh, S/o Late Ramdeo Singh, resident of village-Rustampur, P.O. Rustampur, P.S.-Hulasganj, District-Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Vikas Bhawan, New Secretariat, Patna
2. The Bihar State Housing Board through Chairman-cum-Managing Director, 6 Mangles Road, Patna
3. The Chairman-cum-Managing Director, Bihar State Housing Board, 6 Mangles Road, Patna
4. The Secretary, Bihar State Housing Board, 6 Mangles Road, Patna
5. The Chief Engineer, Bihar State Housing Board, 6 Mangles Road, Patna
6. The Superintending Engineer, Bihar State Housing Board, Bahadurpur, Patna
7. The Executive Engineer, Bihar State Housing Board, Patna Division No. 3, Bahadurpur, Patna
8. The Regional Provident Fund Commissioner, R. Block, Road No. 6, Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. RUPAK KUMAR
For the State : Mr. Shiv Kumar, A.C. to G.A.-3
For the E.P.F. : Mr. Ranjit Sinha
For the Housing Board: Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Ram Kishore Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-10-2016

Heard Mr. Rupak Kumar, learned counsel appearing on behalf of the petitioner and Mr. Tej Bahadur Singh, learned senior counsel appearing for the Bihar State Housing Board along with Mr. Ram Kishore Singh. The State is represented by the State counsel.

The petitioner while praying for an appropriate direction to the respondents to pay his post retiral benefits has also questioned the order bearing Memo No. 1331 dated 04.3.2008 of the Secretary, Bihar

State Housing Board (hereinafter referred to as the 'Housing Board') whereby a recovery effected from his post retiral benefits to the tune of Rs. 37,531/-, has been approved.

The charge against the petitioner is discussed in the enquiry report, a copy of which is enclosed at Annexure-4 and charges the petitioner who held the post of a Junior Engineer with the Housing Board of causing loss to the 'Housing Board' to the tune of Rs. 19,929/- and Rs. 17602/-, the total amount coming to Rs. 37,531/- by making excess payment to the Contractor Hriday Narayan Singh in the matter of construction of 22 houses in village Jhangri Bigha and to Contractor Ashok Kumar Singh in respect of construction of 18 houses at Telbhadro in the District of Nawada. The Enquiry Officer after holding an enquiry submitted his report and in which he has mentioned that in absence of any evidence to support the charge the petitioner can be exonerated therefrom by giving the benefit of doubt. Vide Annexure-9 a show cause was issued to the petitioner enclosing a copy of the enquiry report dated 02.5.1991 vide Memo No. 6642 dated 01.9.1999 of the Secretary of the Housing Board requiring a reply from the petitioner on the enquiry report. The show cause notice so issued, contains no notes of disagreement. The petitioner filed an exhaustive reply vide Annexure-10 on 22nd September, 1999 before the Secretary and a similar reply was also filed before the Managing

Director, a copy of which is present at Annexure-11. No order was passed in the proceedings and in the meanwhile the petitioner superannuated on 31.7.2007 i.e. more than 7 years after the service of second show cause on 01.9.1999 and filing of reply. It is at the stage of payment of post retiral benefits to the petitioner that the respondents awakened from their slumber and while sanctioning payment of 288 days of unutilized leave vide Memo No. 212 dated 08.5.2008 that instructions were issued for recovery of Rs. 37,531/- stated to be the alleged loss quantified in the charge memo discussed in the enquiry report present at Annexure-4. A copy of such order is present at Annexure-15. The order was acted upon and recovery was effected as manifest from the calculation details present at Annexure-16. It is after action has been taken against the petitioner that a show cause was issued on 04.3.2009 vide Annexure-A to the counter affidavit as to why the amount be not recovered from his retiral benefits. The petitioner again submitted his show cause reply and with reference to a judgment of the Supreme Court rendered in the case of **Bhagirathi Jena vs. Board of Directors O.S.F.G. & ors.** since reported in **AIR 1999 SC 1841**, it was submitted that the proceedings so initiated has lapsed on the retirement of the petitioner on 31.7.2007 and cannot be continued thereafter. It is thereafter that the impugned order has been passed on 04.3.2008 impugned at Annexure-

1 and feeling aggrieved the petitioner is before this Court.

A rather short submission has been made by Mr. Rupak Kumar to question the entire proceedings in reference to the judgment rendered in the case of **Bhagirathi Jena** (supra). He submits that the proceedings so initiated, has died its natural death on his retirement on 31.7.2007 and the action of the respondents in first effecting recovery and then affirming the action by the impugned order, is also without sanction of law.

Although the argument of Mr. Rupak Kumar is sought to be contested by Mr. Tej Bahadur Singh, learned senior counsel for the 'Housing Board' to submit that the petitioner having caused financial loss to the Board, no fault can be found in the recovery process but then Mr. Singh has failed to satisfy this Court as to the source of power vested in the authorities of the Board to continue proceedings post retirement of the petitioner. The legal position in this regard is well settled and the moment a delinquent superannuates from service, then he goes beyond the disciplinary control of his employer unless the Service Rules enables such employer to continue the disciplinary proceeding by extending the service of the delinquent for the limited purpose of concluding the disciplinary proceedings.

While Mr. Rupak Kumar has contended that there is no such Rule enabling the 'Housing Board' to continue the disciplinary proceedings post retirement of an employee, Mr. Singh has not been able to contest such argument. Mr. Rupak Kumar has also placed reliance on a judgment of the Supreme Court since reported in (**2013) 6 SCC 515 (Anant R. Kulkarni Vs. Y.P. Education Society**) and in my opinion the conclusion recorded by the Supreme Court at paragraphs-18 to 24 is a complete answer to the issue posed before this Court.

For the sake of convenience, I am persuaded to reproduce the same hereinbelow:-

> 18. This Court in **NOIDA Entrepreneurs Association v. NOIDA & Ors.**, AIR 2011 SC 2112, examined the issue, and held that the competence of an authority to hold an enquiry against an employee who has retired, depends upon the statutory rules which govern the terms and conditions of his service, and while deciding the said case, reliance was placed on various earlier judgments of this Court including **B.J. Shelat v. State of Gujarat & Ors.**, AIR 1978 SC 1109; **Ramesh Chandra Sharma v. Punjab National Bank & Anr.**, (2007) 9 SCC 15; and **UCO Bank & Anr. v. Rajinder Lal Capoor,** AIR 2008 SC 1831.
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> 19. In **State of Assam & Ors. v. Padma Ram Borah**, AIR 1965 SC 473, a Constitution Bench of this Court held that it is not possible for the employer to continue with the enquiry after the delinquent employee stands retired. The Court observed:-
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> > *"7.....According to the earlier order of the State Government itself, the service of the respondent had come to an end on March 31, 1961.* ***The State Government could not by unilateral action create a fresh contract of service to take effect fromApril 1, 1961.*** *If the State Government wished to continue the service of the respondent for a furtherperiod, the State Government should have issued a notification before 31-3-1961."*
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> > *(Emphasis supplied)*

While deciding the said issue, the Court placed reliance on the judgment in **R.T. Rangachari v. Secretary of State,** AIR 1937 PC 27.

20. In **State of Punjab v. Khemi Ram,** AIR 1970 SC 214, this court observed:

"12. There can be no doubt that if disciplinary action is sought to be taken against a government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein."

21. In **Kirti Bhusan Singh v. State of Bihar & Ors.,** AIR 1986 SC 2116, this Court held as under:

"6.... We are of the view that in the absence of such a provision which entitled the State Government to revoke an order of retirement……. which had become effective and final, the order passed by the State Government revoking the order of retirement should be held as having been passed without the authority of law and is liable to be set aside. It, therefore, follows that the order of dismissal passed thereafter was also a nullity."

22. In **Bhagirathi Jena v. Board of Directors, O.S.F.C. & Ors.,** AIR 1999 SC 1841, this Court observed:

"7... There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

> 23. In **U.P. State Sugar Corporation Ltd. & Ors. v. Kamal Swaroop Tondon,** (2008) 2 SCC 41**,** this Court dealt with a case wherein statutory corporation had initiated proceedings for recovery of the financial loss from an employee after his retirement from service. This Court approved such a course observing that in the case of retirement, master and servant relationship continue for grant of retrial benefits. The proceedings for recovery of financial loss from an employee is permissible even after his retirement and the same can also be recovered from the retrial benefits of the said employee.
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> 24. Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed.

The undisputed legal position is that where the Service Rule do not envisage continuation of a disciplinary proceeding on superannuation of a delinquent, then its continuation is without sanction of law. Now no rule of statutory character has been placed on record to support the impugned action of the Board to continue the disciplinary proceedings post retirement of the petitioner and in the circumstances existing the continuation of the proceedings by the Housing Board after the superannuation of the petitioner on 31.7.2007 was without sanction of law and consequently the recovery effected by the respondents of the amount of Rs. 37,531/- from the amount of the unutilized leave payable to the petitioner is a perpetuation of illegality. For the same reason the affirmation of the illegal action by the impugned order bearing Memo No. 1331 dated 04.3.2008 by the Chairman cum Managing Director of the 'Housing Board' issued under the signature of the Secretary, 'Housing Board' impugned at Annexure-1 is per se illegal, without sanction of law and is accordingly quashed and set aside.

The writ petition is allowed with the direction to the Managing Director to refund the recovered amount of Rs. 37,531/- to the petitioner within a period of three months from the date of receipt/production of a copy of this order and his failure to do so would entitle the petitioner for an interest quantified at 9 per cent per annum payable from the date the recovery was effected until the amount is finally refunded to the petitioner.

(Jyoti Saran, J)

S.Sb/-

AFR/NAFR	AFR
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