

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1400 of 2010

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Rabindra Prasad S/o Late Chakradhar Prasad R/o 24, Shivam Apartment, Himgiri Chowk, Anandpuri, West Boring Canal Road, Patna, P.S.- Buddha Colony, Distt.- Patna

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary Old Secretariat, Patna
2. The Secretary Water Resource Department, Government Of Bihar, Patna
3. The Officer on Special Duty Water Resource Department, Government of Bihar
4. The Deputy Secretary Water Resource Department, Government of Bihar
5. The Accountant General Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rabindra Prasad, Advocate
Mr. Amit Kr.Singh
Mr. Rajesh Kumar

For the Respondent/s : Mr. Alok Kumar Rahi, A.C. to G.P.-21

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-10-2016

Heard Mr. Rajesh Kumar, learned counsel for the petitioner
and Mr. Alok Kumar Rahi, learned counsel appearing for the State.

In the nature of the order which this Court proposes to pass,
it would not require to delve deep into the merit of the case. Suffice it
to say that the petitioner is aggrieved by the initiation of a proceeding
under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter
referred to as the 'Pension Rules') vide order bearing Memo No. 284
dated 13.11.2009 in purported liberty granted by this Court in its order
dated 08.9.2005 passed in CWJC No. 5424 of 2002.

Brief facts of the matter is that the petitioner holding the
post of an Executive Engineer in the Mechanical Division of the



Irrigation Department at Chandil was proceeded against departmentally under Rule 55A of the Civil Services (Classification, Control & Appeal) Rules, 1930. The proceeding so initiated against the petitioner resulted in imposition of penalty in the form of:(a) censure; (b) stoppage of promotion for a period of seven years; and (c) recovery of Rs. five lakhs, vide notification bearing No. 1131 dated 13.6.2001. The punishment order was questioned by the petitioner in this Court in CWJC No. 5424 of 2002 and which writ petition was allowed by a Bench of this Court vide judgment and order passed on 08.9.2005 whereby the punishment order was quashed as being violative of the principle of natural justice. However, the disciplinary authority was allowed to proceed in the matter in accordance with law, if so advised. A copy of the judgment and order of this Court is placed at Annexure-12 to the writ petition. The petitioner in the meanwhile had already superannuated on 31.5.2002. No steps were taken by the respondents to continue with the proceedings already initiated against the petitioner in the light of the liberty granted by this Court in its order dated 08.9.2005 passed in CWJC No. 5424 of 2002 nor any order was passed initiating any proceeding under Rule 43(b) of the 'Pension Rules'. A period of more than four years having passed since the order of this Court, that the impugned order bearing Memo No. 284 dated 13.11.2009 was passed initiating fresh proceedings under Rule 43(b) of the Bihar



Pension Rules. It is following the decision of the State Government in its Water Resources Department to proceed against the petitioner under the 'Pension Rules' that a formal charge sheet was framed and served upon the petitioner vide resolution bearing Memo No. 1325 dated 20.11.2009 and the petitioner being aggrieved and questioning the initiation on its invalidity on the statutory provisions of the Bihar Pension Rules, has approached this Court.

I have heard learned counsel for the parties and I have perused the records. As I have said, I do not need to enter into the merit of the case for very initiation of the proceeding besides suffering delay on its initiation, is also not sustainable on the provisions of Rule 43(b) of the 'Pension Rules' which puts a bar on any initiation of the proceeding post the retirement of a delinquent, in relation to an event which does fall within the period of four years of its initiation. It is undisputed that the alleged default with which the petitioner is charged is much beyond this period. In fact the initiation is more than seven years since the retirement of the petitioner and more than four years since the liberty was granted to the respondents by this Court in the order passed in CWJC No. 5424 of 2005.

In view of the undisputed position explained, the initiation of the proceedings against the petitioner is apparently in the teeth of the statutory provisions underlying Rule 43(b) of the Bihar Pension Rules and cannot be upheld and accordingly the order bearing Memo

No. 1284 dated 13.11.2009 impugned at Annexure-1 together with the charge sheet issued vide resolution bearing Memo No. 1325 dated 20.11.2009 impugned at Annexure-2 insofar as the petitioner is concerned, cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

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Uploading Date	
Transmission Date	