

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.105 of 2015

IN
LPA 1091 of 2012

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Dr. Bimal Kant Das S/o Sri Jitendra Nath Das, Resident of Village -
Dakharam, P.S. - Bahera, District - Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Old Secretary Building,
Patna.
2. The Principal Secretary, Animal and Fisheries Department (Animal
Husbandry) Govt. of Bihar, Old Secretariat Building, Patna.
3. The Special Secretary, Animal and Fisheries Department (Animal
Husbandry), Govt. of Bihar, Old Secretariat Building, Patna.
4. The Under Secretary, Animal and Fisheries Department (Animal
Husbandry), Govt. of Bihar, Old Secretariat Building, Patna.
5. The Accountant General, Bihar, Beer Chand Patel Path, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajesh Mohan, Advocate
Mr. Pankaj Kumar Sinha, Advocate
For the Respondents : Ms. Alka Verma, AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 29-11-2016

Heard Sri Rajesh Mohan, learned counsel for
the review petitioner.

2. This Civil Review Application has been filed
against judgment and order dated 12.02.2015, passed in

Letters Patent Appeal No. 1091/2012. The review petitioner was the writ petitioner. Because of the writ petitioner's/review petitioner's involvement in the Animal Husbandry scam, while in service, he was put under suspension. He superannuated while under suspension. Thereafter, on 30.04.2007, he was convicted by the CBI Court for fodder scam to various terms of imprisonment extending to four (4) years, by then, he had superannuated. This was done by the criminal Court in the State of Jharkhand, where he was being prosecuted. This came to the notice of the State of Bihar, and thereafter, they issued notice to the writ/review petitioner for withholding the entire retiral benefits including pension in terms of Rule 43(a)/(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the "Rules"), and thereafter, final orders were passed on 08.04.2011 by the State Government, withholding the entire pensionary benefits, on the ground that he had been found guilty and convicted for imprisonment for embezzlement of government money. In the meantime, being aggrieved by the conviction, writ petitioner filed a criminal appeal before the Jharkhand High Court, being Criminal Appeal No. 694/2007. Even though, appeal was admitted, his sentence was not suspended nor he was





granted bail which was granted only after two years, but his conviction has never been suspended. He filed the instant writ petition in the Court which was heard by learned Single Judge, who allowed the writ petition, and set aside the order of withholding pension. It is that order which was challenged by the State in the Letters Patent Appeal. Notices were served on the writ petitioner who was respondent in the State appeal but no one appeared. The Court waited and adjourned the matter, but no one appeared. The Letters Patent Appeal was allowed and judgment and order of the learned Single Judge was set aside by order dated 12.02.2015 passed in Letters Patent Appeal No. 1091/2012.

3. This Civil Review Application has been filed on two grounds. Firstly, the writ petitioner, who was respondent in the Letters Patent Appeal, was not heard and, secondly, the criminal appeal being pending, pensionary benefits could not be withheld.

4. We have heard learned counsel for the review petitioner and examined the records in detail. It is urged that in the final order in the Letters Patent Appeal, it is noticed that though *Vakalatnama* was filed on behalf of the writ petitioner-respondent, no one has appeared. To us, this is



obvious mistake. Inasmuch as the order-sheet would show that in spite of valid service of notice on the writ petitioner-respondent, he had not entered appearance. The office notes also do not indicate that any appearance was filed on behalf of the writ petitioner-respondent. The record also shows that there is no *Vakalatnama* filed on behalf of writ petitioner-respondent. Thus, the list did not disclose the name of the counsel for the writ petitioner-respondent. Learned counsel for the review petitioner is not able to point out as to when the *Vakalatnama* was allegedly filed. Thus, it is obvious that there was no appearance on behalf of the writ petitioner-respondent, as is apparent from the record. Thus, we are not inclined to entertain this Civil Review Application on grounds of absence of appearance and/or hearing granted to writ petitioner/respondent.

5. However, we have examined the submission of the learned counsel notwithstanding the above. He submits that writ petitioner-respondent had superannuated in the year 2002, and convicted in the year 2007. In terms of Rule 43(b) of the Rules, no departmental proceeding could have been initiated four years after the date of occurrence, and as such, it was not open to the State Government to initiate a proceeding

in the year 2011 for an occurrence that had taken place while petitioner was in service.

6. We find that the submissions is misconceived for more than one reason. Firstly, the jurisdiction to withhold pensionary benefits arises in two situations. One, if there is an order in the departmental proceedings, in such an event, departmental proceedings have to be initiated within the time frame, as provided under Rule 43(b). The second contingency is in respect of withholding pensionary benefits, as a consequence of conviction in a criminal case, and that would be a judicial proceeding. Thus, cause of action to suspend or withdraw pensionary benefits would arise upon conviction and once conviction has been recorded, then, the four year period, from the event, would not apply. Even otherwise, if we look to explanation to Rule 43(b), it clearly predicates that a departmental proceeding would be deemed to have been initiated from the time when a person is put under suspension. It is undisputed that writ petitioner was put in suspension while he was in service. He superannuated while under suspension. Thus, no exception can be taken on the right of the State to take action in terms of Rule 43(b) upon conviction of the writ petitioner. The conviction having not been stayed,



though appeal, is continuance of the original proceedings, mere preferment of appeal does not take away the conviction.

7. That being so, we are of the opinion that the judgment passed by us in the Letters Patent Appeal requires no modification upon review. This Civil Review Application is misconceived. This Civil Review Application is, accordingly, dismissed. However, the order of the Government withholding entire pensionary benefits would, of course, undoubtedly, be subject to the result of the criminal appeal as pending before the Jharkhand High Court filed by the writ/review petitioner.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Rajeev/-

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