

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9402 of 2016

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Gopal Prasad Keshari, son of late Sri Bhagwan Das Kesari, resident of Flat No.301, Samarpan Apartment, Jhunjhun Mahal Road, Kachi Talab, Gardanibagh, P.S. Gardanibagh, District- Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Special Secretary (Allegation and Vigilance), Social Welfare Department, Government of Bihar, Patna.
4. The Joint Secretary, Establishment, Social Welfare Department, Government of Bihar, Patna.
5. The District Magistrate, Patna.
6. The Accountant General, Bihar, Beer Chand Patel Path, 'R' Block, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate

For the Respondent/s : Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-12-2016

Heard Mr. Kumar Kaushik, learned counsel appearing for the petitioner and Mr. Kumar Pankaj, learned Assisting Counsel to Standing Counsel No.5 for the State.

With the consent of the parties this matter has been heard with a view to its final disposal at the stage of admission itself.

This writ petition was filed seeking a writ in the nature of mandamus to fix and pay the pension of the petitioner who had superannuated from the post of District Programme Officer (ICDS), Social Welfare Department, Patna with effect from 31.7.2015.

It is during the process of filing of counter affidavit on the grievance raised that the petitioner was confronted by a resolution



bearing No.2328 dated 26.5.2016, whereby a concluded disciplinary proceeding is sought to be converted into a proceeding under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules'). The order has been placed on record vide Annexure-6 to I.A. No.4886 of 2016 and considering the purport of the order that this Court by order passed on 8.9.2016 has allowed the petitioner to question the said order in the present writ petition itself.

The parties have been heard on merits of the case. The only issue which falls for consideration in this writ petition is whether the respondent-State is within its jurisdiction to issue the resolution dated 26.5.2016 impugned at Annexure-6 to the interlocutory application which now forms part of the writ proceedings.

The short facts of the matter is that the petitioner was proceeded against by service of a charge memo served together with a letter dated 2.1.2015 placed at Annexure-1 whereby the petitioner was charged with dereliction of duty in not taking sufficient steps for serving deputation order on the Child Development Project Officers who were assigned duty as a Magistrate during *Dushera* celebration annually held at the Gandhi Maidan and the present issue revolves around the celebration held on 3.10.2014 which celebration was marred by unfortunate stampede which led to several unfortunate deaths. The petitioner was one of the persons facing charges of dereliction of duty. The petitioner filed his reply, a copy of which is placed at Annexure-3 and the Disciplinary Authority in consideration of the response received



dropped the proceedings vide notification bearing No.4832 dated 2.12.2015, a copy of which is placed at Annexure-4. The petitioner was exonerated from all the charges.

In between the petitioner had superannuated with effect from 31.7.2015. Following his superannuation that the petitioner received part of his pensionary benefits but since the respondents were not taking steps for fixation and payment of pension, gratuity and benefits arising from Modified Assured Career Progression Scheme that he came before this Court in this writ petition but was faced with the situation arising from Annexure-6 and which is also sought to be questioned herein.

As I have already indicated that the only issue which falls for consideration is whether the respondent-State was within its jurisdiction to issue the resolution dated 26.5.2016 impugned at Annexure-6. The answer obviously has to be in the negative for there was no jurisdiction in the State to pass the resolution dated 26.5.2016 whereby they seek to convert the disciplinary proceeding initiated against the petitioner into a proceeding under rule 43(b) of 'the Pension Rules' because there was no proceeding pending on the said date. The only proceeding which had been initiated against the petitioner following the service of charge memo present at Annexure-1 was dropped under the order of the State Government dated 2.12.2015 a copy of which is placed at Annexure-4 when the petitioner was exonerated from the charges and whereafter there was no disciplinary proceeding pending



against the petitioner. These are admitted facts.

In these uncontested circumstances and in absence of any disciplinary proceeding pending on the date when the petitioner had superannuated, there could be no conversion of any proceeding into a proceeding under rule 43(b) of ‘the Pension Rules’ and thus the resolution dated 26.5.2016 seeking to convert a non-existent proceeding into a proceeding under rule 43(b) of ‘the Pension Rules’ impugned at Annexure-6, is manifestly illegal and is accordingly quashed and set aside.

The writ petition is allowed. The interlocutory application is disposed of.

The respondents are directed to take necessary steps for payment of the post-retiral benefits of the petitioner including fixation of pension and payment thereof to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25-12-2016
Transmission Date	NA

