

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2362 of 2008

Abdul Hafiz Ansari, son of Late Mohammad Suleman, resident of village- Chhapra,
P.S.- Akhori Gola, District- Rohtas.

.... Petitioner/s

Versus

1. Deputy Director of Personal –cum- Enquiry Officer, Bihar Electricity Board, Bihar at Patna, through Chairman, Bihar Electricity Board, Patna.
2. Joint Secretary, Bihar Electricity Board, Bihar, Patna.
3. Chairman, Bihar State Electricity Board, Bihar, Patna Bidut Bhawan, Bailey Road, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Nand Kumar Singh

For the Respondent/s : Mr. Vijay Kumar Verma

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-07-2016

Heard Mr. Nand Kumar Singh, learned counsel appearing
for the petitioner and Mr. Vijay Kumar Verma, learned counsel for
the respondents.

The petitioner is aggrieved by the order dated 11.6.2007
passed by the Joint Secretary of the erstwhile Bihar State
Electricity Board which has since been dissolved to form Bihar
State Power Holding Company. In so far as the case of the
petitioner is concerned it would fall within the jurisdiction of the
South Bihar Power Distribution Company Limited. By the said
order the petitioner has been imposed a penalty of reduction of 5%
of his pension amount in exercise of powers vested under section
43 (b) of the Bihar Pension Rules, 1950 (hereinafter referred to as
'the Rules').



The facts are in a very narrow compass and owing to certain interpolation found in the service book of one Dhura whereby his date of birth was interpolated to read as 11.8.1936 in place of 11.8.1926 that the petitioner was proceeded against and after holding the proceedings in question, has been imposed with a penalty of reduction of his pension amount by 5% and the petitioner being aggrieved by such order imposing penalty present at Annexure-1, is before this Court.

This writ petition was filed as back as on 29.1.2008 and although it was dismissed for non-prosecution on 4.7.2013 to be restored vide order passed on 19.8.2015 in M.J.C. No.2362 of 2008 but no counter affidavit was filed either before the dismissal of the writ petition on 4.7.2013 nor any counter affidavit has been filed since after its restoration on 19.8.2015 although a period of almost a year has since lapsed. Considering the matter in contest I am not persuaded to grant any further indulgence.

Mr. Singh, learned counsel for the petitioner while questioning the impugned order of reduction of pension passed under rule- 43(b) of 'the Rules' on merits has also questioned its legality on the stipulations present in 'the Rule' which restrains the employer from drawing any such proceeding in relation to any event which has taken place more than 4 years from the date of institution of such proceedings.



It is the argument of Mr. Singh, learned counsel for the petitioner that the order imposing penalty is based on suspicion and even in absence of any substantial evidence present to connect the petitioner with the alleged interpolation yet the order has been passed merely because the petitioner was posted in the section as a Clerk. He further submits in reference to the enquiry report, a copy of which is enclosed at Annexure-2 that the interpolation came to the knowledge of the respondents on 30.5.1994 when the information was given by the Assistant Electrical Engineer to the superiors, as is evident from the notings present at running page-25 of the enquiry report. It is submitted that nothing progressed thereafter and it is only after the retirement of the petitioner on 30.6.2001 that the respondents have awoken from their deep sleep to serve the charge memo on the petitioner on 1.8.2001, a copy of which is brought on record vide Annexure-6 to the supplementary counter affidavit. Mr. Singh has relied upon the proviso to rule-43(b) to submit that neither these proceedings could have been initiated without obtaining sanction of the appropriate authority nor it could be initiated in 2001 for an event which took place, atleast in 1994, when the Assistant Electrical Engineer communicated the interpolation to the authorities concerned, which is more than 4 years from the institution of the proceedings.

The argument of Mr. Singh is sound, supported by the

statutory provisions and does not require any deep examination. The response of the respondents to the issue raised is evident from the fact that though a period of 8 years has since lapsed but there is no counter affidavit filed. In my opinion in the uncontested position reflecting from the submission of Mr. Singh, learned counsel for the petitioner, the respondents could not have saved the situation because the petitioner having superannuated on 30.6.2001 that the interpolation was within the knowledge of the respondents atleast on 30.5.1994 which is more than 4 years from the service of charge on 1.8.2001, clearly the respondents by drawing proceedings under rule 43(b) of ‘the rules’, have acted illegal and without jurisdiction.

For the reasons discussed, the order dated 11.6.2007 passed by the Joint Secretary, Bihar State Electricity Board, which is since been replaced by the South Bihar Power Distribution Company, cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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CAV DATE	
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