

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9992 of 2013

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1. Madan Lal Rajak Son Of Late Bulkan Rajak Resident Of Mohalla - Mithapur 'B'
Area, Manimesh Bhawan, Bengali Road, Police Station Jakkanpur, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Human Resources Development Department (Education
Department), Government Of Bihar, Patna
3. The Director (Administration), Human Resources Development Department
(Education Department), Government Of Bihar, Patna
4. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-08-2016

Heard learned counsel for the petitioner and the learned
counsel for the State.

In the present case, the petitioner is challenging the
Government Notification No. 233 dated 16.03.2011, by which the
authority by exercising the power under Rule 43(B) Bihar Pension
Rule 1950 has deducted amount of 20 per cent from the pension of
the petitioner and after lapse of two years again, the authority in
exercise of power under Rule 11(5) of Bihar Government Servant
(Classification, Control and Approval) Rules 2005 passed the order
dated 19.09.2000 by depriving him the salary of his suspension for
the period of 19.09.2000 to 31.01.2002 except the subsistence

allowance.

The petitioner submitted several representations were filed before the concerned authorities for the payment of his suspension allowance but no action has been taken by the competent authorities.

The short point on the fact in the present case that the petitioner was posted as Deputy Director, Jan Shiksha, Government of Bihar. For the act of his misconduct, a departmental proceeding was initiated against the petitioner and he was put under suspension from the period 19.09.2000 to 31.01.2002. The petitioner superannuated in the year 2002 and after his superannuation, a proceeding was initiated under Rule 43(B) of Bihar Pension Rule, 1950 and after giving opportunity of being heard, the authority passed the order reduced the pension by 20 % but at the same time, they did not stop there, further, after lapse of two years, they passed the order, declared that the petitioner would not be entitled to the salary for the period of suspension.

The question is in the present case whether the respondent authority has acted beyond the authority, in view of the fact that the Disciplinary Appeal Rules is applicable so long employees are in service, the day, he retires, the relationship of master and servant is over but covered under Bihar Pension Rules

1950, which empowers the authority to exercise the power under Section 43(B) to pass order, for an act of major misconduct as well as in the case of a financial loss but the learned counsel for the State has tried to justify order submitting that it is continuation of the earlier proceeding and there is no bar to exercise the power under Government Servant (Classification, Control and Approval) Rules 2005. The argument is completely misleading and fallacious, in view of the fact that management can exercise the power of Government Servant (Classification, Control and Approval) Rules 2005 so long the employee in service, the power automatically terminates except the management was kept the delinquent in service but no order has been passed by the Government treating the petitioner in service. After superannuation, the State becomes devoid of power, to exercise under the said Rules.

In such view of the matter, the order dated 16.03.2011 invoking the provisions of Rule 11(5) of Bihar Government Servant (Classification, Control and Approval) Rules 2005 is clearly misconceived illegal and not sustainable in law. Accordingly, the order vide notification no. 233 dated 16.03.2011 is quashed.

(Shivaji Pandey, J)

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