IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12547 of 2014

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Jai Mangal Paswan Son of Late Kunwar Paswan Resident of House No. 6B/26C, Tilak Marg, North S.K. Puri, Patna, P.S. S.K.Puri, Town and District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar.
2. Additional Secretary, General Administration Department, Govt. Bihar Bihar, Patna.
3. Deputy Secretary, General Administration Department, Govt. of Bihar, Patna.
4. Under Secretary, General Administration Department, Govt. of Bihar, Patna.
5. Officer on Special Duty, General Administration Department, Govt. of Bihar, Patna.
6. Divisional Commissioner, Magadh Division, Gaya
7. Commissioner, Gaya Municipal Corporation, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vindhyachal Singh, Adv.
Mr. Ranjit Sinha, Adv.
Mr. Prakash Kumar, Adv.,
Mr. Manoranjan Kumar, Adv.

For the Respondent/s : Mr. Yogendra Pd. Sinha, AAG-15
Mr. R.S. Singh, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 29-01-2016

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

The petitioner seeks quashing of the resolution, dated 30.06.2014, issued under the signature of Additional Secretary of the Government, General Administration Department, contained in Annexure-10, whereby he has been inflicted punishment of deduction of 50% pension permanently from the date of his superannuation i.e. from 30.06.2008. In the year 2004, the petitioner was posted as Deputy Chairman, Gaya Regional Development Authority. The Commissioner, Magadh Division noticed that the petitioner has committed grave irregularities in sanctioning of maps without seeking opinion of the Junior Engineer, Assistant Engineer and Executive Engineer. The Commissioner's Office as such prepared charges against the petitioner on 02.11.2005 and forwarded the same to the Personnel and Administrative Reforms Department (now the General Administration Department) for necessary action and initiating departmental proceeding. The letter of the Commissioner's Office remained in limbo and only on 20.05.2009, a resolution initiating proceeding under Rule 43(b) of the Bihar Pension Rules, was drawn against the petitioner. The proceeding started and the petitioner filed his reply. The petitioner had earlier moved this Court in CWJC No. 8243 of 2013, which was disposed of on 21.04.2014 granting liberty to him to take all his points in 2nd show-cause notice as may be available to him. The departmental proceeding ultimately culminated into inflicting punishment of deduction of 50% pension permanently from 30.06.2008.

The petitioner submits that he retired from service on 30.06.2008 and after his retirement, he was proceeded for an incident which took place beyond four years of his retirement vide resolution dated 20.05.2009, which is not permissible in law. He thus submits that very initiation of proceeding under rule 43B of Bihar Pensions Rules is not sustainable in law.

Learned Counsel for the State submits that the petitioner committed grave acts of omission and commission by sanctioning the maps without following due procedure of law. He further submits that the charges were mooted on 02.11.2005 by the Office of Commissioner, Magadh Division which would be within 4 years from the date of initiation of proceeding under Rule 43(b) of Bihar Pension Rules.

I have heard learned counsel for the parties. Rule 43(b) of Pension Rules bars a proceeding if not already instituted while the government servant was on duty either before retirement or during re-employment, the same shall not be in respect of an incident which took place more than 4 years before initiation of such proceeding. In the instant case the proceeding was initiated vide resolution dated 08.06.2009. It would further appear from the Praptra "ka" attached to the resolution that the charges were of the year 2001 to 2004. The petitioner had remained at the station from August, 2000 upto 25th March, 2004. The alleged act of omission and commission was of the year beyond the period of 4 years from the date of passing of the resolution initiating the proceeding.

The case of the State can succeed only if it is demonstrated that if departmental proceeding starts prior to retirement of the petitioner or even after his retirement, with respect to an incident which took place more than four years before the institution of such proceeding. There is no material on record to suggest that any such proceeding was instituted. It is not the case of the respondents that the petitioner was put either under suspension or explanation was sought under preliminary enquiry. The mere mooting and forwarding of charge by an authority, which is not a disciplinary authority cannot tantamount to initiation of departmental proceeding or even a proceeding under proviso (a) to rule 43(b). The Commission's office which mooted the charge under resolution dated 20.05.2009 was conscious of the fact, and as such it did not issue the charge itself, but forwarded the same to the government, which was a disciplinary authority to take appropriate steps in the matter.

The instant proceeding initiated on 02.11.2005 under rule 43(b) of the Pension Rules is time barred, as it is in respect of incident which took place beyond four years from the date of the Resolution.

The proceeding under rule 43(b) is as such not maintainable and consequently, the impugned penalty is set aside. A person who may be guilty of such charges gets reprieve on account of lack of due vigil on part of the concerned respondents in not timely initiating such proceeding. The petitioner may request for consequential benefits, which would be duly considered in accordance with law. The respondents too would be at liberty to take any other steps permissible under the law.

With the aforesaid observation, the writ application is accordingly disposed of.

(Samarendra Pratap Singh, J)

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