IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.148 of 2015
In
Civil Writ Jurisdiction Case No. 13797 of 2014

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1. The State Of Bihar.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Additional Secretary, General Administration Department, Govt. of Bihar, Patna

.... Petitioner/s

Versus

1. Madhu Gupta son of Late Suraj Prasad Gupta resident of Flat No.- LF-1/3, S.K. Puri, Boring Road, P.S.- S.K. Puri, District- Patna
2. The Accountant General, Patna

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. G.P. Ojha, G.P.-22
: Mr. Rabindra Kumar Priyadarshi
For the Respondent No.1: Mr. Kumar Kaushik

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

8 05-04-2016 **1.** Heard learned counsel for the petitioners and learned counsel for the respondent No.1.

2. The State has filed this application for review of order dated 05.12.2015 passed in C.W.J.C. No.13797 of 2014 on the ground that the relevant amended Rule was not brought before this Court for proper consideration that led to commission of error in the order and therefore, this Court should review its earlier order passed in C.W.J.C. No.13797 of 2014.

3. As per learned counsel for the petitioners the case of Madhu Gupta, the petitioner of C.W.J.C. No.13797 of 2014, the respondent No.1 of the present review application, was under the control of General Administration of Government of Bihar. He was sent on deputation in the Mines Department, while discharging his duties, wrong was found to have been committed by him. As per the claim of the petitioners before retirement the respondent No.1 was served a chargesheet which he replied, will be treated that a proceeding was initiated during his service period and as such the case of the respondent No.1 will not be governed by the Provision under Rule 43(b) of the Bihar Pension Rules, rather he will be governed by the provision under Rule 43(C) of the Bihar Pension Rules, which provides as follows:-

> *"43(c)- Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent). This will come into force with immediate effect."*

4. On perusal of this provision, it is clear that if a departmental proceeding or judicial proceeding is initiated during the service period of a government servant, is not concluded till the retirement of government servant, during pendency of departmental inquiry the provisional pension shall be less than the maximum admissible amount of pension, but shall not be less than 90%.

5. On that strength, learned counsel for the petitioners submits that the judgment of the Supreme Court in ***State of Jharkhand & Others vs. Jitendra Kuamr Srivastava*** reported in ***(2013)12 SCC 210*** does not apply to the present case as that matter was primarily related to the proceeding under Section 43 (b) of the Bihar Pension Rules, there the Hon'ble Supreme Court held that no law has been made by the State of Bihar for forfeiting or keeping the amount in abeyance till the departmental proceeding is concluded. He has further submitted that the reply which was submitted by Smt. Madhu Gupta dated 19.09.2013 shows that "Prapatra-ka" was served upon him and in view of the explanation of Rule 43(c) of the Bihar Pension Rules departmental proceeding was initiated against him.

6. Whereas learned counsel for Madhu Gupta respondent No.1 of the present case, has submitted that from the counter affidavit dated 15.4.2014 filed in the writ application, it appears that no any proceeding was pending before his superannuation and that converted into Section 43(c) so much so that the letter dated 19.09.2013 shows that the parent department i.e. the General Administration Department had not initiated any proceeding against the respondent No.1, but only asked an explanation after receipt of the “Prapatra-ka” framed by the Mines Department and finally initiated a proceeding after his superannuation by issuing a charge-sheet dated 15.04.2014 and as such the provision of Rule 43(C) of the Bihar Pension Rules does not apply.

7. This Court has asked the question to the learned counsel for the petitioners about the fact that when matter was under consideration it was well within the knowledge of the State about the pendency of proceeding before superannuation, but was not brought before this Court for consideration. No proper explanation has been submitted by the State, why they have not brought the letter dated 19.09.2013 at the time of hearing of writ petition even that letter would not cut much ice, the reason is that letter dated 19.09.2013 does not show that the parent department has initiated any departmental proceeding against the respondent No.1, rather it only shows that the Show Cause was issued and finally the proceeding was initiated by issuance of charge sheet dated 15.04.2014 by Annexure ‘B’ and so much so that the averment portion of the counter affidavit which has been specifically mentioned in Para 7 that resolution No. 5165 dated 15.04.2014 was issued, whereby the departmental proceeding was initiated.

8. In such view of the matter the submission of learned counsel for the petitioner that the proceeding was initiated before the retirement of the respondent No.1 is not substantiated either on facts or on law and this Court finds that there is no error apparent in the order of this Court and accordingly, review application is dismissed on facts as well as on law.

(Shivaji Pandey, J)

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