

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15949 of 2016

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Dr. Kumkum Prasad, wife of Shri Uday Shankar Upadhyaya, resident of 305
Dinesh Enclave, West Anandpuri, Boring Road, P.S.- S.K.Puri, Patna- 800001.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna- 800001.
2. The Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna- 800001.
3. The Deputy Secretary, Department of Health, Government of Bihar, New Secretariat, Patna- 800001.
4. The Regional Deputy Director, Health Services, Tirhut Division, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimlendu Mishra, Advocate

For the Respondent/s : Mr. Vikas Kumar, AC to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-07-2017

Heard Mr. Bimlendu Mishra, learned counsel appearing
for the petitioner and Mr. Vikas Kumar, learned Assisting Counsel
to the Advocate General for the State.

The petitioner is aggrieved by the resolution bearing
Memo No.671(9) dated 11.7.2016 of the State Government in its
Health Department, whereby and whereunder a proceeding has been
initiated against the petitioner who superannuated as a Civil Surgeon
cum Chief Medical Officer under rule 43(b) of the Bihar Pension
Rules, 1950 (hereinafter referred to as 'the Pension Rules').

The short submission made by Mr. Mishra, learned counsel
appearing for the petitioner is in reference to the proviso attached to



rule 43(b) of 'the Pension Rules' which under clause (ii) inter alia, provides that a proceeding initiated under such provision has to be in respect of an event which took place not more than four years from the date of institution of such proceeding. Mr. Mishra submits that whereas there is a clear bar under the provisions and the respondents can initiate a proceeding only in respect of any event falling within four years of institution of proceeding but in the present case the petitioner having superannuated from the post of Civil Surgeon cum Chief Medical Officer on 30.9.2011, it is much after the expiry of four years that the proceeding in question has been initiated on 11.7.2016 which is clearly hit by proviso (ii) attached to rule 43(b) of 'the Pension Rules'.

Although Mr. Vikas Kumar, learned Assisting Counsel to the Advocate General appearing for the State has endeavoured hard to contest the position in reference to the charge but in my opinion the attempt is futile because the initiation is much in the teeth of the stipulation underlying rule 43(b) of 'the Pension Rules'.

That the petitioner had already superannuated on 30.9.2011 the proceeding, if any, could have been initiated in tune with the prescriptions laid down under rule 43(b) of 'the Pension Rules' and in relation to any event which fell within four years of such initiation but in the present case the very initiation itself is



beyond the period of four years since the retirement of the petitioner and thus not sustainable.

For the reasons aforementioned the resolution bearing Memo No.671(9) dated 11.07.2016 of the State Government impugned at Annexure-6 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2017
Transmission Date	NA

