

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17553 of 2016

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Uday Singh, Son of Late Kedar Singh, Resident of Village- Bara, P.S.-
Khizarsarai, District- Gaya (Bihar) at present Resident of Village- Chak
Bairiya, P.O.- Bairiya, P.S.- Gopalpur, District- Patna (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Works
Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Rural Works Department, Government of Bihar,
Patna.
3. The Chief Engineer, Rural Works Department, Patna.
4. The Superintending Engineer, Rural Works Department, Circle-2, Patna.
5. The Executive Engineer, Rural Works Department, Work Division-2,
Biharsharif, District- Nalanda.
6. The Special Work Officer, Rural Works Department, Biharsharif, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Abhishek

For the Respondent/s : Mr. Prabhu Narain Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

6 17-01-2017 Heard Mr. Abhishek, learned counsel for the petitioner
and Mr. Prabhu Narain Sharma, learned AC to AG appearing for
the respondents.

With the consent of the parties, this writ petition has
been heard with a view to its final disposal at this stage.

The petitioner is aggrieved by the order dated
31.8.2016 passed by the respondent Engineer-in-Chief, Rural
Works Department, Government of Bihar, Patna whereby in
exercise of power vested under Rule 43(a) of the Bihar Pension



Rules, 1950, the petitioner has been awarded punishment for withdrawal of his 100% pension. Taking into consideration the nature of contest, this Court framed the following issues seeking a response from the learned State counsel:

“(a) The petitioner having superannuated with effect from 30.6.2009, no proceeding under the Bihar Pension Rules, 1950 (hereinafter referred to as ‘the Rules’) can be initiated for any of the circumstances which took place during the service period;

(b) An order restricting pension under the Bihar Pension Rules, is to be passed by the State Government with the concurrence of the Bihar Public Service Commission, which is not existing in the present case;

(c) The Engineer-in-chief has no jurisdiction to impose punishment under the Bihar Pension Rules; and

(d) No memo of charge or opportunity of hearing was granted to the petitioner before the order was passed.”

A supplementary affidavit has been filed following the direction and in which it is stated that the petitioner superannuated on 30.6.2009 and prior thereto following a vigilance enquiry report dated 13.6.2008, that a show cause was served on him on 11.2.2009 present at Annexure-3. It is also stated



that charge sheet was served on the petitioner on 16.7.2013 that is more than four years after his retirement and a copy of which have been enclosed at Annexure-E to the counter affidavit.

Mr. Sharma, learned AC to AG fairly admits that except for service of show cause on 11.2.2009 and service of the charge memo on 16.7.2013 under the Bihar Government Servant (Classification, Control and Disciplinary Appeal) Rules, 2005, (hereinafter referred to as 'the 2005 rules'), no notice under the Pension Rules was served on the petitioner. In my opinion, the stand of the respondents itself is a ground for quashing the impugned order. Undisputedly no proceeding either departmental or judicial was initiated against the petitioner during his service period and until his retirement on 30.6.2009. The charge memo under the Disciplinary Rules of 2005 has been served on 16.7.2013 that is more than four years after the retirement of the petitioner and after severance of master and servant relationship. Reference is made to the full Bench Judgment of this Court reported in 2000(1) PLJR 665 (Shambhu Saran Vs. State) in which at paragraph 5, it has been held that after retirement, the Government employee cannot be punished under the Disciplinary Rules although steps can be taken under Rule 43 of the Pension Rules.



In view of the legal position settled, the charge sheet at Annexure-E series to the counter affidavit dated 16.7.2013 becomes illegal and void. As already observed, no proceeding whether judicial or departmental was initiated during service period of the petitioner nor any proceeding under the Pension Rules was initiated after his retirement. In fact, the foundation for the impugned order is the charge sheet at Annexure-E series which is charge issued under the Disciplinary Rules. In other words, whereas the charge memo dated 16.7.2013 is issued under the Disciplinary Rules after retirement of the petitioner which is a void document having no statutory force, the order impugned at Annexure-P8 is without a show cause notice and by an authority not competent to do so because it is the State Government alone who has been vested with the powers to pass any order of forfeiture of pension under the Pension Rules. The order impugned is passed by the Engineer-in-Chief.

In view of the discussions held above, the order bearing memo no. 2666 dated 31.8.2016 passed by the Engineer-in-Chief is held illegal and is accordingly, quashed.

The writ petition is accordingly, allowed.

The petitioner would be entitled to consequential benefits with payment of arrears of pension which should be paid



to him within a period of three months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

A.I./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.01.2017
Transmission Date	NA

