

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.14878 of 2010**

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Shankar Nath Jha, S/O Late Justice Baidya Nath Jha, R/O Plot No. M/8, Road
No.1, Sri Krishna Nagar, P.S.- Kotwali, At And P.O.- Patna, Distt.- Patna (Bihar)

.... Petitioner

Versus

1. The State Of Bihar, through the Secretary, Road Construction Department,
Bihar, Patna
2. The Deputy Secretary, Vigilance Road Construction Department,
Vishweshwaraiya Bhawan, Bailey Road, Patna
3. Chief Engineer-Cum-Conducting Officer, National Highway Section, Road
Construction Department, Bihar, Patna
4. The Presenting Officer-Cum-Section Officer-1, Road Construction Department,
Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Adv.

Mr. Shashi Nath Jha, Adv.

For the Respondent/s : Mr. Anand Kumar, A.C. to A-3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-11-2017

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

2. In this case, the petitioner is challenging the initiation
of proceeding against him by issuance of charge-sheet dated
22.12.2008 and during the pendency of the writ application the
authority has inflicted the punishment vide order dated 03.09.2014



(Annexure-10), reducing 50% pension per month.

3. The short question is being raised by the learned counsel for the petitioner that as the petitioner has superannuated from service on 31.08.2008 and in terms of 43(b) of the Bihar Pension Rules, the rider is that an employee who has superannuated can be put to a departmental proceeding within four years of his retirement, but after four years the retired employee cannot be proceeded with.

4. Admittedly, the petitioner has superannuated on 31.08.2004. The State has taken decision to initiate a proceeding on 17.01.2008. The charge-sheet was issued on 22.12.2008 and resolution against the petitioner to initiate a departmental proceeding was taken on 19.02.2009 and ultimately, the punishment was awarded on 03.09.2014. If the date of superannuation is taken as 31.08.2004, then four years come to an end on or before 30.08.2008 and thereafter retired employee goes beyond the reach of the State Government to initiate a departmental proceeding against the employee concerned.

5. Learned counsel for the State has tried to impress upon this Court that the decision to initiate a departmental proceeding was



taken on 17.01.2008, but this Court is not satisfied, unless the charge-sheet is issued to the person as has been mentioned in 43(b) of the Bihar Pension Rules.

6. Reliance can be placed on the judgment of *Union Of India vs. K.V. Jankiraman*, reported in *1991 AIR 2010*, wherein it has been held that criminal proceeding starts on the date of filing of the charge-sheet and departmental proceeding starts on the date when the delinquent is served with the charge memo. Admittedly, the charge memo has been issued on 22.12.2008 after four years, so the proceeding itself vitiates.

7. Learned counsel for the petitioner submits that the punishment of reduction of 50% pension is too harsh for ex-employee gets support from the judgment of this Court in the case of *The State of Bihar, through the Chief Secretary and Others vs. Narmadeshwar Sharma and another*, reported in *2017(1) PLJR, 252*, wherein it has been decided that the punishment of reducing 50% pension is too harsh and the Court has interfered with the matter and remanded back for fresh consideration. As this Court has already held that departmental proceeding vitiates, the question of remanding back matter on the point of punishment does not arise.



8. In such view of the matter, the order initiation of departmental proceeding and the order of punishment dated 03.09.2014 are quashed.

9. Accordingly, this writ application is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.11.2017
Transmission Date	N/A.

