

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6020 of 2011

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Sikandar Azam Khan

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Mohit Agrawal, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 10-08-2017

The petitioner was working as a Translator in the Directorate of Rajbhasa and after submitting an application for voluntary retirement, the same was accepted and the petitioner was granted permission to seek voluntary retirement from service vide order dated 7.11.2003. However, after a period of more than seven years on 2.12.2010 a memo was issued to the petitioner proposing to take action against him under Rule 43B of the Bihar Pension Rules with regard to an incident that is said to have happened in the year 1999 for which a police case was also initiated against the petitioner vide Kotwali P.S. Case No.18 of 1999, as is evident from the material available on record.

Challenge to the initiation of departmental enquiry is made primarily on the ground that after a period of four years of happening of the event, initiation of departmental enquiry is not



permissible, as held by this Court in the case of Ashok Kumar Mishra vs. State of Bihar, 2003 (1) P.L.J.R. 172. That apart, learned counsel appearing for the petitioner invites my attention to Proviso A2 to Section 143B of the Bihar Pension Rules to say that after a period of more than twelve years of superannuation, the departmental proceedings under the said Rule is impermissible.

Even though the respondents represented by Shri Vivek Prasad invited my attention to the gravity of the misconduct committed by the petitioner and acts of omission and commission and tried to indicate that the action is permissible, the fact remains that the incident took place some time in the year 1999, petitioner was taken into custody on 20th of January, 1999 and the criminal case vide Kotwali P.S. Case No. 18 of 1999 was instituted against him by the Block Development Officer. Once the respondents were on the know of the entire incident in the year 1999 itself, they cannot be permitted to take action now after a period of more than eight years after retirement of the petitioner and the provisions of Rule 43B, proviso A2 and the law laid down by the Hon'ble Supreme Court in the case of Ashok Kumar Mishra (supra) prohibit the respondents from doing so. Once the law prohibits taking of the action after such a long period of time, the gravity of misconduct is of no consequence, the departmental proceedings being itself barred.



Accordingly, this application is allowed and the order
impugned is quashed.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
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