IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5937 of 2014

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1. Rajeshwar Prasad Singh S/O Late Ambika Singh R/O Shivpuri, Patel Nagar, Road No. 1 P.S. Shastri Nagar, Dist.- Patna .... Petitioner

Versus

1. The State Of Bihar
2. Secretary, Rcd, Vishwasaraiya Bhavan, Bailey Road, Patna
3. Special Secretary to the Govt. Rcd, Govt. Of Bihar, Vishwasaraiya Bhavan, Bailey Road, Patna
4. Deputy Secretary (Vigilance), Rcd, Govt. Of Bihar, Vishwasaraiya Bhavan, Bailey Road, Patna
5. The Engineer-in-Chief, Rcd, Govt. Of Bihar, Vishwasaraiya Bhavan, Bailey Road, Patna .... Respondents

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Appearance :

For the Petitioner	:	M/s Prabhat Kumar Singh & Surendra Kumar Singh, Advs.
For the Respondents	:	Mr. P.K. Verma, AAG III, with Mr. Dr. Mankeshwar Singh, AC to AAG III

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
CAV JUDGMENT
Date: 12-10-2017

Heard both sides.

2. The petitioner, herein, seeks quashing of Notification No. 1046(S), dated 07.02.2014, issued by the Deputy Secretary, Vigilance Department of Road Construction, Government of Bihar, whereby the disciplinary authority permanently withheld 20% of the pension of the petitioner.

3. The learned counsel for the petitioner submits that the petitioner was posted as Executive Engineer in the Department of Road Construction, National Highway Road Circle, Muzaffarpur. The petitioner retired on 31.05.2007 as In-Charge Superintending Engineer and the petitioner was granted pension vide Pension Payment Order No. 371763 on 06.10.2017 with effect from 01.06.2007. It is, further,

submitted that on 19.07.2011, the Special Secretary, Road Construction Department, Government of Bihar, vide order, as contained in Memo No. 8164(S), dated 19.07.2011, initiated a proceeding under Rule 43b of the Bihar Pension Rules (hereinafter referred as, "the Rules") on five charges. Sum and substance of which are that the petitioner promoted some fourth grade employees to the post of Class III Clerk. The petitioner also granted benefits of Assured Career Progression to the work charge employees against the departmental norms and rules.

4. The learned counsel for the petitioner, further, submits that the petitioner filed his show cause that the petitioner retired on 31.05.2007 and the proceeding against the petitioner under Rule 43(b) of the Rules was initiated on 19.07.2011, after more than four years from the date of retirement of the petitioner. Therefore, initiation of the departmental proceeding is void abinitio and the punishment on such enquiry report is not legal and sustainable. It is, further, submitted that the Lok Ayukta, Bihar, did not find the petitioner guilty nor made any recommendation for taking action against the petitioner. The petitioner also submitted his show cause to the enquiry officer that the departmental proceeding was initiated on 19.07.2011 under Rule 43(b) of the Rules was with regard to the event of the year 2007 and the proceeding was initiated, admittedly, after four years of the retirement of the petitioner on 31.05.2007. The petitioner granted promotion and Assured Career Progression Scheme to the employees in accordance

with law much prior to the date of his retirement, i.e., 31.05.2007, but, the disciplinary authority did not consider the show cause. The learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court reported in **2010(3) P.L.J.R., 845 (Urmila Sharma @ Urmila Singh & Anr. Vrs. The State of Bihar & Ors.)**.

5. Mr. Surendra Kumar Singh, the learned counsel for the petitioner, further, submits that on the same facts and in the similar circumstances, the single Bench of this Court vide order, dated 09.05.2017, passed in **C.W.J.C. No. 18939 of 2016 (Md. Ghufran Ahmad Vrs. the State of Bihar & Ors.)** quashed the initiation of the proceeding under Rule 43(b) of the Rules on the ground that the proceeding was, admittedly, initiated after four years from the date of events, i.e., negligence or misconduct of the petitioner causing in pecuniary loss from the date of retirement of the petitioner.

6. On the contrary, the learned counsel for the State submitted that the petitioner was noticed for initiation of a proceeding for his misconduct in granting promotion and Assured Career Progression Scheme to the employees. It is, further, submitted that the Government has resolved vide Memo No. 3/M – 192/2006, Sl. No. 3406, Patna, dated 08.10.2007, and held that if an enquiry is held by the Lok Ayukta against retired Government servants, the limitation for initiation of proceeding under Rule 43(b) of the Rules shall not be applicable. It is, further, submitted that the Government has already issued Circulars, as contained

in Letter No. 3448, dated 02.12.2006, that the calculation of four years shall start from the date of knowledge about the events/misdeeds and negligence of the retired Government employee.

7. Having considered the submission of both the sides and on perusal of the records the question falls for consideration whether the departmental proceeding under Rule 43(b) of the Rules can be initiated against a retired Government servant, after four years of the events/misdeeds and negligence of such retired Government servant.

8. This question has already been decided by a Division Bench of this Court in **2010(3) P.L.J.R., 845 (Urmila Sharma @ Urmila Singh)** (supra) relying on the judgment decided by the Apex Court in the case of **(State of Bihar Vrs. Mohd. Indris Ansari (1995)2 P.L.J.R.(SC) 51**. Rule 43(b) of the Rules came to be interpreted in the case of **Mohd. Indris Ansari (1995)2 P.L.J.R.(SC) 51** (supra) wherein two Judges Bench of the Apex Court has held in paragraph 6 of the judgment as follows :

> *"6 : A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired Government servant, it must be shown that in departmental proceedings or judicial proceedings the concerned Government servant is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in*

respect of misconduct which took place not more than four years before the initiation of such proceedings. It is therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rules 43(a) and (b), in connection with the alleged misconduct, as it is alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27.09.1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authority to rely on the earlier notice dated 17.10.1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition no. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to résumé the earlier departmental inquiry pursuant to the notice dated 17.10.1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17.10.1987 but initiated fresh departmental inquiry by the impugned notice dated 27.09.1993. Consequently it is not *open to the learned Advocate for the Appellant to rely upon the said earlier notice dated 17.10.1987."*

9. A Division Bench of this Court has also held in the case of **Bihar State Electricity Boar Vrs. Sharda Prasad Sinha & Ors.** (L.P.A. No. 446 of 1998 with L.P.A. No. 759 of 2005) decided on 21.05.2007, wherein a contention was advanced that four years as mentioned in Rule 43(b) of the Rules should be counted from the date of knowledge of the incident resulting in loss inasmuch as the word 'event' has been used in the said Rules. The Division Bench after scanning the anatomy of Rule 43(b) has held thus :

"A look at 43(b) of the Pension Rules, therefore, amply demonstrates that if a disciplinary proceeding has been initiated by issuing a charge-sheet against the employee for pecuniary loss caused to the employer either by misconduct or negligence and if such disciplinary proceeding could not be conducted before superannuation of the charge-sheeted employee, the same may be concluded by directing stoppage of full or a part of the pension otherwise payable to the employee. In the event before superannuation no disciplinary proceeding is initiated by issuing a charge-sheet, or by ordering suspension, even then, if pecuniary loss has been caused to the employer by misconduct or negligence, disciplinary proceeding may be initiated by

issuing and upon conclusion of the proceedings pension payable to him may be stopped to the extent of full or a part thereof. In addition to that if an employee is guilty of causing pecuniary loss to the employer as has been found in a judicial or disciplinary proceeding as a result of gross conduct, then also full or a part of pension payable to him can be stopped. Therefore, the Rule envisages three different situations. If already there is a finding in a disciplinary or judicial proceeding that an employee has caused gross misconduct resulting in pecuniary loss, his pension can be stopped in full or in part, which is the first situation. Secondly, if there is an allegation that by misconduct or negligence an employee has caused pecuniary loss to the employer and in order to get into the truth and substance of such allegation, charge-sheet has been issued, but the proceeding pursuant to the charge-sheet could not be completed before superannuation, the proceeding may be concluded after superannuation of the employee concerned by awarding punishment of reduction of his pension either in full or in part. The 3rd situation is when there was no finding in any disciplinary proceeding or juridical proceedings during the time the employee and employer relationship existed, that the employee concerned *has caused pecuniary loss to the employer by his misconduct or negligence and at the same time no proceeding as initiated to ascertain the same during the time the employee had not superannuated by issuing a charge-sheet, such proceeding may be initiated by issuing a charge-sheet after superannuation and upon conclusion thereof punishment by way of reduction of pension in full or in part may be awarded. In relation to the 3rd situation, there is a time limit of four years to initiate the proceeding from the date of "event". The "event" must be such which resulted in misconduct or negligence and that has caused pecuniary loss to the employer. This "event" may be of one day or may be continuing from day to day. What is required to be ascertained is whether by reason of the "event" the misconduct or the negligence of the employee stands established resulting in pecuniary loss to the employer. If there are series of "events" then the last of such events should be taken into consideration upon determining the starting point of the time limit. Therefore, if actions are such that one action resulted in another action and that resulted in yet another action, then all actions taken together should be deemed to be the "event" and cut of date would be the last date of that action which* *completed the "event".*

10. Thus, from the aforesaid analysis by a Division Bench of this Court, it is crystal clear that the four years limitation for initiation of a departmental proceeding shall be counted from the date of event/negligence and misconduct of the retired Government servant for the purpose of initiation of proceeding under Rule 43(b) of the Rules. It has been lucidly illustrated that the event may be of one or may be continued from day to day What is required to be ascertained is whether by reason of the "event" the misconduct or the negligence of the employee stands established resulting in pecuniary loss to the employer. If there are series of "events" then the last of such events should be taken into consideration upon determining the starting point of the time limit.

11. In view of these facts, the submission of the learned counsel for the State is of no substance that limitation shall be counted from the date of knowledge about the event or misconduct or negligence of the employed causing pecuniary loss to the employer. In the present case, admittedly, the petitioner retired on 31.05.2007 and before his retirement he granted promotion to fourth grade employees and also granted Assured Career Progression Scheme to the work charge employees, but, the departmental proceeding under Rule 43(b) of the Rules was initiated only on 19.07.2011, i.e., after four years from the date of event, i.e., while the petitioner was in service granted promotion/benefits to the employees. Therefore, the initiation of departmental proceeding, itself,

is barred by limitation and consequent punishment after such departmental inquiry withholding 20% pension of the petitioner is also bad and not sustainable.

12. The learned counsel for the State has, further, submitted that the Government by Circular and Resolution has resolved that the period of four years shall be counted from the date of knowledge and by a Resolution the Government has decided that in a proceeding initiated on the basis of the recommendation of the Lok Ayukta, the period of limitation of four years for initiation of departmental proceeding on the basis of recommendation of the Lok Ayukta shall not be effected.

13. I find no substance in the submission on simple ground that the Government has framed the pension rules under statutory power and the Circular and Resolution issued from time to time by the Executive can only supplement the Rules and Statutes, if there is any space to fill up. But, the Circulars and Resolutions which are the Executive instruction can not supplant the statutory rules. The Circular and Resolution can only supplement statutory rules. Therefore, if the Resolution says that for initiation of a departmental proceeding on the basis of the recommendation of the Lok Ayukta under Rule 43(b) of the Rules, there shall be no limitation, this Resolution can not over-ride the statutory Rules which clearly say that the departmental proceeding can be initiated only within four years from the date of event or negligence of the retired Government employee resulting in pecuniary loss.

14. Having considered the facts and discussions, made above, I find that the order, as contained in Notification No. 1046(S), dated 07.02.2014, withholding 20% pension of the petitioner is bad and, accordingly, the same is **quashed** with a direction to the authorities to release the entire pension and pay the arrears to the petitioner within three months, from the date of receipt of this judgment. Thus, the writ petition is **allowed**, accordingly,

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
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