IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5432 of 2017

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Nawal Kishore Chaudhary, Son of Late Ramawatar Chaudhary, Resident of 1st Floor (East), Laxmi Niwas, Nawal Kishore Road, P.S.- Kadamkuan, Town and District- Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Additional Secretary, Rural Works Department, Government of Bihar, Patna.
5. The Engineer in Chief cum Additional Commissioner cum Special Secretary, Rural Works Department, Government of Bihar, Patna.
6. Superintending Engineer, Road Division, Darbhanga, District- Darbhanga.
7. The Executive Engineer, Road Construction Department, Road Division, Begusarai, District- Begusarai.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha, Sr. Adv.
Mr. Niraj Kumar, Adv.

For the Respondent/s : Mr. Kumar Alok, SC7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-11-2017

Heard Mr. Ashok Kumar Sinha, learned Senior Counsel for the petitioner, who appears alongwith Mr. Niraj Kumar, Advocate on record and Mr. Kumar Alok, learned SC-7, for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the notification bearing No. 3185 dated 18.10.2016, whereby in exercise of power vested under Rule 43(a) of the Bihar Pension Rules, the pension of the petitioner is forfeited.

This case has its own peculiarities and which needs to be put on record. The petitioner was initially appointed under the Road Construction Department on the post of Assistant Engineer. The cadre was finally bifurcated vide memo No. 6115 29.7.2013, but the petitioner was allocated, the Rural Works Department by virtue of a policy decision taken earlier in a meeting chaired by the Chief Secretary on 18.7.2012 which translated in a resolution bearing Memo No. 6115(s) dated 29.7.2013, a copy of which is at Annexure 8 to the writ petition.

It is not in dispute that by virtue of the policy decision on bifurcation, the petitioner superannuated as an employee of the Rural Works Department on 31.12.2012. It was just a month before his retirement, that a decision was taken to initiate disciplinary proceedings against the petitioner for alleged financial irregularities by service of a charge memo, a copy of which is at Annexure 5 to the writ petition and which was in pursuance of a decision to initiate such proceeding taken by the State Government in its Road Construction Department vide Memo No. 11812(s) dated 5.11.2012, a copy of which is at Annexure 6 to the writ petition. Nothing progressed in the disciplinary proceeding until the retirement of the petitioner on 31.12.2012. It is after the superannuation of the petitioner that the State realized that although the proceeding in question had been initiated at the instance of the Road Construction Department vide Annexure 6 read alongside Annexure 5 dated 5.11.2012 but the petitioner had superannuated as a cadre employee of the Rural Works Department and which led to a fresh resolution at Annexure 10 bearing Memo No. 1534 dated 27.5.2014, whereby the State in its Rural Works Department decided to initiate disciplinary proceedings against the petitioner who had superannuated on 31.12.2012 in purported exercise of powers vested under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules'). This led to issuance of a fresh charge sheet, a copy of which is at Annexure 9. Soon realizing the illegality in initiating a proceeding against a superannuated employee under 'the Disciplinary Rules' that another resolution was passed bearing No. 181 dated 13.1.2015 converting the proceeding initiated vide resolution bearing No. 1534 dated 27.5.2014 into a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules') enclosed at Annexure 12 to the writ petition.

It is a matter of record that this proceeding after having gone through the rigors of the procedure under the 'Pension Rules' has finally culminated in the order impugned bearing Memo No. 3186 dated 18.10.2016 of the State Government, impugned at Annexure 21, whereby the entire pension of the petitioner is forfeited under Rule 43(a) of 'the Pension Rules'. Feeling aggrieved, he is before this Court.

Mr. Sinha, learned Senior Counsel for the petitioner, has argued in reference to the replies filed by the petitioner before the authorities concerned to object against initiation of the proceeding in view of four years limitation prescribed under Rule 43(b) of 'the Rules' as according to Mr. Sinha though the alleged irregularities relate to the period 1996-98, it is after lapse of six years that the present proceeding has been initiated which is beyond the limitation period. According to Mr. Sinha, neither the proceeding under Rule 43(b) could have been initiated in view of bar present under 'the Rules' of four years nor the impugned order could convert a proceeding initiated under Rule 43(b) into a proceeding under Rule 43(a) to meet the lacuna.

The arguments advanced by Mr. Sinha, are plain, simple and supported by the provisions underlying Rule 43 of the Bihar Pension Rules. Mr. Kumar Alok, learned State Counsel, has tried hard to defend the impugned action, to submit that even though a fresh charge sheet was served on the petitioner after his retirement but in effect it was a conversion of a proceeding initiated prior to his retirement and which would sufficiently explain the delay. He submits that the petitioner was facing serious charges and thus the penalty order is justified.

Having heard learned counsel for the parties, in my opinion, the entire proceedings initiated post retirement of the petitioner vide resolution bearing No. 1534 dated 27.5.2014, impugned at Annexure 10, whereby a decision was taken to initiate a proceeding under ‘the Disciplinary Rules’ together with the charge sheet issued thereunder at Annexure 9 as well as conversion of the said proceedings into one under Rule 43(b) vide Memo No. 181 dated 13.1.2015, impugned at Annexure 12, resulting in the order of penalty passed under Rule 43(a) of the Pension Rules is without sanction of law because neither any proceeding under ‘the Disciplinary Rules’ could have been initiated against the petitioner post his retirement on 31.12.2012 as purportedly done vide Memo No. 1534 dated 27.5.2014 read alongside the charge memo at Annexure 9 nor an illegally initiated void proceeding could have been given a lawful sanction by its conversion in a proceeding under Rule 43(b) vide notification bearing No. 181 dated 30.1.2015 for two reasons, namely:

(a) A void proceeding could not be given a lawful sanction; and

(b) No proceeding under Rule 43(b) be initiated in relation to an alleged misconduct happening beyond four years as specifically raised by the petitioner in his reply at Annexure 20 paragraph-4 and not answered in the impugned order at Annexure 21. Perhaps the State having realized the faux pas, tried to fill the lacuna by passing the impugned order under Rule 43(a) of the Pension Rules but failing to appreciate that neither the initiation of the proceeding has a lawful sanction nor its conversion under Rule 43(b) is valid or the final order passed under Rule 43(a) is capable of being upheld because no proceeding under Rule 43(a) was initiated against the petitioner.

For the reasons aforementioned, the entire proceedings initiated against the petitioner beginning from the notification bearing Memo No. 1534 dated 27.5.2014 at Annexure 10 together with the charge sheet at Annexure 9, the notification of conversion of the said proceeding into one under Rule 43(b) of the Pension Rules being Memo No. 181 dated 13.1.2015, impugned at Annexure 12, and the final order passed under Rule 43(a) of the Pension Rules, impugned at Annexure 21 bearing Memo No. 3186 dated 18.10.2016 of the State Government cannot be upheld and are accordingly quashed and set aside.

Let the pension of the petitioner together with its arrears be released forthwith.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.12.2017
Transmission Date	NA