

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2527 of 2009

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Nityanand Kumar Singh, son of late Chhatrapati Singh, Chhatrapati Niwas, Postal Park, P.S. Kankarbagh, in the district of Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner and Secretary, Department of Personal and Administrative Reforms, Government of Bihar, Patna
2. The Joint Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna
3. The Deputy Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna
4. The Accountant General Bihar, Birchand Patel Path, Patna-1

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Braj Nandan Tiwary, Adv.

For the Respondent/s : Mr. Namrata Mishra, Adv.

Mr. J.P. Karn, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-01-2017

Heard Mr. Braj Nandan Tiwary, learned counsel for the petitioner, Mr. Ashutosh Kumar Jha, A.C. to G.A.11 for the State and learned counsel for the Accountant General.

The petitioner is aggrieved by the Notification bearing No.1009 of the State Government in its Personnel and Administrative Reforms Department whereby the pension payable to the petitioner has been forfeited in exercise of powers vested under Rule 43(a) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules'), a copy of which is impugned at Annexure-5 to the writ petition.

Facts of the case briefly stated is that the petitioner superannuated from the post of Registrar, Water Resources



Department, Government of Bihar on 31.12.1997 on completion of 58 years. It is thereafter that he was granted promotion vide notification no. 576 dated 17.8.1998 on the post of Under Secretary with effect from 1.12.1995. It is 9 years after the retirement that show cause was issued to the petitioner vide letter no. 250 dated 19.1.2007, in purported exercise of power under Rule 43(b) of 'the Pension Rules' requiring a response from the petitioner. A copy of such notice is impugned at Annexure-1 and the petitioner filed his reply vide Annexure-2 on 19.2.2007. The reply was followed by another show cause vide letter no. 1329 dated 7.3.2008 and this time the show cause was under Rule 43(a) of 'the Pension Rules' and the foundation lay on the conviction of the petitioner by a criminal court. A copy of such notice is impugned at Annexure-3 and the petitioner filed his explanation vide Annexure-4 which has been rejected by the impugned notification dated 19.12.2008 impugned at Annexure-5 and feeling aggrieved he is before this Court.

The core issue raised in the writ petition is whether the State is within its jurisdiction to issue a notice under Rule 43(a) of 'the Pension Rules' to the petitioner for exercising powers of forfeiture of pension.

A coordinate bench, in consideration of the argument advanced by parties on the scope and extent of exercise of power under Rule



43(a) of 'the Pension Rules' in comparison to the restrictions present in proviso attached to Rule 43(b), referred the matter for an authoritative pronouncement by the Division Bench vide order passed on 30.11.2010. The opinion of the Division Bench is recorded in the order dated 30.2.2012. The Division Bench has explained the distinct nature of the exercise underlying Rule 43(a) and Rule 43(b) of 'the Pension Rules' together with the aims and objects accompanying the exercise.

The division bench taking note of the stipulations present in Rule 43, while accepting that the provisions are overlapping, has held that under rule 43(a) it is future good conduct which is an implied condition for grant and continuation of pension of pensioner who is expected to maintain a good conduct in future and in case a pensioner is convicted of a serious crime or held guilty of grave misconduct then the provincial Government is within its jurisdiction to withhold either partially or as a whole, the pension being paid to the pensioner.

In so far as Rule 43(b) is concerned, the division bench has explained that such power is exercisable if the pensioner in a departmental or judicial proceeding is held guilty of grave misconduct or have caused pecuniary loss to the Government by misconduct or negligence during his service including service rendered after reemployment. The relevant part of the order which would govern the



issue raised herein, is reproduced hereinbelow for ready reference:

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Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not related to his conduct during service and/ or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43 (a) and that of Rule 43 (b). Both the provisions operate in different areas having different connotations. The decision under rule 43 (a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State government to continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a government servant done while he was in service. Such provision in the rules governing pension vests the State Government with necessary powers to maintain action against a retired government employee for his conduct while in service but subject to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43 (a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all.

Hence, the requirement of proviso (a) (ii) cannot apply to Rule 43 (a). Such provision in the proviso puts a restriction upon the power of the State government to initiate a departmental proceeding if not instituted while the government servant was in service, either before retirement or during re-employment. Such departmental



proceeding, by virtue of the provision under consideration cannot be in respect of an event which took place more than four years before the institution of such proceeding. Rule 43 (a) comes into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Rule 43 (a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later. Hence, it cannot be governed by proviso (a) (ii) to Rule 43 (b) as it can apply only to initiation of departmental proceeding by the Government after an employee has retired.

Having answered the issue referred to the Division Bench, we refer the matter back to the learned Single Judge for hearing the writ petition for its disposal in accordance with law.

As the above order itself reveals we have not gone into the facts of the case.”

It is self eloquent from the issue settled by the division bench that Rule 43(a) of ‘the pension rules’, is not related to a conduct of a pensioner during service period and/or service rendered on reemployment rather it is a conduct expected from a pensioner after his retirement and after he is granted pension that is to say, his future conduct. The legal position settled by the division bench is that a decision under Rule 43(a) is not on ground of a departmental proceeding or a judicial proceeding instituted while the Government servant was in service or instituted later in respect of an event related to his service rendered before retirement or reemployment which is the arena covered by Rule 43(b).

In the present case, it is not in dispute that no proceeding was



initiated against the petitioner either judicial or departmental before his retirement on 31.12.1997. Although a vigilance case was instituted in 2001 for the alleged involvement of the petitioner in the infamous Animal Husbandry Scam case but even at that stage the department did not choose to initiate any proceeding under Rule 43(b) of 'the Pension Rules'. In my opinion, any issue relating to the conduct of the petitioner during his service period, in view of the division bench pronouncement noted above, could only have been resolved by taking recourse to the enabling provision of Rule 43(b) but no steps were taken. The respondents sat over the matter and it is after 9 years of lapse when they woke up from slumber to issue a show cause notice on 18.1.2007 vide Annexure-1 to the writ petition under Rule 43(b) seeking his explanation. Obviously this notice was barred under proviso (iii) attached to Rule 43(b) as it was in respect of an event which took place more than 4 years of such initiation and thus on explanation given by the petitioner, this proceeding was dropped. It is to cover up their lapse that the proceeding in question has been initiated under Rule 43(a) of 'the Pension Rules' but in my opinion, in view of the legal position settled by the Division Bench as to the scope and object of Rule 43(a), since the conviction of the petitioner is not relatable to an event or conduct which has taken place after the retirement of the petitioner rather admittedly relates to the conduct of



the petitioner during his service period, it was beyond the jurisdiction of the respondent- State to initiate any proceeding under Rule 43(a) of ‘the Pension Rules’ for forfeiture of the pension of the petitioner in respect of his alleged conduct during his service period which has led to his conviction in the judicial proceeding. Had it been a case where the judicial proceeding in question in which the petitioner has been held convicted, was initiated for the alleged conduct of the petitioner post his retirement, may be the proceedings could have been saved but since undisputably it relates to the alleged act of misconduct during the service period of the petitioner, in view of the issue settled by the Division Bench, it sails out of the jurisdiction of the State to initiate a proceeding under Rule 43(a) of ‘the Pension Rules’.

For the reasons so discussed, the notification bearing No. 1009 dated 19.12.2008 of the State Government whereby the pension of the petitioner has been forfeited under Rule 43(a) of ‘the Pension Rules’ cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed. Let the arrears of the pension of the petitioner be paid to him within three months from the date of receipt/production of a copy of this order.

Bibhash/-

(Jyoti Saran, J)

AFR	
CAV DATE	
Uploading Date	25.01.2017
Transmission Date	

