

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16143 of 2015

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1. Indardeo Paswan, son of Late Harkhoo Paswan, resident of 101, Geet Enclave
Mohalla- Sri Krishna Vihar Colony, PO and PS- Beur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Patna.
3. The Additional Secretary to the Government, Department of Mines and Geology, Government of Bihar, New Secretariat, Patna.
4. The Additional Enquiry Commissioner-cum-Enquiry Officer, Irrigation Bhawan, Harding Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Verma, Sr. Adv.
 Mr. Shyameshwar Kumar Singh, Adv.
 Mr. Akash Deep, Adv.

For the Respondent/s : Mr. Sudesh Kumar, A.C. to PAAG 2
 Mr. Rajendra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 08-02-2017

Heard Mr. Rajeev Kumar Verma, learned Senior counsel for the petitioner, who appears along with Mr. Akash Deep, counsel on record, Mr. Sudesh Kumar, A.C. to PAAG-2 and Mr. Rajendra Prasad appearing for the Mining Department.

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

The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the entire departmental proceeding initiated



against the petitioner bearing departmental proceeding No. 13 of 2014 including the memo of charges issued vide Memo No.597 dated 14.2.2014 impugned at Annexure-1 as well as the resolution bearing Memo No.676 dated 27.2.2015 whereby the State Government in its Mining and Geological Department has resolved to initiate proceedings under Rule 139(c) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules').

The only issue that requires a consideration by this Court is whether the disciplinary proceeding initiated against the petitioner bearing Disciplinary Proceeding No.13 of 2014, on the basis of the charge memo contained in the resolution bearing No.597 dated 14.2.2014 of the State Government impugned at Annexure-1, can be the basis for continuation of the proceedings under Rule 139(c) of 'the Pension Rules'.

Mr. Rajeev Kumar Verma learned Senior counsel for the petitioner has submitted that the petitioner after his superannuation on 31.10.2013, was proceeded by service of a memo of charge impugned at Annexure-1, under Rule 43(b) of 'the Pension Rules'. He submits that the petitioner responded to the notice by filing his reply present at Annexure-1/1 and 1/2 questioning the validity of the proceeding so initiated under Rule 43(b) of 'the Pension Rules' inter alia on grounds that it related to an event which was more than four years from the



date of such initiation. It is on such objection being taken that the State Government by the second resolution impugned at Annexure-2 dated 27.2.2015 dropped the proceeding while admitting that the initiation of proceeding under Rule 43(b) of 'the Pension Rules' was not legally valid. According to learned Senior counsel the State however defaulted in continuing the same very proceeding initiated vide resolution dated 14.2.2014 present at Annexure-1 by converting it into a proceeding under Rule 139(c) of 'the Pension Rules'. According to Mr. Verma this cannot be done. As per learned Senior counsel, the prerequisites to initiate proceedings under rule 43(b) of 'the Pension rules' is entirely distinct from a proceeding under Rule 139(c) of 'the Pension rules' which is a revisional power reserved with the State Government, to be exercised in appropriate case. He submits that there cannot be an automatic conversion of a proceeding initiated under rule 43(b) of 'the Pension Rule' into a proceeding under rule 139(c) thereof. It is taking note of the submission that the State counsel was directed to address the Court and was also directed to produce the records of the departmental proceedings which has since been produced.

It is the stand of the learned State counsel that since the petitioner was facing grave charges that the State while realizing that the proceeding under Rule 43(b) is not valid, has decided to exercise



the revisional power vested under Rule 139(c) and which suffers no infirmity. Both the learned Senior counsel for the petitioner as well as learned State counsel, have relied upon the judgment of the Supreme Court rendered reported in **1995 Supp(3) SCC 56 (State of Bihar and Others Vs. Md. Idris Ansari)**.

I have heard learned counsel for the parties and I have perused the records.

As I have already indicated, the issue which falls for consideration before this Court is, whether or not there can be an automatic conversion of a proceeding initiated under Rule 43(b) of 'the Pension Rules' into a proceeding under Rule 139(c) thereof.

For the sake of convenience I deem it proper to reproduce the two provisions which would bear relevant consideration for the contest herein:

"**43(a)**.....

(b)The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss cause to Government if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have cause pecuniary loss to Government by misconduct or negligence during his service including service rendered on re-employment after retirement:

Provided that -

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;



(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;"

"**139(a).** The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

The records of the disciplinary proceedings would reflect that the Departmental Enquiry Commissioner on appreciating the objection raised by the petitioner on the initiation of the proceedings under Rule 43(b) of 'the Pension Rules' as present at Annexure-1/1 and Annexure-1/2 herein, found substance in the same and recommended accordingly to the State Government. The State Government upholding the objection has dropped the proceedings initiated under rule 43(b) of 'the Pension Rules' vide notification



No.676 dated 27.2.2015 however by the same notification the proceedings initiated vide Resolution No.597 dated 14.2.2014 have been converted into a proceeding under Rule 139(c) of 'the Pension Rules' and this has aggrieved the petitioner as according to him, there cannot an automatic conversion. The power reserved in the State Government under Rule 139(c) is a revisional power, to be exercised in the circumstances discussed thereunder and cannot be exercised in the manner done in the present case. The exercise of jurisdiction under Rule 43(b) and Rule 139(c) of 'the Pension Rules' stands explained in the judgment (s) of this Court and the Supreme Court in the case of **Md. Idris Ansari** (supra).

Facts involved in the case of **Md. Idrish Ansari** (supra) would reveal that the State having realised that a proceeding under Rule 43(b) was untenable, and was hit by the limitation prescribed thereunder, decided to exercise the power vested under Rule 139(c) of 'the Pension Rules' inter alia, on charges of misconduct against the petitioner of the said case. The case under reference had travelled from this Court and the discussion of the Division Bench of this Court on the two provisions in consideration in the backdrop of the facts involved, would bear consideration, at para 6 of the judgment reported in **1994(1)PLJR 809 (Md. Idris Ansari vs. State):**

“6. There is no doubt that Rule 139 provides that if the service of a Government servant, who has superannuated, has not been thoroughly satisfactory, the authority



sanctioning the pension should make such reduction in the amount as it thinks proper. However, Rule 139(c) makes it clear that the State Government may revise the order relating to pension passed by subordinate authorities under their control, if, they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. In the instant case it is not the case of the State that the service record of the petitioner showed that his service was not satisfactory. In fact, the show cause notice (Annexure-9) issued to the petitioner under Rule 139 of the Bihar Pension Rules refers to specific acts of misconduct alleged against the petitioner in connection with the execution of works in the year 1986-87. There are more than one reason to hold that in the facts of this case the proceeding under Rule 139 was not maintainable. Firstly, if the Government wished to reduce the pension payable to the petitioner on the ground that he had committed an act of misconduct, the case being squarely covered by Rule 43(b), a proceeding could have been initiated, if the incident giving rise to the proceeding had taken place within four years of the date of the institution of the proceeding. It is conceded in the show cause notice itself (Annexure-9) that the proceeding under Rule 43(b) could not be initiated in the facts of the case. Secondly, Rule 139(b) provides for the order that the sanctioning authority may pass, if the service of a Government servant is not found to have been thoroughly satisfactory. Rule 139(c) empowers the State Government to revise an order passed by subordinate authorities in regard to pension if the State Government is satisfied that the service of the petitioner was not thoroughly satisfactory, or that there was proof of grave misconduct on his part while in service. Even if the power to be exercised under Rule 139(b) is read in the light of the provision of Rule 139(c), the State Government can reduce the pension payable to a retired Government servant if (a) they are satisfied that the service of the petitioner was not thoroughly satisfactory or (b) there was proof of grave misconduct on his part while in service. So far as the first condition is concerned, the same is not fulfilled, because it is not the case of the State that the record of service of the petitioner was unsatisfactory. So far as the second condition is concerned, the same is also not fulfilled, because there is no proof of grave misconduct on the part of the petitioner



while in service. Neither in a court of law nor in a departmental proceeding had any charges been proved against the petitioner. The allegations remained mere allegations and they were sought to be made use of for the purpose of exercise of power under Rule 139(a) and (b) of the Rules. In the absence of proof of grave misconduct, as distinguished from mere allegations of misconduct, the power under rule 139(a) and (b) could not be exercised by the State Government. In these circumstances, we have no doubt that even if a wider meaning is given to Rule 139(b) by reading the said rule in the light of Rule 139(b) by reading the said rule in the light of Rule 139(c), the power conferred thereby is not wide enough to confer on the Government jurisdiction and authority to reduce the pension of a retired Government servant without proof of grave misconduct in the absence of unsatisfactory service record. Such grave misconduct may either be proved before a court of law, or even in a departmental proceeding. That not being the case, the impugned order reducing the pension of the petitioner is wholly unjustified."

The State went in appeal before the Supreme Court and the Supreme Court while affirming the opinion of the Division Bench and after examining the two provisions in question has distinguished the two exercise in paragraphs 7 to 10 of the judgment:

"7. A mere look that 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 year before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b) in connection with the alleged misconduct, as it 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.
.....”

8. There remains the question whether any assistance can be derived by the appellant authorities from Rule 139 of the Rules.

9. So far as that rule is concerned, it empowers the State authorities to decide the question whether full pension should be allowed to a retired Government servant or not in the circumstances contemplated by the Rule. The first circumstance is that if the service of the concerned Government servant is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstances is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of concerned Government servant while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principle of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture :

- 1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.
- 2. Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.



10. So far as the second type of cases is concerned the proof of grave misconduct on the part of the concerned Government servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired Government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27.09.1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which show cause notice dated 27.09.1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13.12.1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after expiry of four years from 1986-87 as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show cause notice dated 27.09.1993 will have to be treated as stillborn and ineffective from its inception.”



The express opinion of the Court(s) on the exercise of jurisdiction under Rule 139 (c) as distinguished from the exercise undertaken under rule 43(b) makes it eloquent that the two exercises are in two entirely distinct circumstances and even the essential prerequisites for such exercise is distinct.

Rule 43(b) is pressed into service in circumstances which requires an enquiry into issues of grave misconduct of a pensioner or where he has caused pecuniary loss to the Government and reserves a right in the State to withdraw either in partial or as a whole and whether permanently or for specified period, the pension of a pensioner who has been found guilty of such misconduct or having caused financial loss, in a departmental or judicial proceeding, so held.

Rule 139 on the other hand is a revisional power vested in the State Government to revise the order of Pension, where the service of the pensioner was not thoroughly satisfactory or where there was proof of grave misconduct. In other words, where the State Government on examination of the service records of a pensioner is satisfied that it is not satisfactory or there is proof of grave misconduct that it may exercise revisional powers which stands reserved under Rule 139(c).

The issue is whether the case in hand is covered by either of the



two pre requisites accompanying Rule 139(c) of 'the Pension Rules'. The answer is in the negative for the exercise of powers under 'the Pension Rules', initially was, under Rule 43(b) and which has been translated in a proceeding under Rule 139(c). Meaning thereby an enquiry into alleged misconduct was yet to be carried out. The notification impugned at Annexure 2 when read alongside Annexure-1, would confirm, that the purpose for the exercise is to enquire into alleged charges of misconduct against the petitioner and not for finding out whether his services was unsatisfactory or there was a case of proven misconduct against the petitioner. In other words, the charges of misconduct was yet at enquiry stage and thus not proved. As the court(s) have held, an enquiry into alleged misconduct is certainly not within the parameters of exercise envisaged under Rule 139(c) of 'the Pension Rules' which is a revisional power vested in the State Government to either modify or withdraw the pension order, on grounds of unsatisfactory service records or where there is a proof of grave misconduct.

Undisputedly, such power could have been exercised by the State under Rule 43(b) of 'the Pension Rules' but rightly understanding the limitations attached to the said exercise, the State thought wise to convert the said proceeding into a proceeding under Rule 139(c) but this was an absurdity for neither Rule 139(c) of 'the Pension Rules' gives any such jurisdiction to the State to convert a



proceeding initiated under Rule 43(b) nor can they enquire into a charge of misconduct in such purported exercise. The provision is self eloquent and reflects that it is only on grounds of unsatisfactory service or on a proof of grave misconduct that such power can be exercised. In the present case the power is being exercised to prove a misconduct and since the matter is yet at its enquiry stage, it stands confirmed that there is no proof of grave misconduct for exercising such power.

In view of the legal position explained by this Court and the Supreme Court as to the distinctive nature of exercise under Rule 43(b) and Rule 139(c) of ‘the Pension Rules’, in my opinion, the case in hand stands squarely covered by the ratio laid down in the case of **Md. Idris Ansari** (supra) because just like in the said case, even in the present case, the exercise of jurisdiction under Rule 139(c) is for proving a misconduct which is clearly without jurisdiction.

For the reasons so discussed, the entire disciplinary proceedings in Disciplinary Proceedings No.13 of 2014 together with resolution dated 27.2.2015 of the State in its Mining and Geological Department impugned at Annexure-2 are held illegal without jurisdiction and contrary to the statutory provisions and accordingly quashed and set aside. The writ petition is allowed with consequential reliefs.

Let the records of the departmental proceedings No.13 of 2014 so produced by Mr. Sudish Kumar be returned to his custody.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NAFR
Uploading Date	10.3.2017
Transmission Date	NA

