

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20630 of 2013

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Parmatma Tiwari, son of Late Dhruvdeo Tiwari, Resident of Village - Nachap,
P.O. Nachap, P.S. - Manjhi, District - Saran (Chapra)

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The District Magistrate-cum-Collector, Saran (Chapra)
4. The Engineer in Chief (Central) Water Resources Department, Govt. Of Bihar, Patna
5. The Chief Engineer Water Resource Department, Govt. Of Bihar, Siwan
6. The Superintending Engineer-cum-Conducting Officer, Planning and Monitoring Circle-3, Water Resource Department, Sichai Bhawan, Patna
7. The Assistant Engineer, Planning & Monitoring Circle-3, Sichai Bhawan, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Dhananjay Kumar,
Mr. Manindra Nath Tiwari, Advocates

For the Respondents : Mr. Binod Kumar
Ms. Deepanjali Gupta, ACs to GP 10

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-08-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing
the order issued vide memo no. 884 dated 30.07.2013 by which a sum
of Rs. 3,47,630/- has been ordered to be deducted from the amount of
gratuity of the petitioner with condition that if gratuity has already
been paid then the said amount will be deducted at the rate of 20%
from his pension amount upto 10 years; and for connected reliefs.

3. The short facts of the case according to the petitioner



are that he was initially appointed on the post of Junior Engineer and joined on 02.03.1979 in Master Planning Division, Water Resources Department at Dumka. The petitioner finally retired as Junior Engineer from Rural Work Division 3, Saran, Chapra on 31.10.2008. During his posting at Chapra, he joined as Junior Engineer on deputation in Nagar Panchayat, Dighwara where certain charges were levelled against him in connection with irregularities in the work of Nagar Panchayat, and a team headed by the Subdivisional Officer conducted enquiry and submitted an enquiry report dated 03.10.2006 and an FIR was instituted against the petitioner and others leading to a departmental proceeding against him. The article of charges and show cause notice were given to the petitioner specifically indicating that being the Incharge of the work, it was the petitioner's duty to verify the maintenance register of muster roll. The petitioner replied to the notice on 01.02.2010. A second show cause notice was also given to the petitioner to which he submitted his reply on 05.06.2013 refuting the charges against him. The disciplinary authority, however, by the impugned order dated 30.07.2013 held the petitioner guilty of three charges (Ka), (Kha) and (Ga) of the charge report and directed recovery of the amount of Rs. 3,47,630/- from the petitioner.

4. Learned counsel for the petitioner makes two broad submissions to assail the impugned order of recovery---

(a) It is submitted that the proceedings in connection with recovery have been initiated with reference to Section 43(b) of



the Bihar Pension Rules (for short, “the Rules”) in the year 2009 much after he had retired on 31.10.2008. It is submitted that as soon as the petitioner was allowed to superannuate, the relationship of employer and employee ceased to exist. The departmental proceedings initiated thereafter without his services having been extended are thus invalid. Reliance is placed on a decision of the single Bench of this Court in the case of *Man Bahadur Mahto Vs. The State of Bihar & others*, 1999(3) PLJR 327 in which it has been held that a departmental proceeding initiated during service cannot be continued after retirement without extending the services in terms of Rule 73 of the Bihar Service Code.

(b) It is further submitted that recovery of the amount of Rs. 3,47,630/- has been directed on the basis of a re-enquiry report dated 24.09.2012 treating the difference in the measurement book and the amount evaluated by the enquiry team as excess expenditure by the petitioner. It is submitted that such action is unsustainable inasmuch as a copy of the said re-enquiry report was not made available to the petitioner nor was he granted any opportunity of hearing with regard to the alleged excess expenditure.

5. Learned counsel for the respondents, on the other hand, submits that there is no infirmity in the impugned order and the proceedings initiated even after superannuation of the petitioner are valid in law. As regards the re-enquiry report, it is submitted that there was never any subsequent enquiry rather the disciplinary authority had merely sought the opinion of the enquiry officer on



certain points, which the enquiry officer accordingly submitted in terms of the letter No. 1365 dated 24.09.2012. A perusal of the second show cause notice dated 18.04.2013 itself discloses that the enquiry report vide letter no. 1592 dated 26.11.2010 together with letter No. 1365 dated 24.09.2012 both were made available to the petitioner and reply sought against the same.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court is not inclined to interfere in the matter and finds the writ petition devoid of merit.

7. The submission made on behalf of the petitioner that the proceeding under Rule 43(b) of the Rules cannot be initiated after superannuation, is not worthy of acceptance. For the sake of ready reference, the relevant portion of Rule 43(b) of the Rules may be extracted hereunder ---

“(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 caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused 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; ...”

8. The use of words “such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment” shows beyond doubt that such proceedings may very well be instituted after retirement, subject to the conditions enumerated in the proviso, if not initiated during service.

9. The decision in *Man Bahadur Mahto's case (supra)* relied upon by the petitioner does not also come to his aid inasmuch as that writ petition was allowed on the ground that the departmental proceeding was initiated in respect of events which had transpired more than four years prior to the institution of the proceeding.

10. It is true that once a Government servant retires, no penalty, major or minor, can be imposed upon him which could be



imposed under the Civil Services (Classification, Control and Appeal) Rules if he had been in service. However, such restriction does not apply in the case of Rule 43(b) of the Rules. This aspect of the matter stands concluded by a Full Bench decision of this Court dated 18.11.1991 reported in the case of *Shambhu Saran Vs. The State of Bihar and Ors. , 2000(1) PLJR 665 (FB)*. The observations of the Court in paragraph 8 of the judgment may be referred to as follows ---

“8. The other point to be noticed is that a distinction is made in Rule 43(b) between a case where a disciplinary enquiry is already pending at the time of such superannuation and where no such disciplinary enquiry is pending at the time of retirement. Certain safeguards have been provided so that there may be no undue harassment after retirement when no proceeding had been initiated before his retirement. Even though there is no pending disciplinary proceeding at the time of such retirement, certain conditions, as contemplated by clauses (i), (ii) and (iii) thereof, are imposed for safeguarding the interest of the Government Servant concerned. Certain limitations on the powers of the authority concerned to initiate a fresh proceeding after retirement, where no such proceeding was initiated before such retirement, have been provided for to prevent any misuse of such power.”
(emphasis added)

11. The other plea of the petitioner with regard to non-supply of the supplementary enquiry report is rather frivolous. The



second show cause notice itself shows that a copy of the supplementary report of the enquiry officer dated 24.09.2012 was duly enclosed and the petitioner submitted his reply to the said notice. The petitioner was therefore granted ample opportunity, upon which, the supplementary enquiry report had expressed that the petitioner was responsible for the difference of the amount in the measurement book and the amount evaluated by the enquiry team amounting to Rs. 3,47,630/-. No objection whatsoever was raised by the petitioner in such reply with regard to non-grant of opportunity of hearing in the proceedings. It is also not in dispute that in his reply to the second show cause notice, the petitioner did not offer any explanation with regard to the aforesaid excess payment of Rs. 3,47,630/-.

12. This Court does not find any error in the decision making process. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14.08.2017
Transmission Date	N.A.

