

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4521 of 2009

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Ajay Kumar, son of Late Dr. Gadadhar Prasad, resident of Ravindra Residing, Flat no.102, 14, Anandpuri, West Boring Canal Road, P.S. Shrikrishnapuri, District-Patna

.... Petitioner

Versus

1. The State of Bihar through Deputy Secretary, Public Health and Engineering Department, Govt. of Bihar, Patna
2. Principal, Secretary, Public Health and Engineering Department, Govt. of Bihar, Vishweshvaraiya Bhawan, Bailey Road, Patna
3. Deputy Secretary, Public Health and Engineering Department, Bailey Road, Govt. of Bihar, Patna Viswaraiya Bhawan, Patna
4. Engineer-in-Chief –cum- Special Secretary, Public Health and Engineering Department, Govt. of Bihar, Patna Viswaraiya Bhawan, Bailey Road, Patna
5. Principal Secretary, Urban Development & Housing Department, Govt. of Bihar, New Secretariat, Patna
6. Managing Director, Bihar Rajya Jal Parshad, West Boring Canal Road, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh

For the Respondent/s : Mr. AC to AAG-6
Mr. Indrajeet Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-04-2017

Heard Sri Shailendra Kumar Singh, learned counsel for the petitioner, learned AC to Addl. Advocate General no.6 and Sri Indrajeet Singh, learned counsel for the Respondent/Bihar Rajya Jal Parshad.

2. The petitioner has approached this Court, invoking its writ jurisdiction under Article-226 of the Constitution of India, with a prayer to quash an order dated 20.02.2009 issued under the signature of the Dy. Secretary, Public Health and Engineering



Department, Govt. of Bihar. By the said order, the petitioner has been imposed punishments (i) Censor (ii) withholding of two annual increments with cumulative effect and (iii) he was denied anything save and except subsistence allowance during his suspension period.

3. It is case of the petitioner that vide Annexure-1 to the writ petition after being promoted as Chief Engineer (Design), Public Health and Engineering Department, he was given additional charge of Chief Engineer in Bihar Rajya Jal Parshad. It has been stated that while he was functioning as Chief Engineer, Public Health and Engineering Department and in the additional charge of Chief Engineer, Bihar Rajya Jal Parshad, the Hon'ble Chief Minister along with Urban Development Minister and other Senior Officers visited the interception and Diversion Plant at Rajapur in Patna. On the plea that the petitioner had not given proper reply or information to the Hon'ble Chief Minister, by order dated 06.06.2007, contained in Memo No.261 vide Annexure-2 to the writ petition, the petitioner was put under suspension. Subsequently, explanation was sought for from the petitioner as to why proceeding be not initiated against him for the alleged misconduct. It has been pleaded that the petitioner after receipt of show cause notice filed a detailed reply. However, without considering his reply vide Government Resolution contained in Memo No.499 dated 05.09.2007, a regular departmental proceeding was



initiated against the petitioner. Along with resolution, the petitioner was served with charge Memo. The petitioner was served with two charges; (i) on the visit of Hon'ble Chief Minister at I & D Plant, the delinquent failed to give proper information and (ii) during the said visit, it was noticed that the Plant in question was not functioning since last one year due to which drain water was going directly into river Ganges.

4. It was submitted by learned counsel for the petitioner that during pendency of the departmental proceeding, the petitioner superannuated with effect from 31.01.2009 while he was under suspension. After the petitioner was superannuated, the petitioner was served with the order of punishment i.e. Annexure-9, which is dated 20.02.2009, whereby the petitioner was imposed punishment, as has been referred to herein above.

5. Sri Shailendra Kumar Singh, learned counsel for the petitioner has assailed the order impugned, firstly on the ground that once the petitioner was superannuated, the Respondents were not having any authority to pass any punishment order under the Bihar Government Servants (Classification, Control and Appeal) Rules 2005. He submits that after superannuation, there was only one provision i.e. provision contained in Rule-43(b) of the Bihar Pension Rules, which prescribes for reducing or deducting retiral dues only.



To substantiate his submission, he has heavily relied on Full Bench Judgment of this Court, reported in 2000(1) PLJR 665; Shambhu Saran Vs.State of Bihar (FB). He has referred to paragraph-5 of the said Judgment. Alternatively, it has been argued that the order of punishment is liable to be set aside on the ground that even though the disciplinary authority, while passing punishment order had taken into consideration of the enquiry report but the enquiry report was never supplied to the petitioner. According to learned counsel for the petitioner, under Rule-18 of Bihar C.C.A. Rules, after submission of the enquiry report, it was mandatorily required to supply enquiry report to the delinquent, whereas in the present case the enquiry report was never supplied to the petitioner. On this ground also, the order of punishment is liable to be set aside.

6. Learned AC to Addl. Advocate General no.6 has opposed the prayer of the petitioner. By way of referring to the statement made in paragraph nos. 11 and 12 of the counter affidavit, he has argued that only on the ground of non-supply of enquiry report, the order of the disciplinary authority may not be set aside. He submits that the petitioner has not asserted as to how due to non-supply of the enquiry report, he was prejudiced. According to him only in such eventuality the order of the disciplinary authority can not be interfered with. However, he has not disputed the fact that Rule-18



of Bihar C.C.A. Rules prescribes supply of enquiry report before passing the punishment order. He was not in a position to dispute the proposition that once a delinquent is superannuated, after his superannuation no punishment order under Bihar C.C.A. Rules can be passed.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Without going into detail, the Court is conscious of the fact that while exercising judicial review, this Court may not examine the case on merit, but once the Court is satisfied that in decision taking process any illegality was committed, in that eventuality, the Court is well competent to interfere with the decision. In the departmental proceeding in the present case it is not in dispute that the order of punishment was passed after superannuation of the petitioner. The issue as to whether after superannuation of any employee, the punishment order can be passed under the Bihar C.C.A. Rules, has already been set at rest by a Full Bench of this Court in Shambhu Saran's case (supra). It would be necessary to quote paragraph-5 of the said Judgment, which is as follow:

“5. The only point involved before us is whether Rule 43(b) is attracted in the facts of this case and whether under the said Rule, even when such disciplinary proceeding was initiated before the retirement, where it



could be continued after the retirement under the provisions of Rule 43(b) . It is true that Rule 43 does not say expressly that such proceeding may be continued after superannuation. However, in our opinion, it is inherent in the said Rule. The opening words of proviso (a) state that “such departmental proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment”. In our opinion such expression makes it quite clear that such enquiry if initiated before, may be continued even after such retirement. In any event, by necessary implication also it is quite clear that continuance of such enquiry after superannuation is permitted by the said Rules. In this context, it may be pointed out that if the Government servant is in service, the disciplinary proceeding can be initiated against him and certain punishments may be imposed upon him as provided in the relevant Classification, Control and Appeal Rules. However, such punishments cannot be imposed upon him if retired from service. After his retirement he cannot be punished otherwise but pension can be withheld and other steps taken as contemplated by the said Rule 43. Punishments, major or minor, like dismissal or removal from service or withholding of increments etc, which contemplates that he is still in service, cannot be imposed upon him. In such view of the matter, if such a person has committed some wrong, merely because he retires and no remedy remains available to the Government even if there was good case against him, then it would be incongruous. Accordingly such a provision was made to that effect. It is in order to fill up this lacuna that provisions like



rule 43(b) has been introduced.”

8. The question, which was referred to the Full Bench was replied in last paragraph of the said Judgment, which is as follows:

“12. In that view of the matter, we answer the reference by holding as follows:-

- (i) In a case where a disciplinary proceeding has already been started, even if the person concerned attains the age of superannuation, the enquiry may be continued under Rule 43 of the Bihar Pension Rules, 1950 for the limited purpose of taking such action as provided under the said Rule even after such superannuation and for that purpose no specific or express order of the Government is necessary.*
- (ii) The decision of the Division Bench in case of Singeshwari Sahay Vs. the State of Bihar and others reported in 1979 BBCJ 735 and the law laid down therein were not correctly decided.”*

9. In view of law, as enunciated by the Full Bench , there is no reason to allow the order of punishment to continue. On this count itself, that the order of punishment was passed under the Bihar C.C.A. Rules, same is liable to be set aside since the order of punishment was passed after superannuation of the petitioner. Moreover, it has not been disputed that before passing order of punishment, though the disciplinary authority has noticed the enquiry



report, the enquiry report was never supplied to the petitioner, which was contrary to the Rule-18 of the Bihar C.C.A. Rules . On both counts, the order impugned is liable to be set aside.

10. Accordingly, the order dated 20.02.2009 issued under the signature of the Dy. Secretary, Public Health and Engineering Department, Govt. of Bihar, contained in Annexure-9 to the writ petition, is hereby set aside with direction to give all consequential benefits. All the formalities must be completed within three months from the date of receipt/production of a copy of this order.

NKS/-

(Rakesh Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	03.05.2015
Transmission Date	

