

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1324 of 2011

IN

Civil Writ Jurisdiction Case No. 7472 of 2005

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Rameshwar Pd.Sinha @ Shrivastava, son of Late Surendra Narayan Sinha, resident
of Vishwanathpur Chowk, Dumra, P.S.-Dumra, District-Sitamarhi

.... Appellant/s

Versus

1. The State of Bihar, through Collector, Sitamarhi
2. The Collector, Sitamarhi
3. Shri Mahavir Ram, Additional Collector (Revenue) cum Enquiry Officer
4. The Sub-Divisional Officer, Pupri, Sitamarhi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar, Advocate

For the Respondent/s : Mr. AC to AAG-1

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-10-2017

Seeking exception to an order dated 13.07.2011
passed by the Writ Court in Civil Writ Jurisdiction Case No. 7472 of
2005, this appeal has been filed under Clause-10 of the Letters Patent.

The petitioner was working in the Office of
Collectorate, Sitamarhi as a Head Clerk and was posted in the Office
of Sub-Divisional Officer, Pupri in the Land Reform Section. On
attaining the age of superannuation, he retired on 31.05.2001 and two
years after his retirement, based on certain facts that came on record, a
charge-sheet was issued to him in the year 2003 by the Collector,
Sitamarhi and by an order passed on 19.05.2005, the Collector
imposed punishment of forfeiture of pension to the extent of 50
percent in accordance to the Bihar Pension Rule, 1950.



Challenging the imposition of punishment, the writ petition in question was filed and the learned Writ Court after taking note of the procedure and the allegations made, dismissed the writ petition by holding that there is no illegality in the action taken. However, while doing so, a legal question with regard to taking action under Rule 43(b) of the Bihar Pension Rules was lost sight of by the learned Writ Court. Proviso (a) to Rule 43(b) of the Bihar Pension Rules stipulates that when a departmental proceeding is not instituted when the government servant was on duty either before retirement or during reemployment, it shall not be instituted without sanction of the State Government. In this case, before the Writ Court and para 13 of the averments made in the writ petition, it is crystal clear that it was the specific case of the petitioner that in his case, the proceedings after his retirement have been initiated under Rule 43(b) of the Bihar Pension Rules, but sanction of the State Government as contemplated under Proviso (a) has not been obtained.

The respondents, in their counter affidavit, filed in the writ petition stated that as the Collector was the appointing authority, therefore, it was not necessary to obtain the sanction of the State Government or the Bihar Public Service Commission.

That being so, admittedly, the petitioner is an employee to whom the Bihar Pension Rules apply and, according to the said rule, once an employee has retired, for initiating departmental



enquiry, sanction of the State Government is necessary. This issue is no more res integra as the matter stands settled by the Division Bench of this Court in the case of **Ram Nandan Prasad Sinha versus State of Bihar reported in 2001(2) PLJR 826**, wherein in para 11 the matter has been dealt with by the learned Division Bench in the following manner :-

“11. Adverting to the instant case, it is the admitted position that the proceeding was initiated much after the retirement of the petitioner. The proceeding, therefore, was clearly covered by proviso (a) to Rule 43(b) of the Pension Rules. That being so, the petitioner was entitled to the safeguards contained in different clauses of the proviso. There is no dispute about the compliance of clauses (i) and (ii). There is dispute about compliance of clause (iii) alone. In the absence of specific denial of the petitioner’s case that inquiry within the meaning of rule 55 of the Civil Services Rules was not held, that is, opportunity to examine/cross-examine witnesses was not given, copies of the documents were not supplied and so on, it is not possible to accept the bald assertion of the respondents that opportunity was given. The respondents should have produced materials to substantiate the plea. It is evident that only hearing worth the name took place on 30.6.93. While that could be compliance of the requirement of giving opportunity of hearing of the kind mentioned in rule 55A of the Civil Services Rules meant for imposition of minor penalties, that cannot be said to be adequate. The procedure applicable to proceedings in which order of dismissal from service can be passed, laid down in rule 55 of the Civil Services Rules, having not been followed, I have no hesitation in holding that there has been violation of clause (iii) of provision (sic- Proviso ?) (a) to Rule 43(b) of the Pension Rules



rendering the impugned order of the Finance Commissioner dated 5.12.95 and the consequential orders illegal.”

Keeping in view the aforesaid, in the present case also as the impugned action has been taken by the Collector without taking sanction or concurrence by the State Government or the Bihar Public Service Commission, the entire action stands vitiated on this count alone as it is breach of the mandatory requirement as contemplated under Rule 43(b) of the Bihar Pension Rules.

Accordingly, we allow the appeal, quash the order passed by the learned Writ Court in C.W.J.C. No. 7472 of 2005 on 13.07.2011 and the impugned order of punishment passed by Collector, Sitamarhi dated 19.05.2005, Annexure-5. All consequential benefits accruing to the petitioner shall now be paid to him within a period of three months.

With the aforesaid, the appeal stands allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
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