

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18939 of 2016

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Md. Ghufran Ahmad, son of Late Md. Yusuf, Resident of Village- Sabeya, P.S.-
Ramnagar, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Government of Bihar,
Vishweshwaraiya Bhawan, Patna.
3. The Special Secretary, Rural Works Department, Government of Bihar,
Vishweshwaraiya Bhawan, Patna.
4. The Joint Secretary, Rural Works Department, Government of Bihar,
Vishweshwaraiya Bhawan, Patna.
5. The Deputy Secretary Establishment, Rural Works Department, Government of
Bihar, Vishweshwaraiya Bhawan, Patna.
6. The Engineer in Chief-cum Conducting Officer, Rural Works Department, Bihar,
Patna.
7. The Assistant Engineer (Main), Quality Management, Rural Works Department,
Bihar, Patna-cum- presenting Officer.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sudha Chandra, Advocate

For the Respondent/s : Mr. PUSHKAR NARAIN SHAHI, AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-05-2017

Heard Mr. Surendra Kumar Singh, learned counsel appearing
for the petitioner and Mr. Manish Kumar, Assisting Counsel to AAG-
6 for the State.

The petitioner prays for issuance of a writ in the nature of
certiorari for quashing the order bearing Memo No. 2545 dated
07.7.2015, of the State Government in its Rural Works Department
whereby a proceeding under Rule 43(b) of the Bihar Pension Rules,
1950 (hereinafter referred to as the 'Pension Rules'), a copy of which



is present at Annexure-6 to writ petition, has been initiated against the petitioner for his alleged misconduct during the service period.

This matter was taken up for consideration on 11.4.2017 and when Mr. Surendra Kumar Singh, learned counsel for the petitioner in reference to the provisions underlying Section 43(b) of the 'Pension Rules' submitted that since the alleged misconduct related to the period 2004-06 and the petitioner had superannuated with effect from 30.4.2014, the proceeding was clearly barred by limitation as provided under the 'Pension Rules'.

On directions issued by this Court that a counter affidavit is filed on behalf of respondent nos. 2 to 7 and Mr. Singh, learned counsel for the petitioner in reference to the admission made by the respondents in para-13 of the counter affidavit submits that the proceeding though was initiated against the petitioner during his service period but on response being given, that the proceeding was dropped vide order bearing Memo No. 13 dated 10.4.2015 exonerating the petitioner of the charges, a copy of which order has also been enclosed by the petitioner at Annexure-5 to the writ petition and in which view of the matter no second round proceeding under Section 43(b) of the 'Pension Rule' can be initiated on self same charge vide Annexure-6.

Mr. Manish Kumar while accepting the position reflecting



from Annexure-5, whereby a proceeding initiated against the petitioner under Rule 43(b) of the 'Pension Rules' was dropped, has endeavoured to submit that the proceeding initiated against the petitioner vide resolution bearing Memo No. 2545 dated 07.7.2015 is in respect of other allegations which can be gathered from the statement made in paragraph-14 of the counter affidavit and would confirm that the petitioner was charged with alleged misconduct of defalcation of government fund in execution of a work during the period 2005-06 and 2006-07 while the petitioner was posted at Benipatti. Mr. Manish Kumar, however, has not been able to satisfy this Court whether any proceeding in this regard was initiated against the petitioner during his service period.

I have heard learned counsel for the parties and I have perused the records. The sequence of events have already been explained above and the only issue which requires adjudication is whether the initiation of proceeding under Rule 43(b) of the 'Pension Rules' vide Annexure-6 is sustainable.

In my opinion, in view of the limitation prescribed in Rule 43(b) of the 'Pension Rules' read along the facts discussed at paragraph-14 of the counter affidavit in which the respondents have admitted that the issue related to the period 2005-06 and 2006-07 and with nothing on record to show that any kind of proceeding was



initiated against the petitioner during the service period, any such initiation after his superannuation would be barred by the limitation because the period dates back to more than four years.

For the reasons so discussed, the initiation of proceedings against the petitioner vide Resolution bearing Memo No. 2545 dated 07.7.2015 is clearly barred by limitation, so prescribed under Rule 43(b) of the ‘Pension Rules’ as it relates to the period 2005-06 and 2006-07 which is beyond the prescribed limitation of four years and in consequence the resolution bearing Memo No. 2545 dated 07.7.2015 is quashed and set aside.

The writ petition is allowed.

Let the pension of the petitioner so withheld, be released forthwith and preferably within a period of four weeks from the date of receipt / production of a copy of this order.

(Jyoti Saran, J)

S.Sb/-

AFR/NAFR	A.F.R.
CAV DATE	
Uploading Date	
Transmission Date	

