IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11254 of 2017

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Awdhesh Singh, Son of Late Ram Chandra Singh, Resident of Village- Lahsuna, P.S.- Masaurhi, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, New Secretariat, Patna.
2. The Chairman, the Bihar State Ware Housing Corporation, Bihar, Patna.
3. The Bihar State Ware Housing Corporation, 2/B, 1st Floor, Mauryalok Complex, Patna through its Managing Director, Bihar State Ware Housing Corporation, 2/B, 1st Floor, Mauryalok Complex, Patna.
4. The Managing Director, Bihar State Ware Housing Corporation, 2/B, 1st Floor, Mauryalok Complex, Patna.
5. The Secretary, Bihar State Ware Housing Corporation, 2/B, 1st Floor, Mauryalok Complex, Patna.
6. The Divisional Manager, Bihar State Ware Housing Corporation, 2/B, 1st Floor, Mauryalok Complex, Patna.
7. The Accounts Officer, Bihar State Ware Housing Corporation, 2/B, 1st Floor, Mauryalok Complex, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Pathak, Advocate
For the Respondent-State : Mr. Tripurari Nath Ambastha, AC to, SC-26
For Respondent-Corporation : Mr. Mithilesh Kumar Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-01-2018

Heard Mr. Sunil Kumar Pathak, learned counsel appearing for the petitioner, learned counsel for the State and Mr. Mithilesh Kumar Rai, learned counsel appearing for the Bihar State Warehousing Corporation (hereinafter referred to as 'the Corporation').

The petitioner is aggrieved by the order bearing Memo No.111 dated 28.2.2014 of the Managing Director of the 'Corporation' a copy of which is impugned at Annexure 7 to the writ petition, whereby an order has been passed for recovery of Rs.5,70,55,066/- from the post-retiral benefits of the petitioner including the group insurance and for the rest directions have been issued to institute a certificate case.

The petitioner questioned the proceedings before this Court in CWJC No.3913 of 2016 which was disposed of vide order present at Annexure 9 on 22.4.2016 on the objection raised by the counsel for the 'Corporation' that the petitioner had appellate remedy under Regulation 25 of the Bihar State Warehousing Corporation (Staff) Regulation, 1958 (hereinafter referred to as the 'Staff Regulation') framed under section 54 of the Agriculture Produce (Development and Warehousing) Corporations Act, 1956 (hereinafter referred to as the 'Act') and whereupon the writ petition was disposed of to enable the petitioner to exhaust the appellate remedy. The order on appeal is impugned at Annexure 11and confirms the punishment order.

It is not in dispute that the petitioner is a superannuated employee of the 'Corporation' having superannuated on 31.7.2011.

The only issue which falls for consideration is, whether the 'Corporation' could have proceeded against the petitioner under the 'Staff Regulation'. A copy of the 'Staff Regulation' has been produced by Mr. Rai, learned counsel appearing for the 'Corporation' and which does not conceive of drawing any proceeding post-superannuation of an employee of the 'Corporation'. The 'Staff Regulation' also does not adopt the provisions of the Bihar Pension Rules for proceeding against its superannuated employee in case of any financial irregularity or grave misconduct. Mr. Rai, learned counsel appearing for the 'Corporation' admits that the Bihar Pension Rules are not applicable to the employees of the 'Corporation'.

In other words, whereas the 'Staff Regulation' does not contain any provision which enables the Disciplinary Authority to proceed against a superannuated employee, the 'Corporation' has done nothing either to amend its Regulation or to adopt the Bihar Pension Rules so as to proceed against its superannuated employee in cases of such kind where they are charged with gross financial irregularities.

The issue in hand is squarely covered by the observation of the Full Bench in the case of **Shambhu Saran vs. The State of Bihar** reported in **2000(1) PLJR 665** and for the sake of convenience I deem it necessary to reproduce the relevant extract at paragraph 5 of the judgment in this context:

> "… …. ….. ….. …… …… … …. … …. ….. ….. …. 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 those provisions like rule 43(b) has been introduced."

Law is well settled and the position clarified by the Full Bench in the case of **Shambhu Saran** (supra) removes all confusions that an employee can only be proceeded for disciplinary action while in service and on his superannuation he moves out of the disciplinary control of the employer inasmuch the master and servant relationship comes to an end on such superannuation. As held by the Full Bench it is to fill up this lacuna and to enable the Disciplinary Authority not to let off a Government servant in default of misconduct either on indiscipline or financial irregularities that the provisions of the Bihar Pension Rules were framed and are being followed in so far as the Government servant are concerned which statute has been adopted in a number of public-sector corporations. Unfortunately the respondent-Corporation has not been wise enough either for adopting the same or to frame its own regulation in this regard.

In my opinion, in absence of effective provisions in the 'Staff Regulation' permitting the 'Corporation' to proceed against a superannuated employee certainly the proceedings so drawn are void ab-initio and the orders passed thereon are an illegal exercise carried out without jurisdiction.

It is rather peculiar that even though this issue was raised by the petitioner before the Appellate Authority as manifest from the appellate order and even though he has partially accepted the position that no proceeding under rule 43(b) of the Bihar Pension Rules was initiated against the petitioner but it is on a complete misconception of the provisions underlying Regulation 21(2)(iv) that he has proceeded to uphold the order when in fact the said provision also does not confer any jurisdiction on the Disciplinary Authority to proceed against a superannuated employee rather it merely draws the procedure to proceed against a 'Corporation' employee which status has come to an end on the superannuation of the petitioner.

For the reasons so discussed, the order impugned dated 28.2.2014 of the Managing Director of the 'Corporation' together with the appellate order dated 4.7.2017 impugned at Annexures 7 and 11 respectively to the writ petition cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed.

While passing the order the records of CWJC No.12203 of 2013 and CWJC No.3913 of 2016 had been called for. Let the said records be returned to their respective position.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02-02-2018
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