IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.297 of 2005

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1.BALKESHI DEVI.

2.SUDHIR KUMAR

3.SANJAI KUMAR

4.SUNIL KUMAR

5.SHUSHILA KUMARI

6.SUNAINA KUMARI.

... ... Petitioner/s

Versus

1.THE STATE OF BIHAR.

2.THE COMMISSIONER AND SECRETARY, HEALTH, MEDICAL EDUCATION AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.

3.THE ADDITIONAL SECRETARY, HEALTH, MEDICAL EDUCATION AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.

4.THE DEPUTY SECRETARY, HEALTH, MEDICAL EDUCATION AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav, Adv & Ms. Annu Shree, Adv

For the Respondent/s : Mr. Dhirendra Kumar AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 15-03-2018

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

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated

22.11.2004 issued under the signature of the Deputy Secretary, Health, Medical Education and Family Welfare Department, Government of Bihar, by which 50 per cent pension of the husband of the petitioner has been forfeited under the provisions of Bihar Pension Rules with further prayer for payment of gratuity and other post retiral benefits.

3. Briefly stated, the facts of the case is that the husband of the petitioner retired from service on 31.07.2000, from the post of Superintendent, Bihar State Health Store, Gulzarbagh, Patna. Husband of the petitioner joined Bihar Health Service in the year 1971 and he was given junior selection grade w.e.f. 1976 and Senior Selection Grade from 25.05.1978. The husband of petitioner was posted as Director, Tuberculosis Demonstration and Training Centre, Agamkuan, Patna, and transferred as Superintendent, Health Store, Gulzarbagh, Patna, from which post he retired on 31.07.2000. Husband of the petitioner received other pensionary benefits except the pension and gratuity. The husband of the petitioner had also moved this Court in C.W.J.C No. 10388 of 2002 praying for grant of pension and gratuity and during the pendency of the said writ petition, departmental proceeding was initiated against the husband of the petitioner vide resolution dated 21.08.2003 and during the pendency of the aforesaid writ petition

vide memo no. 15.12.2003, 90 per cent of provisional pension was sanctioned but no gratuity was sanctioned to the husband of the petitioner. The writ petition of husband of the petitioner was disposed of with a direction to the respondent-authority to conclude the departmental proceeding against the husband of the petitioner, within three months from the date of receipt/production of a copy of this order with liberty to the petitioner to raise the issue of bar of limitation imposed under Rule 43(b) (a) (ii) of Bihar Pension Rules. Memo of charge dated 21.08.2003 was served upon the husband of the petitioner which contained three charges. The charge no. 1 pertains to the year 1997-98, charge no. 2 is also for the same period and charge no. 3 also relates to the period in which husband of the petitioner was posted as Director, TBDC, from 16.05.1995 to 11.08.1997. Husband of the petitioner submitted his reply in which he had stated that as far as Charge No. 1 is concerned, same is based upon the report of Accountant General for audit conducted in the year 1997-98 for the period 1991-92, which not relates to the husband of the petitioner. After husband of the petitioner assumed charge, he directed the cashier to maintain the cash register properly. Charge No. 2 related to irregularity of Rs. 16,92,000/-, which was also based on the report of Accountant General, for which the husband of the petitioner submitted his reply that as far as irregularity of Rs. 16,92,000/- is concerned a criminal case was also instituted and the police found the case not to be true and submitted final form. As far as Rs. 3,19,843/- is concerned, a machine was purchased and it was made functional. As far as payment of excess amount of Rs. 18,06,612.76/- under salary is concerned, same relates to arrears of salary and D.A. The husband of the petitioner also submitted before the disciplinary authority that initiation of departmental proceeding under Bihar Pension Rules is also hit by bar of limitation of 43(b) (a) (ii) of Bihar Pension Rules. The inquiry officer submitted his inquiry report on 16.08.2004 and the same was based on the audit report of the Accountant General. All the charges pertains to the year 1997 and petitioner had retired on 31.07.2000 and proceedings were initiated on 21.08.2003, as such the same is barred under the provision of 43(b) (a) (ii) of Bihar Pension Rules.

4. The respondents have filed their counter affidavit in which they have stated that the departmental proceeding was initiated against the husband of the petitioner vide resolution dated 21.08.2003 and enquiry officer submitted his inquiry report on 16.03.2004 based on the audit report and after considering the reply of petitioner, punishment of 50 per cent of forfeiture of pension was passed against the husband of the petitioner.

5. It has been contended that all the three charges were found to be proved by the enquiry officer and the disciplinary authority concurred with the findings and conclusion of enquiry officer and after going through the reply and materials available on record, imposed punishment of forfeiture of 50 per cent of pension of the petitioner. Rule 43(b) of Bihar Pension Rules reads as follows:-

> **"Rule 43(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 the government by misconduct or negligence, during his service including rendered on re-employment after retirement:
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> Provided that-
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> (a) Such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;
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> (i)shall not be instituted save with the sanction of the State Government;
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> (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
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> (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;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and
(c) the Bihar Public Service Commission, shall be consulted before final orders are passed."

6. It is admitted fact that the petitioner retired in the year 2000, and the proceedings were initiated against him in the year 2003 for the period prior to 1997 and the same was barred under the provisions of Bihar Pension Rules, as such initiation of departmental proceeding and issuance of memo of charge and all subsequent proceedings thereto is void *ab initio* and is quashed.

7. Before initiation of departmental proceeding, the requirement of sanction of state government is mandatory and there is nothing on record to suggest that before initiation of proceeding against the husband of the petitioner, the mandatory provision of sanction from the State Government was taken by the department.

8. Considering the facts and circumstances of the present case, the order of the disciplinary authority is quashed. All the necessary requirement, regarding revision of pension and arrears of family pension, full amount of gratuity and post retiral benefits, be paid to the widow and legal heirs of the deceased-petitioner, within

three months from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.04.2018
Transmission Date	N.A.