

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.915 of 2013

In
Civil Writ Jurisdiction Case No.8803 of 2005

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1. The State of Bihar
 2. The Commissioner- Cum- Secretary, Industries Department, Govt. of Bihar, Vikash Bhawan, Patna.
 3. The Finance Commissioner, Govt. of Bihar Old Secretariat, Patna.
 4. The Director of Industries Govt. of Bihar Vikash Bhawan, Patna.
 5. The Joint Director of Industries, Govt. of Bihar Vikash Bhawan, Patna.
 6. The Accountant General, Bihar Birchand Patel, Path, Patna.

... .. Appellant/s

Versus

1. Smt. Sudama Devi Wife of late Bulkan Prasad Singh
 2. Shri Arjun Kumar Son of late Bulkan Prasad Singh
 3. Shri Ranjeet Kumar Son of late Bulkan Prasad Singh
- All resident of A-9, P.C. Colony, Kankarbagh, P.S. Kankarbagh, District Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rabindra Kumar Priyadarshi
For the Respondent/s	:	Mr. Rajendra Prasad, Sr. Advocate
		Mr. Pramod Kumar, Advocate
for the Accountant General	:	Mr. L.P.K. Ranjan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 23-01-2018

Heard counsel for the parties.

The sole question which arises for consideration in the present appeal is whether the decision dated 22.02.2011, passed by the learned Single Judge allowing the writ application and quashing the orders of punishment can be upheld to be legally correct.



The only reason, why the learned Single Judge seems to have quashed the departmental proceeding as well as the order of punishment, is that during pendency of the departmental proceeding the private respondent, who was the petitioner in the writ application, superannuated on 31.10.1997 and since there has been no order passed by the State Government to convert the departmental proceeding into a proceeding under Rule 43(B) of the Bihar Pension Rules, the entire proceeding as well as the subsequent order of punishment becomes vitiated.

There seems to be a basic fallacy in the decision of the learned Single Judge because the learned Single Judge seems to be totally unmindful of the position of law which has been laid down by the Full Bench of this Court way back in the year 2000 itself. The attention of this Court has been rightly drawn to the decision rendered in the case of *Shambhu Saran Vs. The State of Bihar and others*, reported in **2000(1) PLJR 665** where the Full Bench had opined with regard to the status of pending proceedings and their conversion under Rule 43(B) in following terms :

“8. The other point to be noticed is that a distinction is made in Rule 43(b) between a case where a disciplinary enquiry is already pending at the time of such superannuation and where no such disciplinary enquiry is pending at the time of retirement. Certain safeguards have been



provided so that there may be no undue harassment after retirement when no proceeding had been initiated before his retirement. Even though there is no pending disciplinary proceeding at the time of such retirement, certain conditions, as contemplated by clauses (i), (ii) and (iii) thereof, are imposed for safeguarding the interest of the Government Servant concerned. Certain limitations on the powers of the authority concerned to initiate a fresh proceeding after retirement, where no such proceeding was initiated before such retirement, have been provided for to prevent any misuse of such power. But the question of providing such safeguard does not arise if there is already a disciplinary proceeding pending at the time of the superannuation of the Government Servant concerned. There is no question of any harassment in such a case and, accordingly, no condition has been imposed. This is a good reason for the same. Unless that power is conferred by virtue of the said provision, once a retirement takes place, then the employee concerned can easily say that he was beyond the scope of any action whatsoever. In that view of the matter, this provision has been made in the rule itself and the rule itself contemplates that a disciplinary proceeding, if already initiated, can be continued even after retirement. As we have already stated, that can be spelt out from the



language of the provision itself, and, in any view of the matter, that can be spelt out by necessary implication. Accordingly, in our view, it is open to an authority concerned to continue with a disciplinary enquiry which was initiated before his retirement. In our opinion, once such proceeding is started, even if the person concerned retires from service, such proceeding can be continued and it is not required that there must be any government order to that effect before it can be allowed to continue. No such condition has been laid down in rule 43 in respect of a case where such a proceeding has already been initiated as required by the three conditions in respect of initiation of a fresh proceeding after such retirement. We cannot import the requirement of such a condition which is not in the rules. This would be against the principle of *cassus omissus*. If we accept the contention that such an order of the Government is required before such proceeding can be continued, then we shall be introducing a condition in the rule, which the rule does not provide for. In that view of the matter, we agree with the views expressed by the latter Division Bench and we hold that the Division Bench decision in the case of *Singheshwari Sahay vs. State of Bihar and others* reported in 1979 BBCJ 735 has not been correctly decided.



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 Singheshwari Sahay vs. State of Bihar and others reported in 1979 BBCJ 735 and the law laid down therein were not correctly decided.

We answer the reference accordingly.”

As per the decision of the Full Bench no formal order was required to be recorded by the State for conversion of a pending departmental proceeding into one under 43(B) of the Bihar Pension Rules, and, therefore, quashing the departmental proceeding and the order of punishment on that ground primarily by the learned Single Judge seems to be directly in teeth of the Full Bench decision.

In our opinion, the above grounds and the opinion of the Full Bench is good enough to set aside the order dated 22.02.2011, passed in C.W.J.C. No. 8803 of 2005, which is set aside.



Appeal is allowed in terms of the above.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
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