

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14341 of 2010

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Ram Narayan Singh S/O Late Lattar Singh, R/O Vill Nararthan Tola,
P.S.Kaluahi In The District Of Madhubani

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director General Inspector General Of Police Bihar, Patna
2. The Inspector General Of Police Darbhanga Zone, Darbhanga
3. The Superintendent Of Police Madhepura
4. The Deputy Superintendent Of Police Madhepura

... .. Respondent/s

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. Brajesh Kumar, A.C. to A.AG-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 16-05-2018

Yesterday, the case was called out, but no one was present on behalf of the petitioner. Even today, when the case is called out, no one is present from the side of the petitioner. Hence, this case is being disposed of on the basis of materials available on record.

2. In the present case, the petitioner is challenging the order dated 31.05.2010 passed by the Superintendent of Police, Madhepura, in departmental proceeding No.96 of 2008, where the charges were found proved against the petitioner but did not record the punishment to be inflicted upon the petitioner.

3. The dispute relates to the date of birth of the



petitioner as the original service book was consigned to fire and duplicate service book was prepared, there was variation in the date of birth what was there in the record maintained by Railway (Jamalpur), wherein the date of birth has been shown as 18.11.1947 and the date of entry in service book has been recorded as 01.11.1965 and from the record which was received from Ranchi, the date of entry in service has been mentioned as 01.11.1966 and his age has been mentioned to be 21 years. Later on, the date of birth was recorded as 18.11.1947 created confusion, he continued in service for four years' and five months' more, which led to initiation of departmental proceeding against the petitioner.

4. It appears that after retirement a proceeding under Section 43(b)(2) of the Bihar Pension Rules, was initiated and the Superintendent of Police, Madhepura, has recorded the finding against him that he had illegally continued to discharge the duty and found that the charges are proved and has given direction to lodge a case against him.

5. In the counter affidavit, the State has taken a plea that in pursuance of the direction the payment which has been made to the petitioner for four years and five months has been recovered. But in the present case, the question would arise that



a proceeding under Section 43(b) of the Bihar pension Rules can be initiated only at the level of the Government as after the superannuation the relationship of master and servant is over but because of the provision under the Bihar Pension Rules, the power has been conferred to the State, in certain circumstances, the proceeding can be initiated at the instance of the Government. However, the present proceeding has been initiated by the Superintendent of Police, who had no authority at all under Section 43(b) of the Bihar Pension Rules. At the same time, there cannot be a recovery of the amount for the period the petitioner has discharged the duty as also lodging of criminal case vide Madhepura P.S. case no.233 of 2010 has lost its relevancy. This Court is of the view that the records were in possession of the State, they should have looked upon the entry made in the service book and if any cutting or overwriting or wrong has been done, it could have been rectified while the petitioner was in service and after the retirement the relationship of master and servant is over, so initiation of proceeding by the disciplinary authority does not arise as the power has been conferred on the State Government.

6. In such view of the matter, the order dated 31.05.2010 passed by the Superintendent of Police, Madhepura,



is quashed. Consequently, any recovery made by the State from the petitioner should be returned to him without unnecessary delay. The criminal case has been instituted on account of order passed by the Superintendent of Police, Madhepura, vide Madhepura P.S. Case No.233 of 2010 will also lose its relevancy and as such, the prosecution must consider the justifiability of continuation of the proceeding before the criminal Court as that proceeding is dependent on the order passed by the Superintendent of Police, Nawada, itself is set aside by this Court, so the continuation of criminal proceeding has lost its basis.

7. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	07.06.2018
Transmission Date	N/A.

