

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19134 of 2013

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Bundeshwar Prasad Singh S/o Late Basant Prasad Singh, R/o Village - Siraiya, P.S.
- Sahebpur Kamal, District – Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Programme Officer (Establishment) Begusarai.
3. The District Education Officer, Begusarai.
4. The District Magistrate, Begusarai.
5. The District Provident Fund Officer, Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh and
Mr. Sushil Kumar Ray, Advocates

For the State : Mr. Gyan Prakash Ojha, G.A. 7
Mr. Gopal Krishna, A.C. to G.A. 7

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-03-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following
reliefs:

“That, this is an application for issuance of appropriate writ/writs, for quashing office order vide memorandum No. 3999, 4000 and 4001 dated 16.7.2013 by which order for G.P.F. and other retirement benefits to the petitioner has been cancelled and further direction the respondents for payment of G.P.F. and other retirement benefits to the petitioner like pension its arrear, gratuity, leave encashment and group insurance with interest.”

3. The petitioner was appointed on 22.12.1977. By order dated 12.12.1986, he was suspended on the ground of some allegation that he was working under the name of someone else.



Finally, on 31.05.1999, memo of charge was served on him to which he replied on 19.12.2000. The petitioner superannuated on 31.03.2003 and later on by order dated 31.07.2009, his suspension was revoked. Thereafter, on 08.07.2013, he was sanctioned pension, gratuity and leave encashment. However, soon after on 16.07.2013, the said sanction was cancelled which is impugned in the present writ application.

4. Learned counsel for the petitioner submitted that he had joined service upon verification of his documents and even the charge against him of working in the name of another person has not been found correct by the police in the criminal case and, thus, final form was submitted which has also been accepted by the Court. Learned counsel submitted that initially the Department had asked for information from the Bihar School Examination Board but the departmental proceeding could not be concluded. It was submitted that while revoking the suspension of the petitioner on 31.07.2009, he was held entitled to full salary and by order dated 20.11.2010, it was directed that his documents relating to retirement benefits be prepared. Learned counsel submitted that once the authorities themselves had revoked the suspension allowing full salary and also sanctioned the pensionary benefits, cancelling of the same is arbitrary. Learned counsel submitted that even the criminal case



failed and, thus, now there is no incriminating material against the petitioner for not paying him his retiral benefits. Learned counsel submitted that during the pendency of the writ petition, the order passed by the District Programme Officer (Establishment), Begusarai dated 25.08.2014, has been passed in a hurry without considering the materials furnished by the petitioner much earlier. It was submitted that even the stand of the respondents in the counter affidavit is that they had called for a report from the Bank authority; Block Development Officer, Sahebpur Kamal; Jail Superintendent, Begusarai, and also from the District G.P.F. Officer, Begusarai, but without waiting for any reply from them, the order having been passed is totally unsustainable in law. Learned counsel submitted that only on surmises and facts which have not been proved, the order of the authorities not to make payment of pensionary benefits deserves to be set aside. It was contended that even in law, the only power available to the authorities in the case of a person who has superannuated is to proceed under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules') which contemplates that upon retirement, no departmental proceeding can be instituted in respect of an event which took place more than four years before the institution of such proceeding. It was submitted that the allegation relating to the initial entry into service was hopelessly



time barred and the authorities could not have initiated any departmental proceeding on such allegation. It was further contended that the allegation did not disclose as to who the petitioner was and, thus, the onus being on the allegationist to disclose the allegation/charge, the petitioner is not required to defend himself only on the basis of a bald statement without any supporting evidence. Learned counsel submitted that the petitioner has submitted supporting evidence to show that he is the person who he claims to be and not any other person, by way of PAN Card, Photo Identity Card issued by the Election Commission of India etc., which proves that the petitioner is not some other person. Learned counsel further submitted that the certificate on which the petitioner has got employment has been verified from the Bihar School Examination Board and has been found to be genuine.

5. Learned counsel for the State submitted that the authorities cannot be faulted for taking a stand against the petitioner, for the reason that the allegation was not vague and rather specific. Learned counsel has drawn the attention of the Court to the averments made in the counter affidavit, especially paragraph- 14 which reveals that the petitioner was Vishundeo Prasad Yadav and not Bundeshwar Prasad Singh, whom he claims to be, and that his father's name was also different. Learned counsel submitted that



even before passing of the order dated 25.08.2014, the petitioner was sent several letters to file show cause and finally, he also came to the office on 30.05.2014 and received the letter but did not respond to the show cause and, thus, the authorities have finally passed the order after almost three months. Learned counsel submitted that the reliance of Rule 43(b) of the Rules is misconceived for the reason that it talks of a proceeding which is instituted after the retirement of the employee whereas in the present case, much prior to his superannuation already a proceeding has been instituted by issuance of memo of charges in the year 1999 itself. Learned counsel submitted that the question of there being any limitation of raising any allegation or charge against an employee cannot have any adverse effect in the facts and circumstances of the present case for the reason that if the allegations are true, it would amount to a fraud on the system and the law being settled that fraud vitiates all subsequent actions, mere passage of time would not save any person who has committed a fraud of its adverse consequences.

6. Having considered the rival contentions, the Court is not persuaded to interfere in the matter, especially under its discretionary, prerogative and extraordinary jurisdiction under Article 226 of the Constitution of India. The matter relates to highly disputed questions of fact and it cannot be said that the allegation is



vague and imaginary. There is specific allegation as to who the petitioner actually is along with the name of his wife, his father and also the elder brother. This, coupled with the fact that despite the petitioner having been suspended in the year 1986, he choose not to move before any authority or Court for 13 years when ultimately memo of charge was served on him in the year 1999 does not indicate that the petitioner was very confident of his cause. Moreover, him having been given opportunity to again present his case by the authorities and the petitioner not responding to the same and thereafter even upon receiving such show cause in person, the authorities after waiting for nearly three months, have passed a detailed order on 25.08.2014. Thus, the petitioner has the order staring in his face, which, unless set aside, no relief can be granted to the petitioner. The Court would note here that the said order, copy of which has been brought on record in the counter affidavit filed on behalf of respondents no. 2 and 3, which was serverd on learned counsel for the petitioner on 02.09.2014, has not been assailed or challenged by the petitioner. Even the specific stand of the respondents that twice the petitioner was noticed for giving his side of the story and to file show cause and thereafter him personally appearing on 30.05.2014 and receiving the letter and still not bothering to reply, has remained unrebutted and uncontroverted in



the reply filed by the petitioner to the aforesaid counter affidavit.

7. In the aforesaid background, unless there is specific finding on facts, no positive order in favour of the petitioner can be passed. For recording such findings of fact, the Court finds itself incapable as the same would have to be done in accordance with law before the competent Court after adducing evidence on each and every point.

8. In view thereof, the writ petition stands disposed off with liberty to the petitioner to move before the competent authority/forum, in accordance with law, for redressal of his grievance.

(Ahsanuddin Amanullah, J.)

P. Kumar

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