

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10056 of 2014

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Jyotimary Madhuri, wife of Late Dharmendra Prasad Srivastava, resident of 208,
Saket Enclave, Khajpura, Patna

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Animal Husbandary Department, Bihar, Patna
2. The Special Secretary, Animal Husbandary Department, Bihar, Patna
3. The Senior Accountant Officer, Officer of the Accountant General (A & E), Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate

Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. Alok Kumar Rahi, AC to GP-21

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 14-03-2018

I have heard parties and perused the records of this case.

Through this writ application, the petitioner seeks quashing of the decision of the State Government contained in Resolution No.636 dated 28.09.2011 as contained in Annexure-4A by which husband of the petitioner's full pension and gratuity has been directed to be permanently stopped in view of his conviction by the Special Judge-1, C.B.I. sentencing him to undergo rigorous imprisonment for 19 years and also awarding fine of Rs.7 lacs in connection with RC 44 (A)/96 (Animal Husbandry Scam). The order has been passed under Rule 43(A) and 43 (B) of the Bihar Pension Rules (hereinafter referred to as 'the Rules')

The husband of the petitioner retired from the post of



Animal Husbandry Officer/Veterinary Officer while working at Hotwar, Ranchi on 31.01.1995. In view of certain discrepancies in relation to misappropriation of government fund by the several officials of the Animal Husbandry Department in collusion with the suppliers for fraudulent withdrawal of Rs.8,60,92,228/- from Ranchi Treasury during the period April 1992 to March 1995, the C.B.I., after enquiry, got case no. RC44A/96 registered on 15.04.1996 on the basis of Ranchi Sadar P.S. Case No.21/1996 which was registered under Sections 409, 420, 467, 471, 477A, 120B of the Indian Penal Code and Section 13 (2) read with Section 13 (1) (C) (d) of the Prevention of Corruption Act, 1998 against 41 accused persons including the husband of the petitioner. As per Annexure-5 appended with the supplementary affidavit filed on behalf of the petitioner dated 8.03.2000, the CBI submitted charge sheet in the aforesaid case against about 59 persons. The husband of the petitioner's name figured at sl.no.A-19. The Special Judge-1, CBI vide his judgment dated 10.12.2009 convicted the husband of the petitioner along with others under the aforesaid provisions of law as mentioned above. The husband of the petitioner preferred criminal appeal before the Jharkhand High Court which is pending for consideration, however, the husband of the petitioner has been granted bail vide order dated 21.11.2000 as contained in Annexure-1. However, the impugned decision came to be passed by the competent authority of the State



Government on 28.09.2011.

On the aforesaid factual matrix, present writ petition came to be filed by the husband of the petitioner challenging the decision of the State Government on the ground that since the appeal is pending and the husband of the petitioner has been released on bail, the State Government should have waited for the final result of the criminal appeal and, only thereafter, the decision should have been taken in this regard.

This issue is no longer *res integra* having been set at rest by a Division Bench of this Court rendered in ***Dr. Bajrang Deo Narain Sinha Vs. The State of Bihar and Ors. [2013 (2) PLJR 521]*** holding that the Rules 43 (a) and 43 (b) of the Bihar Pension Rules vest powers in the State Government to withhold or withdraw pension or any part of it if the pensioner is convicted of serious crime or if he be guilty of grave misconduct. The aforesaid provision does not contemplate that such power of the Government shall remain in abeyance till right of preferring appeal has been utilized and exhausted.

However, at the time of hearing, an issue has been raised by the petitioner that the State Government was not competent to take such decision of permanently withholding the pension and gratuity of the husband of the petitioner under Rule 43 (a) of the Rules inasmuch as such rule empowers it to do so if the pensioner is convicted of



serious crime or if he be guilty of grave misconduct but that is for his conduct post retirement and not for the misconduct during the course of his service. On such assertion having been made, this Court would have to examine the provision of law in the aforesaid perspective. For better appreciation, Rule 43 (a) of the Rules is extracted as under :

“43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive ”.

From bare perusal of the aforesaid Rule, it would be apparent that the opening sentence itself indicates towards its applicability with respect to future conduct of the pensioner and not of the past conduct during his service. This issue came to be considered by a Division Bench of this Court ***in Nityanand Kumar Singh Vs. The State of Bihar and Ors.[2016 (2) PLJR 315]***. The issue was referred by a Single Judge Bench to the Division Bench for authoritative pronouncement because no earlier precedence could be cited. The issue was decided vide order dated 13.02.2012. The Division Bench after due consideration has held as follows :-

“Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation



provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not related to his conduct during service and/ or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43 (a) and that of Rule 43 (b). Both the provisions operate in different areas having different connotations. The decision under rule 43 (a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State government to continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a government servant done while he was in service. Such provision in the rules governing pension vests the State Government with necessary powers to maintain action against a retired government employee for his conduct while in service but subject to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43 (a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all.

Hence, the requirement of proviso (a) (ii)



cannot apply to Rule 43 (a). Such provision in the proviso puts a restriction upon the power of the State government to initiate a departmental proceeding if not instituted while the government servant was in service, either before retirement or during re-employment. Such departmental proceeding, by virtue of the provision under consideration cannot be in respect of an event which took place more than four years before the institution of such proceeding. Rule 43 (a) comes into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Rule 43 (a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later. Hence, it cannot be governed by proviso (a) (ii) to Rule 43 (b) as it can apply only to initiation of departmental proceeding by the Government after an employee has retired”.

A counter affidavit has been filed on behalf of the State.

Learned counsel for the State has drawn attention of this Court towards a decision of the Division Bench of this Court dated 5.07.2012 passed in LPA No.919 of 2012 upholding the decision of the single Judge Bench rendered in CWJC No.13323 of 2009 and other analogues matters. Learned single Judge has held that upon conviction for a serious crime or after being held guilty for conviction, the State Government has full power under Rules 43 (a) and 43 (b) for withholding the pension.

However, the Division Bench in **Nityanand Kumar Singh** (Supra) has specifically dealt with the issue and has held



that Rule 43 (a) has nothing to do with the past service or any misconduct by the pensioner during the course of his service rather it is with respect to the future conduct of the pensioner and, admittedly, though the husband of the petitioner has been held guilty after his retirement and the case was also lodged after his retirement in the year 1996, however, this was with respect to his conduct during service period. Thus, in my view, the State Government was not competent to withhold the pension and gratuity of the husband of the petitioner under rule 43 (a) of the Rules.

It appears that the impugned order has been passed after considering both, i.e., Rule 43 (a) and 43 (b) of the Rules. Having opined as above regarding Rule 43 (a), it would have to be examined as to whether the State Government was competent to pass order withholding the pension and gratuity of the husband of the petitioner under Rule 43 (b) or not?

Learned counsel appearing for the petitioner has drawn attention of this Court towards the fact that the alleged misconduct or the criminal offence was for the period commencing from April 1992 to March 1995. The husband of the petitioner has already retired on 31.01.1995. Thereafter, the FIR was lodged on 15.04.1996. The charge sheet was submitted on 8.03.2000 and the judgment of conviction and order of sentence was passed on 10.12.2009. It is contended that, from bare perusal of the provision contained in Rule



43 (b) of the Rules, it would emerge that the present action of the State Authority would be barred under proviso a (ii) of the Rule 43 (b) of the Rules. For better appreciation, the provision contained in Rule 43 (b) of the Rules are extracted as under :-

“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 Government by misconduct or negligence, during his service including service rendered on re-employment after retirement”.

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(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.*

Explanation.- *For the purposes of the rule-*

*(a) departmental proceedings shall be
deemed to have been instituted when the charges framed,
against the pensioner are issued to him or, if the
Government servant has been placed under suspension
from an earlier date, on such date' and*

*(b) judicial proceedings shall be deemed to
have been instituted:-*

*(i) in the case of criminal proceedings, on
the date on which a complaint is made or a charge-sheet
is submitted, to a criminal court; and*

*(ii) in the case of civil proceedings, on the
date on which the complaint is presented, or as the case
may be, an application is made to a civil Court”.*

From plain reading of the aforesaid provision, it would be apparent that the State Government is competent to withdraw whole or part of the pension if the pensioner is found guilty of grave misconduct either in the departmental or judicial proceeding. However, proviso (b) of the Rule 43 (b) contemplates that judicial proceedings, if not instituted while the Government servant was on duty either before the retirement or during re-employment, shall have to be instituted in accordance with sub-clause (ii) of clause (a) of Rule 43 (b). Sub-clause (ii) of clause (a) provides that the same cannot be instituted with respect to an event which took place more than four



years before the institution of such proceeding. The explanation (b) further provides that in case of criminal proceedings, the deemed date of institution of judicial proceeding would be the date on which a complaint is made to a criminal court or a charge sheet is submitted to a criminal court.

For reaching to a harmonious construction, the word complaint and the charge sheet used in the aforesaid sentence should be read separately which would be as follows :-

(i) In case of criminal proceeding initiated on filing of complaint before a competent court, on the date, on which a complaint is made to a criminal court.

(ii) In case of criminal proceedings initiated on registration of FIR, on the date, on which, a charge sheet is submitted to a criminal court”.

Thus, it has to be understood that in case of complaint cases, relevant would be the date on which the complaint is made and in case of police cases, the date on which the charge sheet is submitted before the criminal court.

On coming to the case in hand, it would be apparent that on the date of retirement, no criminal case was instituted against the husband of the petitioner. The FIR was lodged in the year 1996 and the cognizance was taken on 8.03.2000. The petitioner's case is that as per proviso (b) read with proviso (a) (ii) and explanation (b) (i), the date of initiation of criminal proceeding would be 8.03.2000, i.e., the date on which charge sheet was submitted, whereas, the date of



alleged misconduct is concerned, it is from April 1992 to March 1995 or it can be said to be on the date of retirement, i.e., 31.01.1995. Since time limit of four years prescribed with respect of events in the statute has to be reckoned from the date of alleged misconduct, it would be apparent that the same has exceeded four years in the case of the husband of the petitioner but learned counsel appearing for the State has placed reliance upon a decision of the Single Judge Bench of this Court rendered in ***Ashok Kumar Mishra Vs. State of Bihar and Ors. [2003 (1) PLJR 172]*** in which it has been laid down that the time limit prescribed with respect to an event in a statute has to reckon from the date of its knowledge unless contrary intent is pointed in the statute or by necessary implication, any other view would lead to disastrous consequence. Thus, four years time held to be reckoned from the date of the knowledge of the event by the competent authority.

However, the Division Bench of this Court *in Bihar State Electricity Board Vs. Sharda Prasad and Ors [2007 (2) BLJR 2972]* has disagreed with the aforesaid proposition and held as under :-

“12. The learned Counsel for the appellant has drawn our attention to a judgment rendered by a single Judge of this Court in the case of [Ashok Kumar Mishra v. State of Bihar](#) reported in 2003(1) PLJR 172. In this judgment learned Judge has observed that when time limit is prescribed in respect of an event in a statute it has to be reckoned from the date of its knowledge, unless contrary intention is pointed out in the statute by necessary implication: any other view would lead to disastrous consequence. With due respect we do not agree to this. If this view is to be accepted, then we would be required to supply two



words in the statute, which having regard to the plain and simple nature of the language used in the statute, has no scope for supplying the same. However, it would also be kept in mind that if it is brought on record that by reason of acts on the part of delinquent the event remained concealed then the actions to conceal would also be actions resulting in the "event". In other words, the series of actions, which resulted in the actual loss, including actions to prevent detection thereof would also be part of the "event" which has caused the loss. In such view of the matter it must be brought, on record that series of actions not only stopped when the pecuniary loss was actually caused, but the actions continued further for the purpose of preventing detection thereof".

The Division Bench has also considered the provisions contained in Rule 43 (b) of the Rules and has held as under :-

"11. A look at 43(b) of the Pension Rules, therefore, amply demonstrates that if a disciplinary proceeding has been initiated by issuing a charge sheet against the employee for pecuniary loss caused to the employer either by misconduct or negligence and if such disciplinary proceeding could not be concluded before superannuation of the charge sheeted employee, the same may be concluded by directing stoppage of full or a part of the pension otherwise payable to the employee. In the event before superannuation no disciplinary proceeding is initiated by issuing a charge sheet, or by ordering suspension, even then, if pecuniary loss has been caused to the employer by misconduct or negligence, disciplinary proceeding may be initiated by issuing a charge sheet against such employee and upon conclusion of the proceedings pension payable to him may be stopped to the extent of full or a part, thereof. In addition to that if an employee is guilty of causing pecuniary loss to the employer as has been found in a judicial or disciplinary proceeding as a result of gross misconduct, then also full or a part of pension payable to him can be stopped. Therefore, the Rule envisages three different situations. If already there is a finding in a disciplinary or judicial proceeding that an employee has caused gross misconduct resulting in pecuniary loss, his pension can be stopped in full or in part, which is the first situation. Secondly, if there is an allegation that by misconduct or negligence an employee has caused pecuniary loss to the employer



and in order to get into the Page 2977 truth and substance of such allegation charge sheet, has been issued, but the proceeding pursuant to the charge sheet could not be completed before superannuation, the proceeding may be concluded after superannuation of the employee concerned by awarding punishment of reduction of his pension either in full or in part. The 3rd situation is when there was no finding in any disciplinary proceeding or judicial proceedings during the time the employee and employer relationship existed, that the employee concerned has caused pecuniary loss to the employer by his misconduct or negligence and at the same time no proceeding was initiated to ascertain the same during the time the employee had not superannuated by issuing a charge sheet, such proceeding may be initiated by issuing a charge sheet after superannuation and upon conclusion thereof punishment by way of reduction of pension in full or in part may be awarded. In relation to the 3rd situation, there is a time limit of four years to initiate the proceeding from the date of "event". The "event" must be such which resulted in misconduct or negligence and that has caused pecuniary loss to the employer. This "event" may be of one day or may be continuing from day to day. What is required to be ascertained is whether by reason of the "event" the misconduct or the negligence of the employee stands established resulting in pecuniary loss to the employer. If there are series of "events" then the last of such events should be taken into consideration upon determining the starting point of time limit. Therefore, if actions are such that one action resulted in another action and that resulted in yet another action, then all actions taken together should be deemed to be the "event" and cut of date would be the last date of that action which completed the "event".

In the case in hand, it is apparent that FIR was lodged against the accused persons for the alleged misconduct for the period commencing from April, 1992 to March, 1995. The original writ petitioner (since deceased) having retired on 31.01.1995, it has to be assumed that last date of calculating misconduct can be the date of retirement which is beyond the four years period from the date of



submission of charge sheet on 8.03.2000, thus, impugned action would be barred by the aforesaid proviso and explanation of Rule 43 (b).

In the aforesaid background of the matter, in my considered opinion, the State Government was not competent to come up with the impugned resolution contained in Annexure-4A either on the basis of provision contained in Rule 43 (a) or Rule 43 (b) of the Rules.

Accordingly, the impugned order as contained in Annexure-4A is quashed and set aside. The respondent authorities are directed to calculate the unpaid retiral dues of the original petitioner Dharmendra Prasad Srivastava and pay such dues to the substituted petitioner. This action should be taken within a period of three months from the date of receipt/production of a copy of this order.

In the result, this writ application succeeds.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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