

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9222 of 2017

=====

Sudarshan Ram, aged about 62 years, Son of Late Ram Nagina Ram, resident of C/5, Saket Bihar, Mitra Mandal Colony, Anisabad, Police Station Anisabad, District Patna. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
 2. The Joint Secretary, Rural Works Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
 3. The Deputy Secretary, Rural Works Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
 4. The Special Works Officer, Rural Works Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
 5. The Treasury Officer, Patna Nirman Bhawan, Patna.
 6. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Path, Police Station Kotwali, District Patna.
 7. The Principal Secretary, Finance Department, Old Secretariat, Police Station Sachivalaya, District Patna. Respondent/s
- =====

Appearance :

For the Petitioner/s	: Mr. Rupak Kumar
	: Mr. Virendra Prasad
For the Respondent/s	: Mr. Prachi Pallavi- AC to AG
For A/G	: Mr. Manikant Mishra

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 29-06-2018

1. The present writ petition has been filed for quashing the notification dated 15.06.2017, whereby and whereunder 20% pension of the petitioner for the next 10 years has been withheld under ***Rule 139 of the Bihar Pension Rules.***

2. The brief facts of the case are that the petitioner was directed to submit his show cause reply within 15 days to the charges framed against him vide *Prapatra "ka"*, by letter dated 17.04.2013 issued by the Officer on Special Duty, Rural Works Department,



Government of Bihar. In the said *Prapatra "ka"*, it has been alleged that the petitioner had not followed the rules for auctioning the scrap materials lying in the campus of the office and had instead auctioned the unserviceable materials lying in the office since 10 years *de hors* the rules. The petitioner then submitted his reply dated 22.06.2013, whereafter the disciplinary authority vide notification dated 26.11.2014 had found the petitioner guilty of having auctioned the unserviceable materials without following the procedure for auction resulting in loss of revenue to the Government, consequently the petitioner was inflicted with the punishment of withholding of one increment with non-cumulative effect. The petitioner then retired on 30.06.2015, whereafter the respondents by letter dated 26.12.2016 issued a show cause notice to the petitioner directing him to submit his show cause reply as to why 20% pension be not deducted for next 10 years under ***Rule 139 of the Bihar Pension Rules*** on the ground of being guilty of proved charges pertaining to commission of illegality in auction of the unserviceable materials while posted at Works Division, Hilsa. The petitioner had then submitted his reply, however the respondent by the impugned order dated 15.06.2017 have been pleased to direct for withholding of 20% pension for the next 10 years. The said order dated 15.06.2017 is under challenge in the present proceeding.

3. The learned counsel for the petitioner has submitted that the respondents have illegally passed the impugned order dated



15.06.2017, inasmuch as the same is hit by doctrine of *autrefois convict* and *double jeopardy* as enshrined under Article 20(2) of the Constitution of India. The learned counsel has further submitted that the aforesaid act of the respondents is contrary to the decision of the Hon'ble Apex Court, reported in **(1995) Supp (3) SCC 56 (State of Bihar v. Mohd. Idris Ansari)**, paragraph 10 whereof is reproduced hereinbelow :-

10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty



of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.

4. The learned counsel for the petitioner has further submitted that the respondent-authorities are debarred from initiating any action under **Rule 139 of the Bihar Pension Rules** for the same offence for which the petitioner had already been inflicted punishment prior to retirement. It is further submitted that the aforesaid requirement under



Rule 139 of the Bihar Pension Rules cannot be resorted to without finding of guilt under ***Rule 43(b) of the Bihar Pension Rules***.

5. *Per contra*, the learned counsel for the respondents has submitted that since the service career of the petitioner was found to be unsatisfactory, show cause notice was issued to the petitioner under ***Rule 139 of the Bihar Pension Rules*** and thereafter, the order relating to the revision of pension of the petitioner has been passed in accordance with ***Rule 139 of the Bihar Pension Rules***.

6. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be relevant to reproduce hereinbelow ***Rule 139 of the Bihar Pension Rules :-***

139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.



7. It would also be appropriate to reproduce paragraphs no. 9 of the judgment rendered by the Hon'ble Apex Court in the case of ***Md. Idris Ansari (supra)*** hereinbelow :-

9. So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired government servant or not in the circumstances contemplated by the rule. The first circumstance is that if the service of the government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 14(b) and Rule 139 projects the following picture :

1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

2. Even if the service record of the officer concerned is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the officer concerned during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should



be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

8. The facts of the present case lie in a narrow compass. The petitioner was proceeded with by way of a departmental proceeding, which had started with the issuance of charges contained in *Prapatra "ka"*, issued by a letter dated 17.04.2013 and after reply was filed by the petitioner herein, the petitioner was found guilty and then the order of punishment dated 26.11.2004 was issued by the department, whereby and whereunder it was directed to withhold one increment of the petitioner with non-cumulative effect. The petitioner had then retired on 30.06.2015 and immediately thereafter, the respondents vide letter dated 26.12.2016 had issued a show cause notice, asking the petitioner to submit his show cause reply, as to why the pension of the petitioner be not revised to the extent of withholding of 20% of the same for the next 10 years. The petitioner had submitted his reply and thereafter by the impugned order dated 15.06.2017, the respondents had, upon review of the entire service career of the petitioner herein, had found the services of the petitioner to be not thoroughly satisfactory as also had found the petitioner guilty of proved grave misconduct while in service, hence had passed the order of withholding of 20% pension for the next 10 years by the impugned order dated 15.06.2017.



9. Having heard the learned counsel for the parties and having gone through the materials on record as also the provisions of law and the judgment rendered by the Hon'ble Apex court in the case of ***Md. Idris Ansari (supra)***, I find that though the petitioner had been found guilty in the departmental proceeding initiated against him and was also inflicted with a punishment during his service period, notwithstanding the same, the respondents still have the power under ***Rule 139 of Bihar Pension Rules*** to review the service career of the petitioner and in case, the same is found to be not thoroughly satisfactory and there is proved grave misconduct on his part while in service, the pension of such pensioner can be revised and the only rider to such revision is that such action should be taken within a period of 03 years from the date of the order sanctioning the pension was first passed. Thus, I find that the authorities while passing the impugned order dated 15.06.2017 have, upon review, not only found the service career of the petitioner to be not thoroughly satisfactory but they have also found that the petitioner, during his service period was held guilty of misconduct in a departmental proceeding initiated against him, hence the respondents were/ are well within their right to invoke the provisions of ***Rule 139 of Bihar Pension Rules*** and withhold 20% pension of the petitioner for next 10 years under ***Rule 139(c) of Bihar Pension Rules***. The reliance of the petitioner on paragraph no. 10 of the judgment rendered by the Hon'ble Apex Court in the case of ***Mohd. Idris Ansari (supra)*** is misplaced,



inasmuch as in the said case, firstly the petitioner had not been found guilty of misconduct during his service period and secondly the departmental proceeding was sought to be initiated under **Rule 43(b) of Bihar Pension Rules**, after superannuation of the petitioner, for the alleged misconduct committed by the delinquent of the said case prior to 04 years from the date on which the show cause notice was issued to him after retirement. Infact, a bare reading of para 9 of the aforesaid judgment rendered in the case of **Mohd.Idris Ansari (supra)** postulates the situation which is prevalent in the present case, hence according to the dictum of the Hon'ble Apex Court laid down in para 9 of the aforesaid judgment rendered in the case of **Mohd.Idris Ansari (supra)**, it is clear that the pension of a government servant can be revised under **Rule 139 of the Bihar Pension Rules** if the authority is satisfied that the service record of the said government servant is not thoroughly satisfactory or if there is proof of grave misconduct against the said government servant, however subject to the rider that it should be exercised within 03 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period. Admittedly, in the present case, the impugned order dated 15.06.2017, revising the pension of the petitioner for 10 years by withholding 20% of the pension has been passed within the time limit of 03 years. I further find that the order dated 15.06.2017, revising the pension of the petitioner herein, does not in any manner contravene the



provisions as contained in ***Rule 139 of Bihar Pension Rules*** and infact, has been passed in absolute conformity of the provisions contained under ***Rule 139 of Bihar Pension Rules***.

10. In such view of the matter, there is no merit in the present petition, accordingly the same is dismissed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	08.03.2018
Uploading Date	29.06.2018
Transmission Date	

