

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6863 of 2017

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Umesh Narayan Singh, S/o Shyamphal Singh (Retired) Junior Engineer
Block Minapur, District- Muzaffarpur, resident of Village + P.O.- Shekhpur
Mohalla Umesh Nagar (Suryamashram), P.S.- Ahiyapur, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department,
Govt. of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Bihar, Patna.
3. The Superintending Engineer, Quality Management, Rural Works
Department, Bihar, Patna.
4. The Assistant Engineer(Office of Chief Engineer 4) Rural Works Department,
Bihar, Patna.
5. Superintending Engineer, (Local Area Engineering organization), Works
Circle, Muzaffarpur.
6. The Executive Engineer, Local Area Engineering Organization Works
Division, Muzaffarpur.
7. The District Magistrate, Muzaffarpur.
8. The Sub Divisional Officer (East), Muzaffarpur.
9. The Block Development Officer, Minapur, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pradhan Murli Manohar Prasad, Adv. Mr. Raju Kr. Goswami, Adv. Mr. Pawan Kumar Singh, Adv.
For the Respondent/s	:	Mr. Ajay- GA5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 11-10-2018

Heard learned counsel for the petitioner and counsel for
the State.

In this case, the petitioner is challenging the order
contained in Memo No. 510 dated 10.03.2017, whereby and
whereunder, in exercise of power under Section 43(b) of the Bihar



Pension Rules, punishment has been inflicted by way of deducting 5% pension amount for further five years.

This writ application can be disposed of in a short point that the petitioner was a Junior Engineer at Minapur Block in the district of Muzaffarpur and he was discharging the duty of Technical Adviser for the Gram Panchayat, Minapur. He was served with the charge-sheet after 2.12.2015 and the charge-sheet itself shows that the same was framed on the aforesaid date. In the charge-sheet, it has been mentioned that during the year 2004-05 itself, the scheme no. 61/2004-05 was carried out but, in the subsequent year i.e. during the year 2006-07, again the estimate was prepared by the petitioner for the scheme no. 01/2006-07 for the purpose of repair of the road and, thereby, he had intended to divert the fund of the Government.

It appears that the enquiry was conducted and the finding has been recorded against the petitioner by the Enquiry Officer.

The matter relates to the period of 2006-07. The proceeding has been initiated on 12.7.2016 and the petitioner has superannuated from service on 31.1.2015. Thus, admittedly, the proceeding has been initiated after the superannuation of the petitioner. Section 43(b) of the Bihar Pension Rule speaks eloquently speaks that any misconduct committed prior to the four



years of the retirement will not be subject matter of departmental proceeding.

Admittedly, in the present case, the purported misconduct is of the year 2006-07 and the proceeding has been initiated after superannuation of the petitioner. In that view of the matter, straightway the provision of Section 43(b) of the Bihar Pension Rules is attracted and, as such, initiation of departmental proceeding against the petitioner itself is vitiated.

It has to be seen that after preparation of the estimate, no action, thereafter, has been taken from the side of the petitioner. In that event also, it is very difficult for this Court to accept the plea of the State that the petitioner had committed misconduct in any manner. So, the present petition is allowed on two counts, firstly, no proceeding can be initiated with respect to the charge which has purportedly been committed more than four years prior as well as it is very difficult to arrive to a finding that the petitioner has committed any misconduct by preparing an estimate of the year 2006-07 for the purpose of repairing of the road. There is no finding recorded that the road was in a good condition and, thus, mere preparation of the estimate cannot constitute a misconduct even if the construction was done one year earlier.



Accordingly, the present writ application is allowed and the impugned order contained in Memo No. 510 dated 10.03.2017 is set aside.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.10.2018
Transmission Date	

