IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13193 of 2010

Rajendra Prasad S/O Late Shivdhari Singh R/O Mohalla- Nehru Nagar, Lal Baba Street No.20, P.S.- Patliputra, Distt.- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Finance Commissioner, Bihar, Patna
3. The District Magistrate, Jehanabad
4. The Conducting Officer-Cum-A.D.M. (Naxal) Jehanabad
5. The Treasury Officer, Jehanabad

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv.
Mr. Birendra Kumar, Adv.
Ms. Surya Nitambari, Adv.
For the Respondent/s : Mr. Tej Pratap Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 24-04-2018

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

The petitioner was posted and was discharging the duty of Accountant in the Jehanabad Treasury. The office of Accountant General found serious lapses and misappropriation of the huge quantity of fund from that Treasury and, in pursuance thereof, the Accountant General lodged a criminal case bearing Jehanabad P.S. Case No. 424 of 2004 against the employees and officer of Jehanabad Treasury for forged withdrawal of the government money amounting Rs. 3,50,000/-.

The petitioner was holding the post of Accountant and, in such circumstances, the present petitioner and others connected officers and employees were proceeded departmentally. The petitioner was served with five charges, out of five charges, four charges were found proved except the charge no.2. The petitioner was served with show-cause notice which he replied and, ultimately, the District Magistrate, Jehanabad, vide order dated 30.3.2008, inflicted punishment of dismissal from the date the charges were found proved i.e. from 23.1.2008 and also the petitioner has been deprived of 100% pension exercising power under Rule 43B of the Bihar Pension Rule.

A very impressive point has been raised by the learned counsel for the petitioner that the petitioner has superannuated from service from 31.01.2008 whereas the order of punishment has been passed on 30th March, 2008 and, after the superannuation from service, the relationship of master and servant gets snapped. In that view of the matter, the order of dismissal cannot be inflicted upon the petitioner and that too giving retrospective effect.

Any dismissal order passed in retrospective is not sustainable as well when the person has superannuated, after that, no order of dismissal can be passed. If the authority concerned so like, he may convert the proceeding under Rule 43B of the Bihar Pension Rule by the appropriate authority and, exercising power under Rule 43B, would adopt proper course, take a decision accordingly but, in the present case, though a proceeding has been concluded but, the order of punishment could not be inflicted after his superannuation and, in such view of the mater, on the face of it, the order impugned suffers from illegality.

Accordingly, the order of punishment dated 30.03.2008 is set aside and the matter is remanded back to the proper authority, if so like proper, may proceed under Rule 43B of the Bihar Pension Rule and take decision accordingly. It is also directed that the authority, before passing a final order, will give an opportunity of hearing to the petitioner. The entire proceeding must be completed within a period of four months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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