

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18304 of 2010

1. Shanti Devi, aged 69 years Widow of late Dr. Deo Nandan Prasad Mahto Presently residing in Mohalla- Pokharia (Near Press Club) Begusarai, Police Station- Begusarai town, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Animal and Fisheries Resources Department (Animal Husbandry), Government of Bihar, Patna.
3. The Joint Secretary, Animal and Fisheries Resources Department (Animal Husbandry), Government of Bihar, Patna.
4. The Director, Animal and Husbandry Department Government of Bihar, Patna.
5. The Under Secretary, Animal and Fisheries Resources Department (Animal Husbandry), Government of Bihar, Patna.
6. The Regional Director, Animal Husbandry Department, Darbhanga Region, Darbhanga.
7. The Special Officer, Intensive Cattle Development Block, Barauni, District- Begusarai.
8. The Accountant General, Bihar, Veer Chand Patel Path, Patna.
9. The Treasury Officer, Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gyanand Roy
For the State	:	Mr. Sanjay Kumar, AC to GA-13

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 10-07-2018

The present writ petition is being prosecuted on behalf of the wife of the original petitioner, who has died during the pendency of the present writ petition.

The short facts of the case are that the petitioner was proceeded by way of a departmental proceeding and ultimately, he was inflicted certain punishment by an order dated 14.09.1998, however, the same was quashed by this Court by an



order dated 29.04.2004 passed in the writ petition filed by the original petitioner. The State filed an appeal against the said order dated 29.04.2004 and the said order dated 29.04.2004 became absolute. The petitioner is stated to have retired on 31.07.1998 and the final order sanctioning pension was also issued on 05.03.2002, however, belatedly, the Respondents have issued a show cause notice under Section 43(b) of the Bihar Pension Rules vide Memo dated 30.09.2008 whereafter, the petitioner had submitted show cause reply and then, the Respondents had passed the order of punishment dated 28.09.2010 whereby and whereunder the entire pension of the original petitioner was forfeited.

The aforesaid Resolution dated 28.09.2010 is under challenge in the present proceeding. The short point raised by the learned counsel for the petitioner is that any proceeding under Rule 43(b) of the Bihar Pension Rules can only be in respect of an event which took place not more than four years before the institution of such proceedings. It would be gainful to reproduce Rule 43(b) of the Bihar Pension Rules hereinbelow:-

“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”.

In view of the aforesaid, it is the submission of the learned counsel for the petitioner that the event regarding which the said proceedings under Rule 43(b) of the Bihar Pension Rules could have been instituted, could not have been prior to the year 2004 since the show cause notice has been issued on 30.09.2008, however, the event for which the said proceedings



under Rule 43(b) of the Bihar Pension Rules has been issued, is pertaining to the year 1996. The learned counsel for the petitioner has further submitted that even the power of revision of pension under Rule 139 of the Bihar Pension Rules could not have been exercised since there is a limitation of three years and the pension of the petitioner having been fixed in the year 2002, at best, it could have been revised only upto the year 2005 and not beyond.

The learned counsel for the Respondents has not been able to controvert the aforesaid settled position in law.

In view of the aforesaid, the present writ petition is allowed and the order dated 28.09.2010 passed by the Respondents, whereby and whereunder hundred per cent pension of the petitioner has been forfeited, is quashed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2018
Transmission Date	NA

