

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5314 of 2015

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Chandra Nath Jha son of Late Vishwanath Jha Resident of Village-
Chaugama, P.S. - Bahera, District - Darbhanga (Bihar) at present residing at
Flat No. - 403, Kamalini Ranjan Apartment (west of Pushpanjali Kunj
Apartment), Ashiana Nagar, P.S. - Rajiv Nagar, District Patna (Bihar).

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna
2. The Additional Secretary, General Administration Department, the Government of Bihar, Patna.
3. The Joint Secretary, General Administration Department, the Government of Bihar, Patna.
4. The Officer on Special Duty-cum-Deputy Secretary, General Administration Department, the Government of Bihar, Patna
5. The Deputy Secretary, General Administration Department, the Government of Bihar, Patna.
6. The Departmental Enquiry Commissioner, General Administration Department, the Government of Bihar,
7. The Principal Secretary, Labour Resources Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Nand Kishore Pd Sinha, Sujeet Kr Sinha, Indu Bhushan Pandey, Advocates
For the S t a t e	:	Mr Ajay Kumr Rastogi, AAG X withheld Mr Parijat Saurav, AC to AAG X

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 26-02-2019

Heard learned counsel for the petitioners and the
respondent-State.

2 Petitioner is aggrieved by the orders dated
30.12.2014 and 10.02.2015 issued by the State Government
whereby 10% of pensionary benefits for five years and 5% of



pensionary benefits for two years respectively have been directed to be withheld from the petitioner.

3 The short issue raised by the learned counsel for the petitioner is that Rule 139 of the Bihar Pension Rules does not permit exercise of such power on ground of alleged misconduct.

4 The petitioner has been issued show cause purporting to exercise power under Rule 139 on 13.09.2013 and 04.09.2014. Under both the said show cause notices, misconduct is alleged against the petitioner on different counts. The allegations in the show cause issued to the petitioner pertains to the year 2003 in the first instance and for the period between 1999 to 2010 in the second instance.

5 Earlier also charge memo on *Prapatra Ka* has been issued on 21.12.2011 in respect of the allegations pertaining to the period 1999 to 2010. However, no action was taken on the charge memo.

6 Subsequently, a show cause notice was again issued to the petitioner on 04.09.2014. From the communications (Annexure 10 series), it is quite obvious that authorities were conscious of the fact that proceedings under Rule 43 (b) of the Bihar Pension Rules, could no longer be conducted against the petitioner as the same would not be maintainable being barred on account of the allegations being more than four years prior to issuance of the show cause notices dated 13.09.2013 in respect of the first alleged misconduct; and 04.09.2014 being the second. In



view of the said circumstance, Authorities have resorted to Rule 139 of the Bihar Pension Rules.

7 Learned State Counsel has submitted that the authorities have not found the services of the petitioner to be satisfactory. After issuing show cause notice under Rule 139 of the Bihar Pension Rules, the action has been taken, therefore, no interference is required in the punishment as the quantum of punishment is also very negligible.

8 Learned counsel for the petitioner has placed reliance on the judgment in the case of *Lall Babu Lall -Versus- State of Bihar & Others* reported in 2012 (4) PLJR 986. The said judgment has relied upon the law laid down by the Apex Court in the case of *State of Bihar & Others -Versus- Mohd Idris Ansari* reported in AIR 1995 Supreme Court 1853. The relevant portion of the judgment in the case of *Lall Babu Lall (supra)* is being reproduced herein below:

8 Learned counsel for the petitioner submits that the charge relates to an occurrence of 27.03.1991. The show cause notice dated 05.10.1996 under Rule 139 (b) of the Pension Rules was therefore well beyond the period of four years from the date of the charge. The proceedings were therefore barred by law. Reliance is placed on AIR 1995 SC 1853 [1995 (2) PLJR (SC) 51] (State of Bihar vs Mohd Idris Ansari). The show cause notice dated 05.10.1996 has not been brought on record by the parties. The impugned order dated 14.12.2010 recites that it was issued not for any unsatisfactory service but on account of allegations for misconduct.

9 In Md Idris Ansari (supra), it has been held at paragraph – 10 as follows:-



“10 ...On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27.09.1993 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 show cause notice dated 27.09.1993 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...”

9 In view of the settled legal position, as per law laid down by the Apex Court in the case of *Mohd Idris Ansari* discussed in the judgment in the case of *Lall Babu Lall (supra)*, the inescapable conclusion is that in case of petitioner also, the respondent-authorities cannot be permitted to take recourse to Rule 139 as, admittedly, allegations of misconduct was prior to four years from the date of show cause notices dated 30.12.2014 and 10.02.2015 are based on grounds of alleged past misconduct. The show cause notices are not on grounds that service record of petitioner was not thoroughly satisfactory for any other reason.

10 In the circumstances and in view of the legal position taken note of herein above, this Court would hold that proceedings under Rule 139 of the Bihar Pension Rules are wholly incompetent.



11 Accordingly, this Court would quash the two orders dated 30.12.2014 and 10.02.2015 purporting to visit the petitioner with penal consequences under Rule 139 of the Bihar Pension Rules.

12 Writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2019
Transmission Date	NA

