IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10719 of 2016

==

Deep Narayan Yadav Son of Late Thakur Prasad Yadav Resident of village - Purniya, Near Court Station, Police Station K. Hat, District Purniya

... ... **Petitioner**

Versus

1. The State Of Bihar
2. The Principal Secretary, Revenue and Land Reform Department, Bihar, Patna
3. The Commissioner, Purniya Division, Purniya
4. The District Magistrate, Kisanganj
5. The Deputy Development Commissioner, Kishanganj
6. The Additional Collector, Kishanganj
7. The Sub Divisional officer, Kishanganj
8. The Deputy Collector Land Reforms, Kishanganj
9. The Accountant General, Bihar, Birchand Patel Road, Patna

... ... **Respondents**

==

Appearance :

For the Petitioner	:	Mr. Tej Bahadur Singh, Advocate
		Mr. Radha Mohan Singh, Advocate
For the State	:	Mr.Durgesh Nandan, AAG 14
		Mr. Jitendra Kumar, AC to AAG 14
for Accountant General, Bihar	:	Mr. Dhanendra Chaubey, Advocate

==

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 16-01-2019

Heard learned Senior counsel for the petitioner, learned counsel for the State as well as learned counsel for the Accountant General, Bihar.

Short issue raised by learned Senior counsel for the petitioner in the instant writ proceedings is the maintainability of an order passed under Rule 43(a) of the Bihar Pension Rules. By relying upon a decision of the Division Bench of this Court in case of Nityanand Kumar Singh Vs. The State of Bihar and others in C.W.J.C.No. 2527 of 2009 it is submitted that the power under Rule 43(a) of the Bihar Pension Rules could not be resorted to in the instant case as the conduct which has been made the basis for exercise of power is for a period when petitioner was still in service.

He submits that future good conduct has been explained/interpreted by the said Division Bench so as to mean that the same comes into play after retirement of employee. Relying upon the Division Bench decision it is submitted that in respect of allegations pertaining to the period of service the authorities cannot be permitted to take resort to Rule 43(a) of the Bihar Pension Rules. Relying upon the said submission, this Court under order dated 2.1.2019 had specifically formulated this issue and afforded the State an opportunity to respond to the said submission. Order dated 2.1.1990 thus reproduces as follows:-

> *"It is submitted by Mr Tej Bahadur Singh, learned Senior Counsel for the petitioner that the order is in purported exercise of power under Rule 43 (a) of Bihar Pension Rules (for brevity, the Rules). He submits that resort to Rule 43 (a) of the Rules is not permissible as the impugned order relies up on allegations against the petitioner during the course of his employment. Relying upon the decision of the Division Bench in the case of Nityanand Kumar Singh -Versus- State of Bihar &Others (CWJC No 2527 of 2009), he submits that the power under Rule 43 (a) of the Rules, as is clear from the words contained in the Rule, comes into play only in respect of finding of guilt or grave misconduct in relation to the future conduct of the employee and not in relation to the period of services rendered with the Government.*

The submission of the learned counsel for the petitioner, prima facie, appears to be correct.

However, this Court would allow an opportunity to the State Government to file comprehensive counter affidavit dealing with the issue of law raised by the learned Senior Counsel for the petitioner. Let the same be filed within a week from today.

It is made clear that if no counter affidavit is filed within a week, this Court would presume that respondents have no comments to offer in respect of the petitioner's claim.

List this case under the same heading on 09th of January, 2019."

Counter affidavit has been filed subsequent to the said order. However, there is no averment of the State in respect of specific issue formulated in the order dated 2.1.1990. From bare perusal of the order dated 30.7.2014 purporting to impose punishment of withholding full pensionary benefit of the petitioner it is more than obvious that the same has been issued in purported exercise of power under Rule 43(a) of the Bihar Pension Rules.

The judgment of the Division Bench in the case of **Nityanand Kumar Singh (supra)** is relevant in this regard. Reference was made to the Division Bench to answer whether Clause (a)(ii) of the proviso to Rule 43(b) shall govern Rule 43(a) of the Bihar Pension Rules or not. While answering the said reference, the Division Bench has taken note of the said two provisions and as it was essential to examine the nature of powers being exercised under Rule 43(a) and Rule 43(b) of the Bihar Pension Rules. The Division Bench has considered at length the scope of the jurisdiction of the authority under Rule 43(a) and Rule 43(b) of the Bihar Pension Rules. The Division Bench while examining the scope of the power being exercised by the authority in Rule 43(a), in its decision has held:-

> *"Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not related to his conduct during service and/ or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43 (a) and that of Rule 43 (b). Both the provisions operate in different areas having different connotations. The decision under rule 43 (a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State government to continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a government servant done while he was in service. Such provision in the rules governing pension vests the State Government with necessary*

powers to maintain action against a retired government employee for his conduct while in service but subject to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43 (a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all.

Hence, the requirement of proviso (a) (ii) cannot apply to Rule 43 (a). Such provision in the proviso puts a restriction upon the power of the State government to initiate a departmental proceeding if not instituted while the government servant was in service, either before retirement or during re-employment. Such departmental proceeding, by virtue of the provision under consideration cannot be in respect of an event which took place more than four years before the institution of such proceeding. Rule 43 (a) comes into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Rule 43 (a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later. Hence, it cannot be governed by proviso (a) (ii) to Rule 43 (b) as it can apply only to initiation of departmental proceeding by the Government after an employee has retired."

From pronouncement of the Division Bench taken note herein above, it is more than obvious that the scope and nature of the jurisdiction under Rule 43(a) of the Bihar Pension Rules has been interpreted by the Division Bench to be in respect of alleged misconduct of a retired Government servant and could not relate back to the allegation in respect of the period while the employee was in service.

In this case, though charge memo had been issued on 3.7.2006, i.e., prior to the petitioner's retirement on 1.6.2007 the order has been passed much later on 30.7.2014 in purported exercise of jurisdiction under Rule 43(a) of the Bihar Pension Rules. Clearly, order dated 30.7.2014 is unsustainable inasmuch as the same has been passed in respect of allegations for the period while the petitioner was in service. In view of the decision of the Division Bench interpreting the scope of Rule 43(a) of the Bihar Pension Rules order passed by the District Magistrate, Kishanganj is therefore unsustainable in law and is hereby quashed. The petitioner, as a result of quashing of the order of punishment would be entitled to consequential benefits.

Writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2019
Transmission Date	NA