

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5485 of 2017

Dr. Parimal Chakraborty Son of Late A.B. Chakraborty, resident of 470-C,
Mandir Marg, Ashok Nagar, P.S.-Argora, District-Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Animal and Fishery Resource Department, Government of Bihar, Patna.
3. The Under Secretary, Animal and Fishery Resource Department Government of Bihar, Patna.
4. The Director Animal Husbandry Department, Animal and Fishery Resource Department, Government of Bihar
5. The Accountant General, Government of Bihar, patna,

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rakesh Kumar Samrendra
For the Respondent/s : Mr.Sajid Salim Khan -SC-25

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 19-06-2019 Heard counsel for the parties.

This writ application has been filed for following
reliefs:-

“(i) To quash the Notification contained in Memo No.64 dated 02.03.2017 issued under the signature of the Respondent No. 3 whereby and whereunder the Government in purported exercise of power under Rule 43(a) of the Bihar Pension Rules has decided to withhold the pension and gratuity of the petitioner.

(ii) To hold and declare the purported exercise of power by the Government under Rule-43(a) of the Pension Rules as against the withholding or withdrawing of pension of the petitioner to be barred and hit by limitation under the provision of Rule-43(b) and hence, arbitrary and illegal.



(iii) To command the Respondent Authorities to allow pension to the petitioner, who has retired w.e.f. 31.12.1990 as before.

(iv) For any other relief (s) to which the petitioner may be found entitled to in the facts and circumstances of the case.”

The brief facts of the case is that the petitioner was appointed as Animal Husbandry and Veterinary Officer on 02.10.1957 and after attaining the age of superannuation, the petitioner superannuated from the post of Regional Director, Santhal Pargana Range, Dumka with effect from 31.12.1990. After superannuation of the petitioner, respondent authorities paid retiral dues to the petitioner and pension of the petitioner has been fixed vide Pension Payment Order of the Accountant General, Bihar, Patna with effect from 01.01.1991 and the same is being paid regularly to the petitioner. It is further contended that in the year 1996 one criminal case alleging fraudulent withdrawal from Chaibasa Treasury being Chaibasa Sadar P.S.Case No.23 of 1996 was lodged on 11.03.1996 and after being taken over by C.B.I re-registered as R.C.Case No.49A of 1996 (Pat). In the said criminal case, the petitioner has been made accused in the capacity of being District Animal Husbandry Officer, Chaibasa for the period from 11.08.1983 to 14.01.1986 with the allegation that the petitioner facilitated



fraudulent payment/withdrawal from the treasury. Finally, after contest the petitioner was convicted vide judgment dated 28.01.2011 under Sections 420, 409, 467, 468, 471 and 477A of the Indian Penal Code and read with Section 13(2) of the P.C.Act, 1988 and sentenced to undergo rigorous imprisonment for four years and a fine of Rs.11,00000/- passed by the learned court of Sessions Judge-IV, Ranchi. Against the judgment of conviction and order of sentence, the petitioner preferred Criminal Appeal (SJ) No.110 of 2011 before the Hon'ble Jharkhand High Court which has been admitted and the petitioner has been enlarged on bail during the pendency of appeal. The said criminal appeal is still pending for consideration before the Hon'ble Jharkhand High Court. After passing of the aforesaid order, the petitioner had been issued a notice contained in Memo No.160 dated 16.06.2016 (Annexure-3 to the writ petition) whereby and whereunder the petitioner has been served a show cause as to why a proceeding under Rule 43(a) of the Bihar Pension Rules be not initiated in view of the fact that he has been convicted in a criminal case involving fraudulent withdrawal from the Govt. Treasury which amounts to misconduct.

Petitioner replied to the show cause on 25.06.2016



(Annexure-4 to the writ petition) and after considering the reply of the petitioner, the respondents vide notification dated 02.03.2017 (Annexure-5 to the writ petition) had passed order whereby, it has been decided to withdraw the pension and gratuity of the petitioner in exercise of power under Rule 43(a) of the Bihar Pension Rules.

The contention of the petitioner is that petitioner has superannuated on 31.12.1990 and till the date of superannuation neither any departmental nor any criminal proceeding was initiated. It is only after lapse of six years of retirement, the criminal case was lodged against the petitioner and after 25 years of superannuation, the impugned order has been passed, which is absolutely illegal and unsustainable. In this connection, petitioner has placed reliance upon a decision of this High Court reported in 2017(3) PLJR page 79. It is further submitted on behalf of the petitioner that Rule 43(a) of Bihar Pension Rules 1950 is not related to a conduct of pensioner during service or service rendered on re-employment, rather it is a conduct expected from a pensioner after his retirement that is to say, his future conduct.

On the other hand, learned counsel for the respondents vehemently opposes the contentions of learned



counsel for the petitioner and submits that the impugned order has been passed since charges levelled against the petitioner were proved and has been convicted and sentenced for four years and fine of Rs.11,00,000/- awarded to him under the judgment dated 28.01.2011. It has further been submitted that a proceeding has been initiated against the petitioner under Rule 43(a) of Bihar Pension Rules and after giving him a show cause and considering the same, the impugned order has been passed and as such no interference is required by this Court.

The scope and extent of exercise of power under Rule 43(a) of Bihar Pension Rules is no more res-integra in view of the decision rendered in the case of Nityanand Kumar Singh v. State of Bihar reported in 2017(3) PLJR 79 in which placing reliance upon a Division Bench it has been held in paragraph-8 which is as follows:-

“8. It is self-eloquent from the issue settled by the Division Bench that Rule 43(a) of “the pension rules”, is not related to a conduct of a pensioner during service period and/or service rendered on re-employment rather it is a conduct expected from a pensioner after his retirement and after he is granted pension that is to say, his future conduct. The legal position settled by the Division Bench is that a decision under Rule 43(a) is not on ground of a departmental proceeding or a judicial proceeding instituted while the Government servant was in service or instituted later in respect of an event related to his service rendered



before retirement or re-employment which is the arena covered by Rule 43(b).”

In the present case, it is not in dispute that no proceeding was initiated against the petitioner either judicial or departmental before his retirement on 31.12.1990. The criminal case was instituted in the year 1996 for an event which took place in the year 1983-86. The petitioner after contest was finally convicted in the year 2011 by the trial court and till that date, the department did not choose to initiate any proceeding under Rule 43(b) of the Bihar Pension Rules against the petitioner. The respondents rather sat over the matter and it is only after 25 years of superannuation of the petitioner that they chose to issue a show cause dated 16.06.2016 that too under Rule 43(a) of the Bihar Pension Rules seeking his explanation and finally, forfeited pension and gratuity vide impugned order.

In view of the legal position settled by the Division Bench as to the scope and object of Rule 43(a) since the conviction of the petitioner is not related to a conduct which has taken place after retirement of the petitioner rather admittedly relates to the conduct of the petitioner during service period, it was beyond the jurisdiction of the respondent-state to initiate any proceeding under Rule 43(a) of the Bihar Pension Rules for forfeiture of the pension and gratuity of the petitioner



in respect of his alleged conduct during service period, which has led to his conviction.

In view of the aforesaid facts and circumstances and the law laid down by this Court, I am of the considered opinion that notification dated 02.03.2017 issued by the State Government whereby the pension and gratuity of the petitioner has been forfeited permanently under Rule 43(a) of the Bihar Pension Rules cannot be upheld and is accordingly quashed and set aside. This Court further directs the respondent to pay entire arrears of pension and gratuity within a period of three months from the date of receipt/production of a copy of this order.

A.F.R.
B.Kr./-

(Prabhat Kumar Singh, J)

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