

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2984 of 2018

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Smt. Sarswati Devi Wife of late Mukund Lal Bhagat, MIG-60, Barari Housing Colony, Bhagalpur, P.S.-Barari, Town and District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Vishweshariya Bhawan Campus, (Technical Secretariat) Bailey Road, Patna.
2. The Additional Secretary, Public Health Engineering Department, Government of Bihar, Vishweshariya Bhawan Campus, (Technical Secretariat) Bailey Road, Patna.
3. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Vishweshariya Bhawan Campus, (Technical Secretariat) Bailey Road, Patna.
4. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Adv. Mr. Bimlendu Shekhar Thakur, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad, AAG-5 Mr. Vishwambhar Prasad, AC to AAG-5
For the A.G.		Mr. Arun Kumar Arun, Adv. Ms. Subuni, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT

Date : 09-04-2019

Heard Mr. Shivendra Kishore, Senior Advocate along with Mr. Bimlendu Shekhar Thakur, learned counsels for the petitioner, Sri Raza Ahmad, learned AAG-5 with Vishwambhar Prasad, A.C. to AAG-5 for the respondent-State and Mr. Arun Kumar Arun along with Mrs. Subuhi learned counsels for respondent no. 4, Accountant General, Bihar Patna.

2. The widow of late Mukund Lal Bhagat who died on 09.10.2014 claims for the following reliefs:-



(i) *For a direction on the respondents to pay full pension of the late husband of the petitioner w.e.f. 01.09.1992 and arrears thereto, entire gratuity amount and leave encashment amount, three months arrear of salary alongwith statutory and delayed interest.*

(ii) *For fixation of family pension on 100% pension of late Mukund Lal Bhagat and payment of family pension w.e.f. 9th October 14 till date.*

(iii) *For a direction on the respondents not to make recovery of a sum of Rs. 95,723.70 from the leave encashment received by late husband of the petitioner during the period 01.09.1992 to 10.03.1995 towards salary.*

(iv) *For quashing order no. 812 dated 15.10.2014 issued under the signature of Joint Secretary, P.H.E.D., Bihar by which recovery of a sum of Rs. 95,723.70 from leave encashment has been ordered and 10% pension and entire amount of gratuity has been ordered to be withheld after the death of Mukund Lal Bhagat on 9th October, 2014.*

(v) *For any other relief/reliefs to which petitioner is found entitled in the facts and circumstances of the case.*



3. The facts of the case is that the late employee Mukund Lal Bhagat was appointed as Overseer in the Public Health Engineering Department, Government of Bihar on 19.07.1958. A dispute with regard to date of birth of the late employee arose in the year 1994. According to the State, the date of birth of the late employee as recorded in the service book was 01.09.1934 but according to the late employee his date of birth was 01.09.1939 as recorded in the matriculation certificate. While posted in Hazaribagh as In-Charge Executive Engineer, Ph.E.D. Hazaribagh, vide memo no. 1293 dated 02.12.1994, he was made to retire with immediate effect taking his date of birth as 01.09.1934 which is Annexure-14 of the rejoinder filed by the writ petitioner. However, the Commissioner-cum-Secretary, P.H.E.D. vide letter dated 31.12.1994 directed that the petitioner would continue in service till the inquiry relating to his date of birth is resolved which is Annexure-15 to the rejoinder filed by the petitioner in the writ application. Thereafter by letter no. 80 dated 10.03.1995, the Memo No. 1293 dated 02.12.1994 was revived by the Special Secretary of the Government P.H.E.D. treating the letter no. 465 dated 31.12.1994 to be withdrawn which is Annexure-16 of the rejoinder filed by the writ petitioner. Hence, the husband of the petitioner was made to retire on 10.03.1995 w.e.f. 31.08.1992



treating his date of birth as 01.09.1934. However, vide memo no. 642 dated 17.09.1996 as contained in Annexure-5 to the writ application 90% of the pension was sanctioned and because of the controversy in the date of birth, while his date of retirement was treated as 01.09.1992 and his unauthorised continuation in service till 10.03.1995 was inquired into hence, 10% of the pension and gratuity was kept pending awaiting the result of the departmental inquiry. It may be mentioned here that the petitioner moved this Court in C.W.J.C. No. 1928 of 1995 which is Annexure-3 to the writ application against the order of the retirement which was dismissed on the ground that the dispute regarding date of birth cannot be raised at the fag end of the service. Against the said order, late employee moved in L.P.A. No. 1097 of 1995 which was also dismissed on 08.01.1997 as contained in Annexure-4 to the writ application. However, the petitioner again moved this Court in C.W.J.C. No. 6017 of 1996 for grant of promotion to the post of Selection Grade Assistant Engineer together with his claim for retirement dues although his arguments were only confined with regard to retiral dues. This Court vide order dated 05.12.1997 found that 90% of the pension has already been sanctioned and a departmental proceeding is pending. Hence a direction was given to the disciplinary authority to pass a final order within a period of



three months and accordingly, disposed of the writ application which is Annexure-6 to the writ application. It is relevant to mention that a departmental proceeding was initiated against the late employee vide memo no. 883 dated 04.12.1995 under Rule 55 of the Civil Services (Classification Control and Appeal) Rules, 1930 for suppression of actual date of birth and simultaneously an FIR being Hazaribagh P.S. Case No. 104 of 1995 was also instituted for offences under Sections 419, 420, 467, 120B, 468, 471 and 472 of the Indian Penal Code. The inquiry officer vide letter no. 65 (c) dated 03.10.1996 during the course of departmental proceedings observed that for similar charges criminal proceeding being Hazaribagh P.S. Case No. 104 of 1995 has been lodged on 03.04.1995 hence, the departmental proceedings would be kept in abeyance till the decision of the criminal case. The criminal case pending before the Judicial Magistrate, 1st Class, Hazaribagh being G.R. No. 501 of 1995/Tr. No. 08 of 2008 was disposed of and the late employee was acquitted and given the benefit of doubt vide order dated 19.02.2008 as contained in Annexure-17 of the supplementary affidavit filed by the petitioner. Thereafter the departmental proceedings revived and vide memo no. 74 dated 28.12.2012 the departmental proceedings was converted under 43 (b) of the Bihar



Pension Rules as contained in Annexure-7 and an inquiry officer was appointed. During course of inquiry, the inquiry officer found that in the original tabulation register (OTR) of the Bihar School Examination Board the date of birth of the late employee is mentioned as 01.09.1934. After cutting 34 his date of birth has been noted as 01.09.1939 and bears the initial but the cutting was done by which officer is not known which the Deputy Secretary-cum-Public Information Officer of the Bihar School Examination Board had reported by letter no. 957 dated 12.09.2011. It also came to light during course of inquiry that the service book of the petitioner only bears 1st September, 193 and thereafter the year has been erased. It was also opined by the inquiry officer that the service history of the late employee which has been prepared by the Superintending Engineer, Purnea circle who had endorsed his signature on 15.05.1981, which shows the date of birth of the late employee as 01.09.1934. It was also opined that the petitioner had joined the service on 16.08.1958 and ought to have applied for correction within 10 years of service which was not done and hence charges were found to be proved. Thus, the order of punishment was passed against the late employee vide memo no. 812 dated 15.10.2014 as contained in Annexure-1 for recovery of Rs. 95723.70 for his unauthorised service for the period between



01.09.1992 to 10.03.1995 and 10% of the pension was forfeited along with entire gratuity which has been challenged by the writ petitioner in the present writ application. However, before the order of punishment dated 15.10.2014 could be passed, the late employee died on 9th October, 2014, the death certificate is enclosed in Annexure-11 of the writ application.

4. The issues to be decided in the present writ application are:-

(I) Whether after the order of retirement dated 10.03.1995 whether a departmental proceeding initiated on 04.12.1995 could be initiated under Rule 55 of the Civil Services (Classification Control and Appeal) Rules, 1930 when the master and servant relationship ceases to exist.

(II) Whether the order of punishment as contained in Annexure-1 dated 05.10.2014 could be passed under Rule 14 of the Civil Services (Classification Control and Appeal) Rules, 2005 as there was reverence of master and servant relationship.

(III) Whether the Departmental Proceedings could be converted under Rule 43 (b) of the Pension Rules, 1950 beyond the period of four years of the retirement of the late employee.

(IV) Whether the salary of the period 01.09.1992 to 10.03.1995 could be recovered although the late employee



continued to work on the orders of the Commissioner-cum-Secretary, P.H.E.D.

(V) Whether the order of punishment dated 15.10.2014 of recovery and order of forfeiting 10% of pension and entire gratuity could be passed against a dead person or whether an order of punishment could be passed against a dead person.

(VI) Whether the date when decision is taken by the authority would amount to communication to the person affected by it.

5. Mr. Shivendra Kishore, learned Senior counsel appearing on behalf of the petitioner submits that terminal and pensionary benefits are the condition of service and are governed by the Service/Pension Rules. Pension is neither a charity or bounty and a person cannot be deprived without the authority of law which is the constitutional mandate enshrined in Article 300(A) of the Constitution and has relied upon a judgment of the Apex Court in the case of **State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr. since reported in (2013) 12 SCC 210.** He submits that the Civil Services (Classification Control and Appeal) Rules, 1930 (hereinafter referred to as the 'Rules, 1930') as per Rule 3 would apply to every person in whole time civil employment and action or departmental proceeding can be



initiated only if there is a master and servant relationship. The erstwhile employee having deemed retired on 10.03.1995, the departmental proceeding could not have been initiated under Rule 55 of the Rules, 1930 on 04.12.1995. He further submits that although the departmental proceeding was converted under 43 (b) of the Pension Rules on 28.12.2012 but punishment order dated 15.10.2014 has been passed under Rule 14 of the Bihar Government (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005') which is a penalty order which would be applicable for employees in service and not a retired employee. He further submits that after retirement, departmental proceeding can only be initiated under the Bihar Pension Rules, 1950 (hereinafter referred to as Pension Rules, 1950) and not under the Rules, 1930 or under the Rules, 2005. He further submits that departmental proceedings initiated under Rule 55 of the Rules, 1930 could have been initiated during the service period of the late employee, but was initiated after the petitioner was made to retire on 10.03.1995 and the proceedings could have been converted under Rule 43 (b) of the Pension Rules 1950 subject to the rider of 4 years as held in the case of **Dr. Usha Jaishwal v. State of Bihar** since reported in 2012 (1) PLJR 143. The departmental proceedings initiated under Rules, 1930 on



04.12.1995 and converted under Rule 43 (b) of the Pension Rules, 1950 on 28.12.2012 after 17 years of the retirement of the late employee is impermissible in the eye of law. He further submits that even otherwise after the death of the late employee a punishment order under Rules, 1930 or under Rules, 2005 is impermissible and refers to the judgment of this Court passed in the case of **Ashok Kumar Singh Vs. Bihar Industrial and Technical Consultancy Organization Ltd. & Ors.** since reported in 2000 (4) PLJR 471 elucidating that the position would stand revived as it stood before the order of punishment was passed. He further submits that no recovery is permissible from a retired employee in view of the judgment of the Apex Court in the case of **State of Punjab & Ors. v. Rafiq Masih (White Washer) etc.** since reported in 2015 (1) PLJR (SC) 261 while laying down the guiding principles at para 12 of the said judgment, wherein it has been held that no recovery is permissible from a retired employee. He further submits that this Court in the case of **Mubarak Hussain v. The State of Bihar & Ors.** since reported in 1996 (2) PLJR 166 has held that an employee who having been allowed to perform his duties the respondent cannot recover any amount from post retirement benefits for the period the erstwhile employee actually worked. In the present case, although the



erstwhile employee was made to retire on 02.12.1994, the said order was not given effect to and by letter dated 31.12.1994 the Commissioner-cum-Secretary, PHED recalled the order dated 02.12.1994 and allowed the late employee to continue in service till 10.03.1995. Hence, treating his retirement w.e.f. 01.09.1992 and order of recovery of Rs. 95,723.70 is impermissible as held in the case of **Mubarak Hussain** (supra) as the petitioner continued to work on the orders of the Commissioner-cum-Secretary, PHED till 10.03.1995. He further submits that the year of birth has been erased only showing 193 in the service book could not be alleged to have been an act done by the late employee.

6. Learned counsel for the petitioner vehemently and strongly contends that the impugned order of punishment dated 15.10.2014 of recovery of Rs. 95,723.70 of unauthorized continuance in service from 01.09.1992 to 10.03.1995, forfeiting of 10% pension and entire gratuity could not be passed against a dead person as the employee died before the order of punishment could be passed i.e. on 09.10.2014. He submits that the order communicated would be the date of order and not the official decision and refers to the case of **M/s Harman Electronics (p) Ltd.& Ors. Vs. M/s National Panasonic India Ltd. since reported in 2009 (2) PLJR (SC) 86**. He further refers to the case



of Union of India & Ors. Vs. Dinanath Shantaram Karekar & Ors. since reported in (1998) 7 SCC 569 para-7 and 9 which is quoted hereinbelow:-

“7. As would appear from the perusal of that decision, the law with regard to “communication” and not “actual service” was laid down in the context of the order by which services were terminated. It was based on a consideration of the earlier decisions in State of Punjab v. Khemi Ram, Bachhittar Singh v. State of Punjab, State of Punjab v. Amar Singh Harika and S. Partap Singh v. State of Punjab. The following passage was quoted from S. Partap Singh Judgment:

“It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or



modifying it. In our view, once an order is issued and it is sent out to the government servant concerned, it must be held to have been communicated to him, no matter when he actually received it.”

9. Where the services are terminated, the status of the delinquent as a government servant comes to an end and nothing further remains to be done in the matter. But if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the said order be deemed to have been communicated.”

7. He further refers to a constitution Bench judgment of the Apex Court in the case of **Bachhittar Singh v. State of Punjab & Ors.** since reported in AIR 1963 (SC) 395 para-10 which is quoted hereinbelow:-

“10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by



the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the 'order' of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh, AIR 1961 SC 493 at p. 512:

“Mr. Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent



seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent.”

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over against and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.”

8. He thus, submits that the order of the State Government would amount to a decision of the Government if the same has been communicated to the person concerned and since the retired employee died before the order of punishment could be communicated, the order of punishment stands abated.

9. Learned counsel for the State however, submits that the petitioner had made a fraudulent misrepresentation with regard



to his date of birth by seeking to conceal his age by five years so much so that his date of birth was 01.09.1934 whereas he had produced a matriculation certificate showing the date of birth as 01.09.1939. Such a deliberate and fraudulent misrepresentation on the part of the late employee amounts to gross misconduct. He submits that the service book also has been interpolated as the year after 193 has been erased. In this context counsel for the State has produced the original records wherein, in the service book with regard to Item No. 5 in left portion 'the date of birth by Christian era as nearly as can be ascertained' and on the right portion 'First September, 193 (verified from the matriculation certificate)' the year of birth has been erased which amounts to misconduct and fraudulent action of the late employee. Hence, continuance in service beyond the age of superannuation as in the original tabulation register the date of birth has been mentioned as 01.09.1934 and the Superintending Engineer who has prepared the service history of the late employee and endorsed his signature on 15.05.1981 shows the date of birth of the late employee as 01.09.1934 on the basis of which charges have been proved as held by the inquiry officer. He further submits that the In-Charge Headmaster of the C.N.D. High School, Bausi (Banka) by letter no. 13 dated 02.03.2005 has also stated in the transfer certificate,



the date of birth of the petitioner as 01.09.1934. He submits that although in the criminal trial, the petitioner has been acquitted giving benefit of doubt, will not stand in the way of a contrary decision in the departmental proceedings as both the proceedings are distinct and separate. He further submits that this Court in **C.W.J.C. No. 11667 of 2005 in the case of Dhirendra Nath Majee v. The State of Bihar & Ors.** wherein a similar matter had come up for consideration by order dated 13.08.2008 has held that a fraudulent misrepresentation being deliberate, amounts to gross misconduct, as such, the order of punishment of withholding of 10% of pension is the own making of the writ petitioner and accordingly, dismissed the writ application. He submits that the late employee has committed forgery in the original service records and interpolated the date of birth leading to overstayal in service hence not entitled to salary after superannuation as late employee is himself responsible for interpolation in the service records as held in the case of **Brajendra Yadav v. The State of Bihar & Ors. since reported in 2000 (4) PLJR 625**. The order of recovery of Rs. 95,723.70 in the punishment order which is refund of salary received by the late employee for his unauthorized continuance in service for the period 01.09.1992 to 10.03.1995 and his overstayal in service on account of fraud, forgery and



interpolation is legal and proper. There is absolutely no question of any payment of salary after the age of superannuation. Counsel for the State further relies in the case of **Nageshwar Prasad Sah Vs. The State of Bihar & Ors. since reported in 2017 (2) PLJR 392** para-17 stating therein that the forfeiture of pension is permissible as future good conduct is an implied condition of every grant of pension and the petitioner has been found to have committed grave misconduct amounting to forgery and interpolation in the date of birth in the service record. He also relies in the case of **Raj Kishore Sinha v. The State of Bihar & Ors. since reported in 2016 (4) PLJR 7**. The departmental proceedings under Rule 55 of the Rules, 1930 was eventually converted under 43(b) of the Bihar Pension Rules and the punishment order dated 15.10.2014 under Rule 14 of Rules 2005 is a clerical error as stated in para-8 of the supplementary counter affidavit filed on behalf of the respondent nos. 1, 2 and 3. He submits that the recovery of Rs. 95,723.70 from leave encashment in the punishment order is permissible in view of the Full Bench decision of this Court in the case of **Arvind Kumar Singh v. State of Bihar & Ors. since reported in 2018 (2) PLJR 933**. The last limb of the argument of the counsel for the State is that admittedly during the pendency of the departmental inquiry after a delinquent government employee dies



then the departmental proceeding stands abated and no order of punishment can be passed against a dead person, but, the counsel for the State has produced the original records wherein the notings of the department has been shown. The Secretary of the PHED department had taken a decision on 27.05.2014 which is between pages 157 to 161/N which was endorsed by the Hon'ble Chief Minister which is at page 161/N itself dated 31.05.2014 proposing the said punishment. Thereafter, the approval of the Bihar Public Service Commission was obtained on 20.08.2014 which is pages 643-645/C of the original records. Thereafter, the Principal Secretary of the PHED Department vide order dated 10.10.2014 has endorsed the said punishment order. Hence, the decision has been taken for imposition of punishment upon the late employee which had already received approval of authorized functionaries of the State finally recommended on 20.08.2014 by the Bihar Public Service Commission before the death of the late employee. Hence, although the order was communicated to the petitioner on 15.10.2014, before the death of late employee (who died on 9th October, 2014) the decision of punishment and penalty had already been imposed against the late employee and merely the order of punishment having been communicated after the death of the late employee would not abate the departmental proceedings.



10. Heard the parties.

11. The departmental proceedings was initiated against the late employee on 04.12.1995 and simultaneously a criminal proceeding under Hazaribagh P.S. Case No. 104 of 1995 was instituted against the petitioner for the same charges. The inquiry officer had opined on 03.10.1996 that departmental proceedings would be kept in abeyance till the decision of the criminal case. The order of this Court in C.W.J.C. No. 6017 of 1996 disposing of the writ application on 05.12.1997 directed the disciplinary authority to pass a final order within a period of three months. Still the departmental proceedings remained in abeyance. The criminal case being Hazaribagh P.S. Case No. 104 of 1995 was disposed of on 19.02.2008 wherein the late employee was given benefit of doubt and acquitted. Still the department remained silent. After a gap of more than four years of the date of the order passed in criminal case, the departmental proceedings were converted under Rule 43 (b) on 28.12.2012. What prevented the authorities in pursuing both criminal and disciplinary proceeding simultaneously is anybody's guess, as there was no legal bar for simultaneous proceedings as held in the case of **Kusheshwar Dubey v. M/s Bharat Coking Coal Ltd. & Ors. since reported in (1988) 4 SCC 319** and also the order passed by this Court in C.W.J.C. No.



6017 of 1996 disposed of on 05.12.1997 to pass a final order in the disciplinary proceedings within a period of three months. The Department at its leisure revived the disciplinary proceedings in the year 2012 giving a yawning gap of 17 years to again restart the disciplinary proceedings with no explanation whatsoever.

12. Now the issues (I), (II), (III) and (IV) are taken up together. The petitioner was made to retire on 10.03.1995. A departmental proceeding was initiated on 04.12.1995 under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930. As per the Rule 3 of Rules, 1930 the said Rule applies to every person in whole time civil employment and can be initiated only if there is a master and servant relationship. The initiation of departmental proceedings under Rule 55 of the Rules 1930 is applicable to a person already in service and not applicable against a retired employee. Rule 43 (b) of the Bihar Pension Rules, 1950 prescribes that a departmental proceeding not initiated while the Government Servant is on duty before retirement shall be initiated within four years of the cause of action. The petitioner retired on 10.03.1995, proceedings under Rule 55 of 1930 Rules could not have been initiated against a retired employee as there was no master and servant relationship existing at the time of such initiation. Even the rider of four years as prescribed under 43 (b)



of the Pension Rules, 1950 was not followed as the departmental proceedings were converted under Rule 43 (b) of the Pension Rules, 1950 on 28.12.2012. As held in the case of **Dr. Usha Jaishwal** (supra) a departmental proceeding can be converted under Rule 43 (b) of the Bihar Pension Rules, 1950 subject to a rider of four years. The very initiation of the departmental proceeding after retirement of the late employee under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 was illegal and void and the subsequent conversion under 43 (b) after a gap of 17 years of the retirement of the erstwhile employee is impermissible in the law. The retired employee cannot be departmentally proceeded under the Civil Services (Classification, Control and Appeal) Rules, 1930 and the conversion under 43 (b) of the Bihar Pension Rules was barred. When substratum itself is faulty the edifice is sure to collapse. When the initiation of the departmental proceeding under Rules, 1930 was itself illegal its conversion under Rule 43 (b) of the Pension Rules has to be held to be illegal and void. The subsequent order of punishment as contained in Annexure-1 dated 05.10.2014 under Rule 14 of the Civil Services (Classification, Control and Appeal) Rules, 2005 would also fail although the state in its counter affidavit stated that Rule 14 of the Rules, 2005 is a clerical error, but in my opinion



would hardly make only difference. Thus, the very initiation of departmental proceedings is held to be illegal, the departmental proceedings converted under 43 (b) of the Pension Rules, is also held to be illegal and consequently, the punishment order no. 812 dated 15.10.2014 contained in Annexure-1 cannot be sustained. There is yet another aspect. The late employee continued to work on the orders of the Commissioner-cum-Secretary, PHED for the period 01.09.1992 to 10.03.1995 hence no recovery is permissible from the post retirement benefits for the period an employee was allowed to perform his duties as held in the case of Mubarak Hussain (supra).

13. Now with regard to the issues (V) and (VI). Although since the order of punishment has itself been declared to be unsustainable, illegal, but since the parties have argued at length as to what would be the date of communication of an order whether the decision of the authorities or actual communication to the person affected by it or vice versa and whether the punishment order could be passed against a dead person, the issues V and VI are being taken up together. From the original record, it appears although a decision was taken at the level of the Secretary of the PHED Department on 27.05.2014 for imposing the punishment as contained in the final punishment order dated 15.10.2014 which



received approval of the Hon'ble Chief Minister on 31.05.2014 and the Bihar Public Service Commission on 20.08.2014 but the actual communication of the order is 15.10.2014, the late employee having died on 09.10.2014. An order has to be communicated to the person who would be affected by that order and the decision till its communication is provisional in character as held in the case of **M/s Harman Electronics (p) Ltd.** (supra), the **Union of India & Ors. Vs. Dinanath Shantaram Karekar & Ors.** (supra) and **Bachhittar Singh** (supra). Since the date of communication would be 15.10.2014 and the late employee died on 09.10.2014, the punishment order against the deceased employee does not exist after his death and stands abated. The position as it stood before the punishment order was passed would stand revived.

14. The facts, as noticed above, show that from day one, the respondents had completely thrown the requirements of law to the wind and, just to cover up their own lapses, issued notification initiating an inherently defective proceeding and continued the same. The entire proceedings initiated against the erstwhile employee was wholly without jurisdiction. Resultantly, the punishment order is also in violation of law and stands abated against a dead person/the erstwhile employee.



15. Therefore, the punishment order as contained in Annexure-1 dated 15.10.2014 is quashed. The respondents are directed to issue orders for payment of retiral benefits and other monetary benefits to the petitioner who is the widow of the late employee within three months from the date of receipt/production of the copy of this order.

16. The writ application is allowed.

17. The original records are being returned to the learned AAG-5, counsel for the State.

(Nilu Agrawal, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	28.02.2019
Uploading Date	10.04.2019
Transmission Date	NA

