IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1498 of 2017

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Dr. Ram Parashidh Singh S/o- late Raghuvar Dayal Resident of Flat No. 203, Saraswati Apartment, New Punaichak, P.S.- Shashtri Nagar, District- Patna.

... ... Petitioner/s

Versus

1. The State o f Bihar
2. The Principal Secretary, Animal and Fisheries Resources Department, Animal Husbandry, Bihar, Patna
3. The Under Secretary, Animal and Fisheries Resources Department Animal Husbandry Bihar, Patna.
4. The Director, Animal Husbandry, Bihar, Patna.
5. The Regional Director, Animal Husbandry, Purnea.
6. The District Animal Husbandry Officer, Araria.
7. The Treasury Officer, Secretariat Treasury , Vikash Bhawan, Patna.
8. The District Treasury Officer, Araria.
9. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Adv.
		Mr.Binit Kumar, Adv.
		Mr. Akshansh Ankit, Adv.
For the Respondent/s	:	Mr.Raj Kishore Roy- GP-18
For Accountant General	:	Mr. Nivedita Nirvikar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 15-07-2019

Heard Shri Ashok Kumar Choudhary, assisted by Shri Binit Kumar and Mr. Akshansh Ankit, the learned counsel appearing for the petitioner as also the learned counsel appearing for the State and the learned counsel for the Accountant General, at length.

2. The present writ petition has been filed for quashing of the order dated 16.01.2017 passed by the Under

Secretary, Animal Husbandry and Fisheries Resources Department, Government of Bihar, Patna whereby and whereunder the entire amount of pension and gratuity of the petitioner has been withheld under Rule 43(a) of the Bihar Pension Rules, 1950. It is further prayed that after setting aside of the said order dated 16.01.2017, the respondents be directed to make payment of full pension and gratuity as also other retiral benefits outstanding to the petitioner.

3. The brief facts of the case are that the petitioner is stated to have passed the Bachelor of Veterinary Science and Animal Husbandry course and obtained a degree thereof in the year 1982, prior to which a complaint case was also filed in the year 1977 by the Principal, Bihar Veterinary College, Patna leading to Trial No. 933 of 1982, wherein allegation was levelled that the petitioner had misrepresented his caste as “Dusadh” which comes under the Harijan category and obtained such caste certificate and on the said basis he further obtained admission in Bachelor of Veterinary Science course. A full fledged trial was undertaken, whereupon the learned Judicial Magistrate, 1st Clas, Patna by judgment dated 21.6.1982 acquitted the petitioner herein of all the charges and also held that the caste certificate of the petitioner could not be said to be

forged and fabricated.

4. In this regard it would be relevant to reproduce herein below paragraph-13 to 15 of the judgment dated 21.6.1982:-

> “13. The prosecution has purposely held back the B.D.O. Ram Beyash Singh along with C.O. and the issue clerk of the office and no explanation has been given by the prosecution for their non examination.
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> 14. None of the prosecution witnesses have asserted and proved beyond all reasonable doubts that the deed of adoption was a collusive as well as forged documents further none of the D.W.s in any manner have established during trial that the caste certificate was forged and fabricated. Thus no ingredients of sections 467 and 471 I.P.C. are present in this case for being applied against this accused. On careful reading of the written report as well as the statements of all the D.Ws. It is found that the accused has no where impersonated and cheated the University of the State. None of the P.Ws. Have proved beyond all reasonable doubts that this accused cheated by impersonation because all the P.Ws. have confirmed that the caste certificate was issued by the B.D.O., Daudnagar after proper verification on the basis of the deed of adoption. This deed or the certificate have not been proved to be fabricated or forged rather all the P.Ws. Have admitted that the said certificate was rightly and correctly issued and this using the caste certificate for admission to the said college cannot amount to impersonation. The prosecution have not been reached near the application of section 419 I.P.C. much less section 420 I.P.C. against this accused.
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> 15. The discussions as made above I am well satisfied that the prosecution has miserably failed failed to prove the charges levelled against the accused beyond all shadow of doubts. Therefore, I find and hold the accused

> Ram Prasidh Singh not guilty under sections419, 420m 457 and 471 I.P.C. and acquit him thereunder the provisions of section 248(1) of the Cr. P.C. He is hereby released from the liability of his bail bonds."

5. It appears that, thereafter the petitioner had obtained employment and was appointed as Block Animal Husbandry Officer, Palamau vide order dated 3.10.1983 issued by the Director, Animal Husbandry Department, Bihar, Patna in the general category. The petitioner continued to work and had excelled in his career without any complaint from any quarter and thereafter he superannuated from service on 31.1.2014. It appears that after retirement of the petitioner herein, on some complaint made by the one Shri Santanu Paswan, the respondents had instituted a departmental proceeding under Rule 43 B of the Bihar Pension Rules, 1950 vide letter dated 16.5.2014 and prior to that Prapatra- "Ka" was issued on 13.5.2014 wherein the only allegation levelled against the petitioner was regarding the petitioner having obtained employment in the Government service on the basis of forged schedule caste certificate. Thereafter, a departmental enquiry was held and it appears that some witnesses were also examined by the Enquiry Officer and the enquiry officer submitted his enquiry report dated 8.12.2014 wherein he found the charges to

have not been proved during the course of enquiry. The department had then issued a second show cause notice dated 4.2.2015, however, in the said second show cause notice, the stand of the respondents had changed and since they found that charges pertain to a period relating back to more than four years of the date of retirement on account of which a proceeding under Rule 43B of the Bihar Pension Rules, 1950 could not have been initiated, the disciplinary authority converted the said proceeding into one under Rule 43(a) of the Bihar Pension Rules, 1950. The petitioner had then submitted his show cause reply to the aforesaid second show cause notice dated 17.6.2015 whereupon the impugned order of punishment dated 16.1.2017 came to be passed forfeiting the entire pension and gratuity of the petitioner herein on the ground that according to the legal advice given by the Advocate General, the benefit of schedule caste, in the present case, would not be available to the petitioner.

6. The learned counsel for the petitioner Shri Ashok Kumar Choudhary has contended that first of all the proceedings under Rule 43(a) of the Bihar Pension Rules, 1950 is not maintainable in view of the scope of the same. At this juncture, it would be relevant to produce Rule 43(a) of the Bihar

Pension Rules, 1950:-

> 43.(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.
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> (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:
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> Provided that-
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> (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;
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> (I) shall not be instituted save with the sanction of the State Government;
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> (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
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> (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;
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> (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.

Explanation- For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date, on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court."

7. It is thus submitted that only in case the future conduct of the petitioner is found to be not good on occasion of being convicted of serious crime or being held guilty of grave misconduct, the government can withhold or withdraw the whole or any part of the pension under the Rules. In this regard, the learned counsel for the petitioner has relied upon a judgment reported in 2016(2) PLJR 315 (**Nityanand Kumar Singh vs. The State of Bihar & Ors.**) wherein the learned Division Bench of this Court has held that Rule 43(a) does not pertain to a charge when the government servant was in service but pertains to a charge after his retirement. In this regard, paragraph-5 and 6 of the aforesaid judgment would be relevant to be reproduced herein below:-

"5. Rule 43(a) and Rule 43(b) on account of similarity of expression and words used, appear to be overlapping and that has led to issue at hand. However, the opening sentence of Rule 43(a) provides the key to answer the issue. Future good conduct will be implied condition of every grant of pension would mean that a pensioner who has been granted pension is expected to maintain a good conduct in future and in case a pensioner is convicted of serious crime or held guilty of grave misconduct, the Provincial Government has the power granted by Rule 43(a) to withhold or withdraw the pension or any part of it and its decision has been made final and conclusive. So far as Rule 43(b) is concerned, this also confers power upon the State Government to withhold or withdraw a pension or any part of it, either permanently or for a specified period (this expression is not provided in Rule 43(a) if the pensioner is found, in a departmental or judicial proceeding, 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 (emphasis supplied by us). Under Rule 43(b), the Government also has the right of ordering recovery from a pension of the whole or part of any pecuniary loss caused to Government on the basis of finding in departmental or judicial proceeding.

6. 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".

8. The learned counsel for the petitioner has further contended that since the enquiry officer has acquitted the petitioner of all the charges levelled against him, there was no material before the disciplinary authority so as to pass the impugned punishment order dated 16.1.2017, hence the same is without any basis and liable to be quashed.

9. Lastly, it is submitted that the respondents have not been able to prove the factum of the petitioner having obtained employment in the year 1983 on the basis of schedule caste category, hence the entire charges as framed in Prapatra-"Ka" dated 13.5.2014 is baseless and thus void, hence liable to be quashed.

10. At this juncture, this Court had put a query to the learned counsel for the respondents to show as to whether any material exists to substantiate the factum of the petitioner having been employed on schedule caste category, to which the learned counsel for the respondents submitted that there was no material to show that the petitioner has obtained appointment under the scheduled caste category.

11. I have heard the learned counsel for the parties and gone through the materials on record and I find that since the respondents have failed to demonstrate that the petitioner was appointed on the basis of schedule caste category quota, whereas on the contrary, the learned counsel for the petitioner has shown from the documents on record that the petitioner was appointed under the general category, this Court finds that the charge issued vide Prapatra 'Ka' dated 13.5.2013 itself is baseless and has been framed on non-existent material, hence

Prapatra-Ka itself is liable to be set-aside, hence is quashed. Consequently the entire departmental proceeding and the order of punishment dated 16.1.2017 are bound to fall, thus are accordingly quashed. This Court further finds that the scope of Rule 43(a) of the Bihar Pension Rules, 1950 is limited and the same can only be enforced in case the future conduct of the petitioner is found to be not good, based on either the subsequent conviction or the delinquent having indulged in some future misconduct and only then pension/ gratuity etc. of the petitioner can be withheld. This aspect of the matter has already been decided by the learned Division Bench of this Court in the case of **Nityanand Kumar Singh** (supra). Thus, this Court is of the view that conversion of the proceedings into Rule 43(a) of the Bihar Pension Rules, 1950 vide show cause notice dated 17.6.2015 itself was dehors the provisions of the Bihar Pension Rules, 1950, hence the same is liable to be quashed and is accordingly set aside.

12. In view of the setting aside of the notice issued by the respondents under Rule 43(a) of the Bihar Pension Rules, 1950, the order of punishment dated 16.1.2017 does not have any legs to stand, hence the same is also set aside.

13. The writ petition stands allowed with a further

direction to the respondents to pay the outstanding amount of pension, gratuity and leave encashment, if not already paid, within a period of three months from today.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	31-08-2019
Transmission Date	N/A