IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8109 of 2018

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Aniruddh Prasad, Son of Ram Bilas Prasad Resident of Babu Bazar, P.S. - Ara Town, District - Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The District Magistrate, Bhojpur.
4. The Deputy Collector, Nazarat, Bhojpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Pathak, Advocate.
For the Respondent/s : Mr.Manish Kumar- Gp4

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 28-09-2020

Heard the parties in virtual Court.

The petitioner has sought for issuance of Mandamus against the respondents to grant the post retiral dues and pension of the petitioner. Further prayer is for issuance of a writ of certiorari quashing the departmental proceeding initiated against the petitioner under Rule 43(b) of the Bihar Pension Rules, after lapse of more than four years from the date of alleged irregularity / misconduct allegedly committed, while the petitioner was in service.

Case of the petitioner is that he retired from the post of Head Clerk, Nazarat Section, District – Bhojpur on 31.01.2013. Thereafter under order of the District Magistrate, Bhojpur, his provisional pension was granted vide order at Annexure-1 and the Accountant General, Bihar immediately issued necessary payment order vide order at Annexure-2. However, soon thereafter the authorities stopped payment of provisional pension and other dues on the pretext that the petitioner had not submitted vouchers of the referred amount to substantiate its lawful expenditure and later on a departmental proceeding was initiated on 30.12.2017 and till date the petitioner has not been paid the due retiral benefits.

The respondents in their counter affidavit did not dispute the factual aspect of the writ application save and except making assertion that the petitioner during his service period had not handed over the vouchers of the advance of Rs.94,31,555/- (Rupees ninety four lacs thirty one thousand five hundred fifty five) and odd, as such was liable to be departmentally proceeded with and was accordingly proceeded with. The respondents further stated that 90% of the provisional gratuity, the amount of unutilized earned leave and amount of group insurance was already paid to the petitioner.

Now, the pertinent question of law is whether the respondents were / are justified in instituting departmental proceeding against the petitioner after retirement and after expiry of four years of the act of misconduct in view of the provisions of Rule 43(b) of the Bihar Pension Rules.

For better appreciation, entire Rule 43 of the Bihar Pension Rules is being reproduced below:

> "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 -
>
> (a) **such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-**

employment;
(i) shall not be instituted save with the sanction of the State Government;
(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
(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;
(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 purpose 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.”.

It is well settled by a catena of decisions that the period of four years shall be counted from the date of alleged misconduct and not from the date of knowledge of the misconduct. Reference may be made to the case of **State of Bihar Vs. Mohd. Idris Ansari, (1995) 2 PLJR (SC) 51**, **L.P.A. No. 446 of 1998 with L.P.A. No. 759 of 2005** decided on 21.05.2007 by a Division Bench of the Patna High Court in **Bihar State Electricity Board vs. Sharda Prasad Sinha & Ors**. and Division Bench Judgment in **Urmila Sharma @ Urmila Singh vs. The State of Bihar & Ors.** reported in **2010 (3) PLJR 845**. In Para-9 of Urmila Sharma’s case, the Hon’ble Division Bench observed as follows:-

> “In this context, we may also state that the language employed in the Rule is that in respect of an event which took place and, therefore, the concept of knowledge is not attracted to such a situation and, in fact, on the contrary the concept of knowledge of the event is impliedly ousted. The Rule is clear and it has a purpose, that is, a Government employee has been protected after his superannuation. When one adds from the date of knowledge, one is actually reading something to the Rule by providing words. In this

context, we may profitably refer to the decision of State of Jharkhand and Another vs. Govind Singh, (2005) 10 SCC 437 [2005 (1) PLJR (SC) 207] wherein their Lordships have held as follows:-

"15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so" (See Frankfurter: "Some Reflections on the Reading of Statutes" in Essays on Jurisprudence, Columbia Law Review, p.51)".

However, submission of learned counsel for the State-respondent is that since misconduct was a continuing one, hence limitation of four years for initiation of departmental proceeding would start from the last misconduct.

In the present case, after retirement of the employee, no misconduct or irregularity was committed. Hence proceeding should have been initiated within four years, at least from the date of retirement.

Thus, the only conclusion would be that the respondents authorities have acted against the law in initiating the departmental proceeding against the petitioner under Rule 43(b) of the Bihar Pension Rules after expiry of the period of four years from the date of alleged misconduct / irregularity.

In the result, the pending departmental proceeding against the petitioner is hereby quashed and the respondents are directed to make payment of entire retiral dues including entire pension to the petitioner within three months of this order, failing which the petitioner would be at liberty to initiate proceeding for willful disobedience of order of this Court by the respondents concerned.

(Birendra Kumar, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.09.2020
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