

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19985 of 2019

Awadhesh Kumar Upadhyay, Male, aged about 64 years, son of Late Dharam Nath Upadhyay, Resident of Mohalla-Vijay Nagar. Road No.3, Kankarbagh, District-Patna

Petitioner

Versus

1. The Bihar School Examination Board through its Secretary.
2. The Chairman, Bihar School Examination Board, Patna
3. The Secretary, Bihar School Examination Board, Patna
4. The Deputy Secretary, Bihar School Examination Board, Patna
5. The Finance Officer Accounts, the Bihar School Examination Board, Patna

Respondents

Appearance

For the Petitioner : Mr. Yugal Kishore, Sr. Adv.

Mr. Birendra Prasad, Adv.

For the Bihar School Examination Board: Mr. Sunil Kumar Mandal, G.P...

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

5 09.09.2020 Heard learned Senior counsel for the petitioner and learned counsel for the Bihar School Examination Board through video conferencing.

The petitioner has filed the instant application praying for quashing of the order contained in memo no. 3201/2019 dated 19.8.2019 issued under the signature of the Secretary, Bihar



School Examination Board whereby and whereunder Bihar School Examination Board (hereinafter referred to as 'the Board') using the powers under Rule 43(a) of the Bihar Pension Rules has decided to forfeit the full pension, gratuity and other retiral benefits of the petitioner. Further prayer has been made for directing the respondents to pay all pensionary benefits of the petitioner who retired from service with effect from 30.11.2015 along with interest thereon.

It has been submitted by learned counsel appearing for the petitioner that the petitioner was appointed on Grade-III post on daily wages in the office of the Bihar Intermediate Education Council, Patna. Subsequently, his services were regularised by order dated 21.2.1986 with effect from 1.6.1985 against sanctioned post in the prescribed scale. The petitioner was promoted to the post of Statistical Officer/Senior Statistical Officer in the prescribed pay scale. Subsequently, he was reverted by order dated 24.7.2003 by the Chairman of the Council to the post of Assistant. Vide order dated 27.1.2012 the services of the petitioner was absorbed on the post of Sectional Officer with effect from 24.7.2003. It is further submitted by learned Senior counsel for the petitioner that an F.I.R. being R.C.



5(A) 2005 (R) dated 28.2.2005 was lodged by the anti corruption branch of the Central Bureau of Investigation, Ranchi against one Munna Kumar and some unknown official of the Bihar Intermediate Education Council, Patna. The name of the petitioner transpired in course of investigation. Sanction for prosecution was given by the Chairman of the Bihar Intermediate Education Council. Pursuant to the investigation, charge sheet was submitted and on conclusion of the trial, the petitioner was convicted and sentenced for 3 years vide judgment dated 11.4.2018. It is further submitted by learned Senior counsel appearing for the petitioner that though the Council granted sanction on 5.10.2005 but the authority has not ordered for initiating the departmental proceeding against the petitioner. During pendency of the aforesaid criminal case lodged by the CBI, the petitioner superannuated from service on 30.11.2015.

After conviction in the criminal case by the Special Court of CBI, Ranchi on 11.4.2018, by letter dated 2.5.2019 (Annexure-3) the Board directed the petitioner to submit his reply within 15 days as to why under Rule 43(a) of the Bihar Pension Rules his pension be not forfeited. The petitioner submitted his detailed reply. However, it is submitted by learned Senior counsel



appearing for the petitioner that without considering the reply and even without considering the judgments of this Court as also the Apex Court, vide letter dated 19.8.2019 (Annexure-5) order was passed to forfeit full pension and pensionary benefits of the petitioner under Rule 43(a). It is against this order that the petitioner has preferred the instant writ application. Further in support of his contention, learned Senior counsel appearing for the petitioner relies on the judgment in the case of **Nityanand Kumar Singh versus State of Bihar** reported in **2016(2)PLJR 315**.

A counter affidavit has been filed on behalf of the Bihar School Examination Board. Learned counsel appearing for the Board submits that the petitioner while working as an Assistant in the Board was instrumental in falsely inflating the intermediate result of one Munna Kumar from 3rd Division to 1st Division and in issuance of certificate accordingly. It was in this context that the criminal case was registered by the CBI in which by judgment dated 11.4.2018 the learned Special Judge, CBI, Ranchi convicted the petitioner under sections 420 and 120B of the Indian Penal Code and section 13(2) of the Prevention of Corruption Act and sentenced him to undergo 3 years rigorous imprisonment and Rs.10,000/- by way of fine. In the attending



circumstances, by letter dated 2.5.2019 the petitioner was asked to submit his reply to the show cause as to why his pension be not forfeited in terms of Rule 43(a) of the Bihar Pension Rules. The petitioner filed an evasive reply. After taking all the facts into consideration, in terms of Rule 43(a) of the Bihar Pension Rules, the impugned order dated 19.8.2020 was rightly passed forfeiting the full pension of the petitioner. It is further submitted that had the petitioner been in service he would have been dismissed with no terminal benefits. It is submitted that there is no illegality in the order impugned and the petitioner not having made out any case for interference, the instant application be dismissed.

Having heard learned counsel for the parties and taking into consideration the submissions made on behalf of the parties, a very short point for consideration arises in the instant application. It is as to whether after retirement of the petitioner in the year 2015, would he be proceeded against under Rule 43(a) three years after his retirement for an event which is admittedly of the period that the petitioner was in service. The question has been answered by the Division Bench of this Court in the case of **Nityanand Kumar Singh** (supra) relied upon by



learned Senior counsel for the petitioner. Relevant part of paragraph no. 6 of the judgment is quoted herein below for ready reference:-

“6.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 reemployment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between aim and object of Rule 43(a) and that of Rule 43(b). Both the provisions operate in different areas having different connotation. 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 reemployment.....”.

Thus, from the judgment in the case of **Nityanand Kumar Singh** (supra), it is clear that a proceeding under Rule 43(a) is not on account of a departmental or judicial proceeding instituted when the Government servant was in service nor is it in respect of an event which related to his service rendered before retirement.

In the instant case, admittedly the show cause notice issued was with respect to the occurrence/event which had



taken place some time in the year 2005 when the F.I.R. was registered and which was much before his retirements in the year 2015. Thus the Court find substance in the submissions made by learned Senior counsel for the petitioner that the respondent authorities erred in proceeding under Rule 43(a) of the Bihar Pension Rules in the facts and circumstances of the case.

Thus, in the opinion of this Court the order of punishment contained in Memo No.3201/19 dated 19.8.2019 (Annexure-5) issued under the signature of Secretary, Bihar School Examination Board, Patna is not sustainable and as such the same is quashed. The petitioner would be entitled to all consequential pensionary benefits.

(Partha Sarthy, J)

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