IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10729 of 2019

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Binod Kumar Jha (Dy. Commissioner Bhagalpur Division (Retd.), Son of Late Hari Lal Jha, Resident of Araria, P.S. and Distt.- Araria

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar, Patna.
2. The Commissioner and Inspector General of Registration, Department of Excise and Prohibition, Govt. of Bihar, Patna.
3. The Secretary Department of Excise and Prohibition, Govt. of Bihar, Patna.
4. The Special Secretary, Department of Registration Excise and Prohibition, Govt. of Bihar, Patna.
5. The Deputy Secretary, Department of Excise and prohibition, Government of Bihar at Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Singh, Advocate
Mrs. Kumari Rashmi, Advocate

For the Respondent/s : Mr. Pawan Kumar (AC to AG)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date : 21-01-2021

Heard learned counsel for the petitioner and the respondents.

2. The petitioner is aggrieved by the decision of the respondents as contained in Annexure-13 whereby the respondents have inflicted punishment of forfeiture of 5% pension with cumulative effect (page 9 to the Interlocutory application) and also aggrieved by non-payment of interest on inordinate delay in payment of gratuity.

3. Mr. Suresh Prasad Singh, learned counsel for the petitioner submits that the petitioner superannuated on 31.01.2015

and on 15.02.2019 the respondents have decided to inflict punishment to forfeit 5% pension in purported exercise of Rule 43(a) of the Bihar Pension Rules. Mr. Singh submitted that from perusal of Annexure-13, it appears that the action was taken for the alleged conduct of the petitioner while he was in service. Rule 43(a) of the Bihar Pension Rules is attracted in the case where subsequent to the retirement conduct rendered the incumbent not entitled to full pension or action of forfeiture of pension. Reading in between line one cannot approve the action of the respondents in forfeiting pension in exercise of power under Rule 43(a) of the Rules.

4. Counsel for the State submits that Rule 43(a) of the Rules may be wrong levelling of the provisions of the pension rules. In fact the action can be traced out under Rule 43(b) of the Rules. Learned counsel submits that the action against the petitioner was initiated on 07.05.2015 under Rule 43(b) of the Bihar Pension Rules.

5. It is noted that the petitioner retired on 31.01.2015 and after retirement Prapatra (Ka) was issued on 07.05.2015 in relation to allege act or omission of 10.12.2012.

6. Learned counsel for the petitioner submits that Rule 43(b) of the Rules permits action only in relation to act or

omission four years prior to superannuation. Here the petitioner superannuated on 31.01.2015, but Prapatra (Ka) was initiated, which was served in fact on 13.05.2015 but punishment was inflicted after four years. Rule 43(b) of the Bihar Pension Rules is most unambiguous term and reads as follows:

> "43(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:
>
> 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;
>
> (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;"

7. In the explanation, it has been categorically enumerated that in case of criminal proceeding, on the date on which the complaint is made and the charge-sheet is submitted in criminal court. In the case of civil proceedings, on the date on which the complaint was presented, or as the case may be, an application is made to a civil Court, in the case of departmental proceeding shall be deemed to have been initiated against the petitioner on service of Prapatra ‘Ka’.

8. In the present case, for the alleged lapse of 2012, Memo of charge was framed in the departmental proceeding in 2015 well within four years. Therefore, submission of the petitioner does not any merit that it was beyond four years. However, he submits that after the alleged lapse of 2012, the petitioner was granted promotion on higher post in the year 2014 and as such the adverse record prior to grant of promotion looses the effect after grant of promotion.

9. After going through the record and considering the rival submissions of the parties, the Court finds merit that action under Rule 43(a) of the Bihar Pension Rules is without jurisdiction. The Court finds substance in the submission of the petitioner that any action on the basis of omission of 2012 is not justified in exercise of jurisdiction under Section 43(a) of the

Rules, as Rule 43(a) of the Rules applies in the case of future conduct and not the past conduct. Therefore, the order is bad to the extent that it was passed in exercise of power under Rule 43(a) of the Rules. Similarly, the Court finds substance in the submission of the petitioner that once the petitioner with open eye granted promotion and higher responsibility after the alleged incident of 2012 then it was not open for the respondents to reopen the matter and punish the petitioner after retirement and forfeit the 5% pension with cumulative effect.

10. Learned counsel for the State submits that after filing of the writ application, the respondents have rectified their mistake and instead of Rule 43(a) of the Rules, they have passed order mentioning that the action was taken under Rule 43(b) of the Bihar Pension Rules.

11. Since the aforesaid action is an after though, but merely rectified the same after challenging of the action in the present writ proceeding.

12. Considering the totality of the facts situation, the Court is of the view that the order as contained in Annexure-13 cannot sustain. It is, accordingly, quashed. However, the matter is remitted back to the authority concerned for taking fresh decision

in accordance with law after opportunity of hearing to the petitioner.

13. Adverting to the second part of the grievance of the petitioner in the present writ application i.e. delayed payment of gratuity is concerned, learned counsel for the petitioner submits that there is delay of five years in payment of gratuity. In terms of the Governmental decision gratuity is payable on retirement and if there is inordinate delay of five years, in that situation, the petitioner is entitled to payment of interest, which is quantified as 9% interest from the date of its accrual till the date of actual payment.

14. The writ application is allowed and disposed of in terms of directions and observations made hereinabove.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2021
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