

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6499 of 2017

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Vijay Kishore Singh, Son of late Ram Vilash Singh, Resident of Mohalla- Pakri Chowk, in front of Malti Hospital, Maulabagh, P.S. Arrah Nawada, District- Bhojpur.

... .. Petitioner

Versus

1. The State Of Bihar through the Commissioner-cum-Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Government of Bihar, Patna
5. The Special Work Officer, Water Resources Department, Government of Bihar, Patna.
6. The Account General, Government of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. R.K. Sinha, Advocate
Mr.Gajendra Nath Ojha, Advocate
For the State : Mr.Harish Kumar, GP-8
For the Accountant General : Mr. Prabhat Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 31-08-2021

Heard learned counsel for the petitioner and learned
counsel for the respondents through video conference.

2. The following reliefs as formulated by the petitioner
have been claimed in the writ petition-

“(i) To issue a writ in the nature of Certiorari to quash the Notification contained in Memo No. 35 dated 13.01.2017 issued under the signature of the Deputy Secretary, Water Resources Department, Government of Bihar, Patna, respondent no. 4 whereby and whereunder 10% pension

directed to be deducted for one year from the pension of the petitioner illegally and arbitrarily.

(ii) To issue a writ in the nature of Certiorari to quash the Notification contained in Memo No. 1771 dated 19.08.2016 issued under the signature of the Deputy Secretary, Water Resources Department, Government of Bihar, Patna, respondent no. 4 whereby and whereunder 10 % pension directed to be deducted for one year from the pension of the petitioner illegally and arbitrarily.

(iii) To issue a writ in the nature of Mandamus commanding the respondents to pay the full pension to the petitioner along with interest @ 9% per annum.

(iv) To issue writ or writs, direction or directions, order or orders for which the petitioner is entitled to in the facts and circumstances of this case.

(v) Cost and Compensation be awarded in favour of the petitioner and against the respondents”.

3. The short facts of the case according to the petitioner are that he joined the service as Assistant Engineer in the Irrigation Department on 05.02.1979 and in due course, he discharged his duty as Superintending Engineer and thereafter as Executive Engineer, Gandak Area Development Agency (in short ‘GADA’). The work of construction of *Nala* within ‘GADA’ division, Chapra was started in the financial year 2010-11 during the service period of the petitioner. On a complaint made in regard to the construction, the Flying-squad team inquired into the matter and submitted its report on 20.04.2012 in the office of the Principal Secretary, Water Resources Department, Government of

Bihar, Patna. Soon thereafter, the petitioner superannuated from service on 30.11.2013. A proceeding under Rule 43B of the Bihar Pension Rules was initiated in terms of Memo No. 188 dated 20.01.2015. On receipt of charge-sheet, the petitioner submitted his reply. The Enquiry Officer in his report dated 28.08.2015 exonerated the petitioner of the charges levelled against him. However, differing with the findings of the Enquiry Officer, a second show cause notice was issued on 01.12.2015 to which the petitioner submitted his reply on 22.12.2015. The proceeding concluded with award of punishment of deducting 10% pension of the petitioner for one year. A representation to the Principal Secretary did not also find favour and it was held that the punishment awarded was justified.

4. Learned counsel for the petitioner submits that proceeding under Rule 43B of Bihar Pension Rules was barred by limitation. It is stated in para 4 of the supplementary affidavit on basis of the petitioner's memory that the work was completed in the month of December, 2010 whereas the proceeding was initiated on 20.01.2015, which was thus beyond four years of the event. It is further submitted that despite the Enquiry Officer having exonerated the petitioner, punishment has been awarded without meeting the reasons given in the enquiry report.

5. Learned counsel for the State appears and opposes the writ petition. As regards the question of limitation, it is submitted that as a matter of fact the proceeding under Rule 43B was initiated well within time. It has clearly been stated in the enquiry report dated 28.08.2015 that the work in question was completed in the last quarter of the financial year 2010-11, and as such the proceeding under Rule 43B initiated on 20.01.2015 was well within four years thereof. It is next submitted that the petitioner was exonerated in the enquiry report by merely giving benefit of doubt to the petitioner. Accordingly, the second show cause notice was issued on 01.12.2015 (Annexure-6) specifically confronting him with regard to the short quantity of cement used in the plaster work of *Nala*. It is only after due consideration of the show cause reply of the petitioner that the punishment order has been passed by a speaking order.

6. Having heard the parties and on a consideration of the materials on record, this Court finds the writ petition to be devoid of merit. It transpires from the enquiry report that the work in question was completed in the last quarter in the financial year 2010-11. As such, the initiation of the proceeding under Rule 43B of the Bihar Pension Rules on 20.01.2015 was well within four years thereof. It therefore, cannot be said that the proceeding under Rule 43B was barred by limitation.

7. As regards the order of punishment, the findings of fact cannot be interfered with in a writ petition. There is no infirmity in the decision making process, nor indeed has any such deficiency been pointed out by the petitioner. Upon differing with the enquiry report, a second show cause notice was issued to which the petitioner replied and thereafter, punishment order was passed.

8. The scope of interference by the High Court in a departmental proceeding is rather limited, as held by the Hon'ble Supreme Court in ***Union of India v. P. Gunasekaran reported in (2015) 2 SCC 610***, wherein it has been observed as follows -

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge-I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience”.*

9. For the reasons stated above, therefore, the writ

petition stands dismissed.

(Vikash Jain, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	06.09.2021
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