

IN THE HIGH COURT OF JUDICATURE AT PATNA

C.W.J.C. No. 3361 of 2020

Kumari Manju Lata, w/o Sri Phanindra Jha, r/o Mohalla-Shastri Nagar,
PO-Ramna, PS-Mithanpura, District-Muzaffarpur, retired Assistant
Teacher, Women's Teachers Training College (Sanlagn Pathsala)
Rambagh, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Human Resource Department, Government of Bihar, Patna
3. Director (Secondary), Education Department, Government of Bihar, Patna
4. Regional Deputy Director of Education, Muzaffarpur
5. District Education Officer, Muzaffarpur
6. Principal, Women's Teachers Training College/ DIET, Rambagh, Muzaffarpur
7. Accountant General, Bihar, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	: Mr. Natraj Verma, Adv.
For the State	: Mr. Gyan Prakash Ojha, GA-7
For the Accountant General	: Mr. Bindhyachal Rai, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.AV. JUDGMENT

Date : 04-09-2021

1. The present petition has been filed for quashing the order dated 19.09.2019, issued by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, whereby and whereunder the entire pension and gratuity amount of the



petitioner has been forfeited.

2. The brief facts of the case are that the petitioner was appointed as Assistant Teacher at Sahebganj on 09.05.1989, whereafter she was transferred to Muzaffarpur in the year 1990 and finally she retired on 30.11.2014. It appears that in view of the direction of the Hon'ble Patna High Court ***dated 08.12.1998***, passed in ***C.W.J.C. no. 9047 of 1998***, the Central Bureau of Investigation (hereinafter referred to as "the C.B.I.") conducted an inquiry pertaining to appointment of candidates belonging to the lower Subordinate Education Services (female cadre) and Assistant Teachers appointed during the period 1980-98. The C.B.I. during the course of inquiry, found 27 Assistant Teachers to have been legally and validly appointed whereas the appointments of 278 Assistant Teachers were found to be irregular. Thereafter, the Hon'ble Patna High Court had issued certain directions in a Public Interest Litigation bearing ***C.W.J.C. no. 10002 of 2016***, leading to the respondents taking effective action against the candidates whose appointments were found irregular, whereafter the said writ petition was disposed of by an Order dated 21.10.2016.

3. At this juncture, it has been brought to the notice of this



Court by the learned counsel for the respondent State that the C.B.I. had submitted its inquiry report wherein, as far as the petitioner is concerned, it was found that she was over-aged by 5.5 years at the time of her appointment and her appointment was also stated to have been made in an irregular manner i.e without following the prescribed procedures. It was also found that no select committee proceedings were available as well as no roster clearance was obtained for the advertised post and the reservation rules were also not followed. In such view of the matter, since the appointment of the petitioner was made without following the norms/ procedures for appointment, a proceedings under ***Rule 43(b) of the Bihar Pension Rules, 1950*** was initiated against the petitioner vide Memo dated 26.08.2016, after issuance of a show cause notice dated 22.08.2016. A charge-sheet was then issued to the petitioner vide Memo dated 12.03.2018. The Presenting Officer, who had been appointed in the aforesaid departmental inquiry, had sent a letter dated 07.06.2018 to the petitioner to submit her defence, however the petitioner had failed to respond, whereafter a reminder dated 14.06.2018 was issued to the petitioner by the presenting officer, however again the petitioner failed to respond. Y

der dated 30.08.2018 was issued to



the petitioner requesting her to submit her defence statement. The Inquiry Officer had then issued a letter dated 06.07.2019 to the petitioner fixing the date of hearing and informing the petitioner to be present for hearing of the said case. The Inquiry Officer had again fixed a date of hearing and informed the petitioner vide letter dated 11.07.2019, Finally, the Inquiry Officer had submitted his inquiry report dated 31.07.2019, finding all the charges to have been proved. The Regional Deputy Director of Education, Tirhut Division Muzaffarpur had then vide letter dated 13.08.2019, issued a second show cause notice to the petitioner, enclosing a copy of inquiry report and seeking her reply. The petitioner had then submitted her reply and after consideration of the same, the impugned order dated 19.09.2019 has been passed by the respondent no. 4, whereby and whereunder the entire pension and gratuity amount of the petitioner has been forfeited.

4. The learned counsel for the petitioner has referred to the charges framed against the petitioner in *Prapatra-Ka* dated 12.03.2018, which in brief are:-

- (i) The appointment of the petitioner has not been made by the competent officer and has been made without



adopting the prescribed procedure.

(ii) The model reservation roster has not been followed while making the appointment of the petitioner. In the year 1988, at the time of appointment, the selection committee, ignoring the fact that the age of the petitioner was five years more than the prescribed standard age, had nonetheless, appointed the petitioner. This is why the said appointment has been regarded by the CBI to be illegal/irregular.

(iii) The appointment of the petitioner has been made without fulfilling the roster procedure.

5. The learned counsel for the petitioner has next referred to Rule 43(b) of the Bihar Pension Rules, 1950, which 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 proceedings 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 —

- (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;”*

6. The learned counsel for the petitioner has submitted that admittedly, in the present case, the departmental proceeding has been initiated vide Memo dated 26.08.2016 i.e. after the retirement of the petitioner on 30.11.2014 and as per **Rule 43(b) of the Bihar Pension Rules, 1950**, firstly the departmental proceeding under **Rule 43(b)** can be instituted only with the consent of the State Government and secondly, it can only be instituted in respect of an event which took place not more than 04 years before the institution of such proceeding. It is submitted that the



charges levelled against the petitioner date back to the year 1989 inasmuch as it has been alleged by the respondent that the appointment of the petitioner was made in the year 1989 in an illegal/irregular manner i.e without following the prescribed procedure of appointment as also without following the roster procedure and moreover, the petitioner was over-aged at the time of appointment by five years. Thus it is submitted that the proceeding initiated against the petitioner under ***Rule 43(b) of the Bihar Pension Rules, 1950***, as aforesaid, is in respect of an event which has taken place more than 04 years before the institution of the said proceedings, thus the entire proceedings stands vitiated in the eyes of law, consequently the impugned order dated 19.09.2019 is also illegal and fit to be set aside.

7. The learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court, reported in ***1995 Supp (3) SCC 56 (State of Bihar and others v. Mohd. Idris Ansari)***, paragraphs 7, 9 and 10 whereof are reproduced herein below :-

“7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings



or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition No. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently it is not open to the learned advocate for the appellant to rely upon the said



earlier notice dated 17-10-1987.

9. So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired government servant or not in the circumstances contemplated by the rule. The first circumstance is that if the service of the government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:

- 1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.*



2. Even if the service record of the officer concerned is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the officer concerned during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent



retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proc

Rule 139 were wholly incompetent.



The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as still-born and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs."

8. *Per contra*, the learned counsel for the respondent- State has submitted that the petitioner has not defended the charges levelled against her and moreover, there is no procedural irregularity in conduct of the departmental proceeding as also the petitioner has been granted full opportunity to put forth her defence, however she has failed miserably and her appointment has been found to be irregular, thus there is no illegality in the impugned order of punishment dated 19.09.2019.

9. I have heard the learned counsel for the parties and gone through the materials on record, from which I find that though the petitioner was heard on 30.11.2014, the departmental pro-



ceeding was initiated against her by the respondents vide Memo dated 26.08.2016 pertaining to an event/ misconduct which took place more than 04 years of the commencement of such proceedings, hence such initiation of the departmental proceeding against the petitioner under ***Rule 43(b) of the Bihar Pension Rules, 1950***, vide office Order dated 26.08.2016 is bad in the eyes of law and contrary to the provisions contained under ***Rule 43 (b) of the Bihar Pension Rules, 1950***, inasmuch as the disciplinary authority had no power to invoke ***Rule 43(b) of the Bihar Pension Rules, 1950***, as against the petitioner in relation to an event which took place more than 04 years before the institution of such a proceeding. The present case is squarely covered by the law laid down by the Hon'ble Apex Court in the case of ***Mohd. Idris Ansari (supra)***. Thus, this Court finds that a proceeding under ***Rule 43(b) of the Bihar Pension Rules, 1950*** could not have been initiated by the respondent- State in view of the facts and circumstances of the present case as discussed hereinabove, thus the very initiation of the departmental proceedings by the respondents under ***Rule 43(b) of the Bihar Pension Rules, 1950*** is bad in law. Consequently, the subsequent Order of punishment dated 19.09.2019, passed by the Regional Deputy Divisional Officer, Tirhut Division, Muzaffarpur, is



held to be null and void, hence is quashed.

10. Last but not the least, it would suffice to state that Rule ***139 (b) of the Bihar Pension Rules, 1950*** is not applicable in the facts and circumstances of the present case, inasmuch as the charges levelled against the petitioner is not regarding her services being unsatisfactory but the charges levelled against the petitioner pertains to her initial appointment being irregular.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV date	24.08.2021
Uploading date	11.09.2021
Transmission date	NA

