IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6887 of 2020

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Krishna Kumar Singh, Male, aged about 67 years, Son of Late Ram Uchit Mahto Resident of Village- Rampura, P.S.- Gopalpur, District- Samastipur, Bihar, the then Junior Engineer, Minor Irrigation Division, Madhubani.

... ... Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Minor Water Resource Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
4. The Superintending Engineer, Minor Irrigation Department, Old Secretariat, Patna.
5. The Executive Engineer, Minor Irrigation Division, Madhubani.
6. The Assistant Engineer, Minor Irrigation Division, Madhubani.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Kumod Kumar Shrivastaw, Adv.
For the State of Bihar	:	Mr. Durgesh Nandan, AAG- XIV

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date : 31-08-2022

Heard learned counsel for the petitioner and learned AAG- XIV representing the State of Bihar.

2. The petitioner seeks quashing of order dated 11-06-2019 passed by the Deputy Secretary, Minor Water Resources Department, Govt. of Bihar, Patna as contained in Annexure- 5 to the writ petition, directing deduction of 10% of his pension for five (05) years. The impugned order of punishment is pursuant to a charge memo dated 07-04-2017, as contained in Annexure-1 to the writ petition, issued post the petitioner's retirement on 30-06-

2013.The charges on ‘*Prapatra -Ka’* are in relation to the petitioner’s services as Junior Engineer while posted in the Minor Irrigation Division, Madhubani. The statement of imputation of misconduct is that a Flying Squad made some inspection of 50 irrigation Schemes. The findings of Flying Squad was that the payment had been made to the Contractor based on bill prepared in accordance with the Measurement Book, wherein, 50 Surge tanks were shown to be made of 8mm thickness plate whereas the Flying Squad found the Surge tank to be made of 3 mm thickness plate. This lapse allegedly caused loss of Government revenue. The petitioner has responded to the same by his response dated 12-01-2018. He has raised the issue regarding proceedings being not maintainable since the enquiry was in respect of allegations more than 04 years old. He has also denied the allegations on merit. In his response, the petitioner had stated that the findings of the Flying Squad was without any opportunity to the petitioner and based on alleged inspection behind his back. If the petitioner was there he would have informed them that 8mm thickness diameter has been mentioned by mistake as even in the estimate approved by the Department, there is no mention of the thickness of M.S. plate.Therefore, the finding of the Flying Squad that instead of requisite thickness of M.S. plate (8 mm),the Contractor has used

M.S. plate of thickness 3 mm and paid by the petitioner at rates applicable to 8 mm thickness plate is without any basis whatsoever. Mention of 8 mm thickness was nothing but a printing mistake. The Enquiry Officer, vide report dated 06-10-2018, has held the charges to be proved. The petitioner, thereafter, was allowed an opportunity to submit second show cause, which was submitted by the petitioner on 19-11-2018 reiterating the same submissions made in his earlier response to the Enquiry Officer. Thereafter, the petitioner has been visited with the impugned order of punishment dated 11-06-2019. The Disciplinary Authority has imposed the punishment of withholding of 10% pension for five years. Order is purported to have been passed under Rule 43 B read with Rule 139 of the Bihar Pension Rules (for short 'the Rules'). Pursuant thereto, the Executive Engineer, Minor Irrigation Division, Madhubani, has written to the Treasury Officer, Samastipur, vide communication dated 22-06-2019, bearing Memo No. 1496, for implementing the punishment order by effecting actual deductions from the petitioner's pension in compliance thereof.

3. The petitioner's counsel submits that in respect of an occurrence alleged to have taken place on 29-03-2012, charge sheet was issued on 07-04-2017, after five years. Proviso to Rule 43B of the Rules permits institution of proceedings post retirement in respect of alleged misconduct or negligence during service period only in respect of an event which took place not more than four years before the institution of such proceedings. In the instant case, institution of proceedings, vide charge memo dated 07-04-2017, is in respect of the alleged misconduct or negligence more than four years prior to institution of the proceedings, i.e. 12-09-2012. Therefore, the very initiation of the proceedings under the charge memo dated 07-04-2017, is without any sanction of law. Proviso to Rule 43B while permitting initiation of proceedings post retirement for alleged misconduct or negligence while in service prescribes a bar that the proceedings should not be for an event which took place more than four years before institution of the proceedings. In absence of any statutory provision permitting withholding of pension, as is sought to be done by the impugned order of punishment dated 11-06-2019, it is impermissible for the respondents to conduct proceedings and subject the petitioner to penal consequence as has been done in the instant case.

4. The respondents, on the other hand, have taken a stand which apart from being legally unsustainable, defines plain simple logic and reasoning. They have stated in paragraph no. 11 that "…. while preparing the charge sheet, the date of incident was considered to be 30-06-2013, that is his date of retirement. Charge sheet was issued on 09-03-2017. This is within the time limit of four years from the date of incident i.e. (30-06-2013) as prescribed in Rule 43B of the Rules". The stand of the respondents is by deeming the date of petitioner's retirement to be the date of the event for which proceedings were instituted and punishment awarded by resorting to Rule 43B of the Rules. Without any basis the event dated 12/9/2012 forming the basis of allegations levelled in the charge memo has been deemed to be event of the date 30-06-2013. Under what provision the authorities are permitted to consider the date of superannuation to be the date of event, has, however, not been stated in the counter affidavit. No departmental instruction rule or provision has been brought to the notice of this Court based on which the authorities can be permitted to rely on such deemed date of event. They have gone one step further to submit that by deeming the event for which allegation have been levelled to be on the date of petitioner's retirement, the action can be sustained as being within the scope of Rule 43B of the Rules. Such a stand cannot be countenanced. Plain reading of Rule 43B and its proviso is sufficient to out rightly reject such unconscionable stand of the respondents in the counter affidavit.

5. This Court would, therefore, hold that the proceedings leading to issuance of the order of punishment dated 11-06-2019 was without any sanction of law and unsustainable. The order of punishment dated 11-06-2019 is hereby quashed. The consequential communication dated 22-06-2019 is also quashed. The petitioner, as a result of quashing of the impugned order orders would be entitled to payment of his dues admissible towards pension without any deduction in terms of the order of punishment order dated 11-06-2019, to be paid within eight (08) weeks from the date of receipt/production of a copy of this order.

6. The writ application stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	25-08-2022
Uploading Date	17-09-2022
Transmission Date	N/A