

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1553 of 2018

In
Civil Writ Jurisdiction Case No.720 of 2018

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Sudhanshu Shekhar Tripathi S/o Late Rajbali Tripathi Flat No- 304, Shyama
Palace Apartment Vednagar, Rukunpura, Patna- 800014.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Labour Resources, Government of Bihar, New Secretariat, Patn
3. The Deputy Secretary, Department of Labour Resources, Govt. of Bihar, New Secretariat, Patna.
4. The Director of Employment, Department of Labour Resources, Govt. of Bihar, Vikas Bhawan, Patna.
5. The Accountant General A and E Bihar.
6. The Director of Provident Fund, Finance Dept. Govt. of Bihar.
7. The District Treasury Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Dhaneshwar Prasad Gupta
For the Respondent/s : Mr.Amar Nath Singh

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 31-08-2022

Heard learned counsel for the respective parties.

02. In the instant Letters Patent Appeal, the appellant has questioned the order of the learned Single Judge dated 05.09.2018 passed in C.W.J.C No. 720 of 2018 wherein the appellant has questioned the order nos. 2887, 2888, 2889 and 2890 dated



30.10.2017 and further Resolution nos. 3112 and 3114 dated 16.11.2017.

03. Learned Single Judge in para 16 and 24 held as under:-

*“16. Having considered the rival contentions of the parties, in the present case admittedly the petitioner has superannuated from the service on 31.10.2017 and on that day four letters vide memo nos. 2887 to 2890, all dated 31.10.2017 were issued, it is well known principle of law that the departmental proceeding will be treated to have commenced on the service of the chargesheet upon the delinquent employee. In the present case, vide two letters, i.e., memo no. 2887 and 2888 dated 31.10.2017 chargesheets have purportedly been served upon the petitioner and vide rest two letters i.e. memo nos. 2889 and 2890 dated 31.10.2017 the explanation has been sought from the petitioner as to why he should not be proceeded departmentally for the act of misconduct mentioned in “Prapatra-K”, so the two proceedings initiated for the purported misconduct mentioned in the said two letter i.e. memo nos. 2889 and 2890 dated 31.10.2019 will not be treated that valid departmental proceeding was started as has been held in the case of **Union of India vs. K.V. Jankiraman** reported in **AIR 1991 SC 2010**, wherein the Hon’ble Supreme Court has held that the departmental proceeding or the criminal proceeding will be treated to have commenced only on the service of chargesheet upon the delinquent employee. So, the two letter by which the explanation has been sought from the petitioner will not be treated to be valid inquiry*



proceeding and the allegation mentioned in both the letters will come under the mischief of Rule-43(b) of the Bihar Pension Rules as the allegation mentioned therein are beyond four years of the date of superannuation of the petitioner; and as such, departmental proceeding related to letter no. 2889 and 2899 dated 31.10.2019 are quashed.

24. If the prosecution will be able to prove the service of notice upon the petitioner through e-mail in terms of Section 65B of the Indian Evidence Act, then it will only be treated to be proper service through e-mail upon the petitioner. In failure to prove the service of notice in terms of Section 65B of the Indian Evidence Act, then it will not be treated to be a valid service of notice upon the petitioner; in such event, automatically rest two proceedings will be treated to be the proceeding under Section 43(b) of the Bihar Pension Rules and the limitation of four years will automatically come to effect for continuation of the departmental proceeding as there is bar of four years with regard to the event took place beyond the period of four years and in terms the Md. Idris Ansari case (supra), the proceeding will be treated to be vitiated at the threshold. However, at this stage it will not be appropriate to give any finding with regard to service of notice upon the petitioner. However, the petitioner is at liberty to raise the question of service of notice and staleness of the proceeding during the departmental proceeding as well as the conditioned mentioned in Rule 43(b) of the Bihar Pension Rules.”

04. Learned counsel for the appellant, submitted that service of notice in respect of order nos. 2887 and 2888 dated



30.01.2017 has not been interfered by the learned Single Judge. It is submitted that as long as the aforesaid memo no. 31.10.2017 is not communicated to the petitioner, as on 30.10.2017. The aforesaid order cannot be proceeded in accordance with the relevant provision of law against retired person. On receipt of charge memo, the appellant is stated to have submitted explanation. The appellant could not apprise this Court, whether he has taken contention with the aforesaid memo dated 31.10.2017 communicated to him beyond 30.10.2017 or not?

05. Here is a ticklish issue viz., service of notice of the aforesaid memo dated 31.10.2017 was beyond 30.10.2017 or not?

06. Learned counsel for the appellant disputed with reference to certain materials that it has not been communicated. Even though e-mail was sent, however, it was not sent to a proper e-mail address.

07. On the other hand, learned counsel for the State resisted the aforesaid contention of the appellant and submitted that the memos dated 31.10.2017 cited supra have been dispatched, as is evident from the dispatch record through registered post. However, postal receipt material have not been placed on record that on what date appellant was in receipt of the aforesaid registered post.



08. In the light of the aforesaid disputed facts and it could go to the root of the matter, where the said respondent could act upon the aforesaid memo dated 31.10.2017 with reference to mode of communication, whereas sub rule 4 of Rule 17 is silent. In such circumstances, any order passed under quasi judicial function it has to be communicated through appropriate mode like registered post under acknowledgment or in the alternative in terms of Section 65 B of the Evidence Act.

09. In the light of these facts and circumstances, whatever the observation made by the learned Single Judge in the aforesaid memo dated 31.10.2017 is not binding on the appellant and the State-respondents.

10. The State-respondents are hereby directed to issue a show cause notice to the appellant in furnishing necessary materials with the aforesaid memos dated 31.10.2017 has been served on the appellant. On receipt of such notice and material, the appellant is hereby directed to file his explanation along with material information, if any. Thereafter, the disciplinary authority is hereby directed to analyze the material facts and explanation to be submitted by the appellant and take a decision within a period of three months from the date of receipt of this order. The appellant shall co-operate in deciding the aforesaid issue with the



disciplinary authority. Till the aforesaid decision is taken by the disciplinary authority, further action pursuant to cited memo dated 31.10.2017 shall be kept in abeyance until decision is taken by the disciplinary authority.

11. With the above observations, the present Letters Patent Appeal stands disposed of.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

