

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 706 of 2018

=====

Sona Prasad son of Late Charitar Choudhary resident of Mohalla - Hajiganj,
Chhoti Patan Devi, Opposite Arora House, Police Station - Patna City Chowk,
District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna
2. The District Magistrate, Patna.
3. The Deputy Development Commissioner, Patna.
4. The District Panchayat Officer, Patna.
5. The Additional Collector, Departmental Enquiry, Patna-cum-Conducting Officer.
6. The Sub-Divisional Officer, Masaurhi.
7. The Block Development Officer, Masaurhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Mithilesh Kumar, Advocate
For the Respondent/s : Ms Archana Meenakshee, GP VI

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date : 09-09-2022

Heard learned counsel for the petitioner and the respondents.

2 Petitioner was a Panchayat Secretary who retired on 31.05.2013. He has been proceeded against under Charge Memo dated 15.05.2017 on allegation of having committed some illegality in preparation of wait list of beneficiaries under the Indira Awas Yojna dated 24.06.2012.



3 The petitioner's counsel submits that the charge memo is unsustainable since subsequent upon petitioner's retirement on 31.05.2013, he ceased to be a Government employee. Respondents, therefore, had no disciplinary control over the petitioner since the master-servant relationship had come to an end with the petitioner's superannuation.

4 Learned State Counsel submits that under Rule 43 (b) of the Bihar Pension Rules, the right of the State Government is reserved for passing orders for recovery from pension in whole or in part of any pecuniary loss caused to the Government or on finding of any misconduct in a departmental proceeding or guilt in judicial proceeding during service period of an employee.

5 The charge memo specifically mentioned that it has been issued under Rule 43 (b) of the Bihar Pension Rules. Submission of the petitioner's counsel that the impugned charge memo is unsustainable, therefore, has no merit. Pursuant to the charge memo, charges have already been held proved by the Enquiry Officer on 12.12.2017. Under earlier order dated 17.01.2018, this Court has passed an interim order that ongoing departmental proceeding against the petitioner shall not be proceeded with till disposal of the present writ petition. The Enquiry Report has, thus, not been acted upon.



6 The charge memo is sustainable under the provisions of the Bihar Pension Rules and since it is in compliance with principles of natural justice, the petitioner, has no basis to assail the proceedings. Having committed illegality while in service, the petitioner must be held liable to face the consequence.

7 On consideration of rival submissions, this Court would find that submission of the learned State Counsel regarding reserving of the State's right to proceed against retired Government servant being retained by the Bihar Pension Rules under Rule 43 (b), is correct. The same, however, is subject to some conditions contained in the proviso to Rule 43 (b), proviso (a) (ii) of Bihar Pension Rules bars proceeding under Rule 43 (b) in respect of events which are more than four years before institution of proceedings. Relevant extract of Rule 43 (b) is considered appropriate for the sake of reference to be quoted and is being quoted herein, which reads as follows:

“43. (a)

(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 -

(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;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

8 The mandate of the Rule is clear. In unambiguous terms, the time limit of four years is specified in the proviso. The date of event in respect of which the proceeding is sought to be instituted by the impugned charge memo is not in dispute as being on 29.05.2012, while the petitioner was still in service as Panchayat Secretary in Masaurhi. In respect of event dated 29.05.2012, Rule 43 (b) of Bihar Pension Rules permits institution



of proceedings upto four years thereafter, being 29.05.2016. In the instant case, however, the proceedings have been instituted by charge memo dated 15.05.2017. The same is clearly barred, being more than four years after the event in respect of which proceedings have been instituted.

9 Since the Rule clearly bars institution of such proceedings, the Court has no hesitation in holding that the charge memo is legally unsustainable not being founded on any source of power for issuing such charge memo and specifically contrary to the existing Rule 43 (b) of Bihar Pension Rules.

10 The charge memo dated 15.05.2017 is hereby quashed.

11 As a consequence of quashing of the charge memo, all actions, pursuant thereto, are legally unsustainable and cannot be made the basis for visiting the petitioner with any penal consequence whatsoever.

12 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	06.09.2022
Uploading Date	26.09.2022
Transmission Date	NA

