

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.769 of 2020

Awadhesh Kumar, S/o Late Bishnudev Prasad, Resident of Village
Dhargawana, P.S.- Mehshi, District- East Champaran (Motihari).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Special Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Officer on Special Duty, Water Resources Department, Government of Bihar, Patna.
6. The Under Secretary, Water Resources Department, Government of Bihar, Patna.
7. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna.
8. The Chief Engineer, Water Resources Department, Muzaffarpur.
9. The Superintending Engineer, Tirhut Canal Division, Water Resources Department, Muzaffarpur.
10. The Accountant General, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Chitranjan Sinha, Sr. Advocate Ms. Priyank Samdarshi, Advocate Mr. Lakmesh Marvind, Advocate
For the State	:	Mr. Vikash Kumar, S.C.-11 Mr. Ram Yash Singh, AC to S.C.-11

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 05-09-2022

In view of the submissions advanced by Mr. Chitranjan Sinha, learned Senior Counsel, appearing for the petitioner, specifically limited to illegality of notification dated 10.12.2014, bearing No.1914, this Court does not consider it necessary to go into unnecessary details/background.



2. The facts relevant to the submissions are that the petitioner was posted as Executive Engineer in Tirhut Canal Division No.1 at Muzaffarpur. The embankment of a canal was breached and alleging dereliction of duties and improper maintenance etc., the petitioner was proceeded against. The charges having been proved, the petitioner was punished by notification dated 23.10.2013. Two minor punishments were imposed; (i) censure for the year 2011-12 and (ii) withholding of two annual increments with non-cumulative effect.

3. The petitioner thereafter availed remedy under Rule 24(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “the CCA Rules”) seeking review by way of memorial. While the same was pending, the petitioner attained the age of superannuation on 30.06.2014. Since the punishment under notification dated 23.10.2013 was not given effect to, the same was withdrawn and simultaneously the petitioner was asked to submit his second show cause after converting the proceedings into one under Rule 43(b) of the Bihar Pension Rules by the impugned notification dated 10.12.2014.

4. It is submitted by Mr. Sinha, learned Senior Counsel that there is no such provision under the CCA Rules under which the proceedings could have been converted under Rule 43(b)



of the Bihar Pension Rules, when the punishment notified under notification dated 23.10.2013, admittedly was not imposed on the petitioner while he was in service.

5. The submission is that there is no source of power for taking such action under notification dated 10.12.2014 and therefore, the notification is unsustainable in the eyes of law. It is submitted that since the notification dated 10.12.2014 is legally unsustainable, the consequent punishment being withholding of 10% of the petitioner's pension for two years and depriving the petitioner of his right to salary for the period of two years under notification dated 30.05.2016, as a consequence of the illegal notification dated 10.12.2014, must also collapse.

6. Counter affidavit has been filed by the State. State has taken a plea that the petitioner had been held guilty of the allegation while in service. The punishment, however, could not be given effect to on account of his retirement during pendency of his review application by way of memorial under Rule 24(2) of the CCA Rules. It was under such circumstance that the authority decided to impose commensurate punishment under the Bihar Pension Rules since the petitioner had already been held guilty.

7. It is submitted that after due notice in this regard under communication dated 05.01.2015, the order of punishment



dated 30.05.2016 has been passed and therefore there is no infirmity in the decision making process. There was a finding of the petitioner's misconduct while he was still in service. Therefore, the punishment is sustainable and in accordance with Rule 43(b) of the Bihar Pension Rules.

8. On consideration of rival submissions, this Court would find that decision to convert the proceedings under Rule 43(b) of Bihar Pension Rules was taken under notification dated 10.12.2014. Thereafter, the consequent second show cause was issued on 05.01.2015 under the signature of the Officer-on-Special Duty in the Water Resources Department (Annexure 21 of the writ petition).

9. The petitioner chose not to assail the notification dated 10.12.2014, or the consequent second show cause notice dated 05.01.2015. It is only when the order of punishment dated 30.05.2016 under Rule 43(b) of the Bihar Pension Rules has been issued that the petitioner has, for the first time, in the year 2020 has raised the issue regarding notification dated 10.12.2014 and consequent second show cause dated 05.01.2015 being without any sanction of law. There is apparent delay and laches in assailing the notification and consequent second show cause notice.



10. The petitioner has also chosen not to respond to the second show cause dated 05.01.2015. If at all the petitioner was aggrieved by the same, at least he was required to respond to the second show cause notice and avail the opportunity being granted under Rule 43(b) of the Bihar Pension Rules. The same having not been done, this Court would find that the petitioner cannot be permitted to assail the consequential order of punishment dated 30.05.2016.

11. This Court is of the opinion that the petitioner cannot be permitted to assail the notification dated 10.12.2014 by resort to a writ petition filed six years later, in the year 2020. More so, since he has chosen not to respond to the same as well as the consequent second show cause notice dated 05.01.2015, or to challenge the same when it was served on him.

12. When a person like the instant petitioner sleeps over his rights and allows things to attain finality, he cannot be permitted to awake from slumber and invoke the discretionary and equitable writ jurisdiction, as and when he pleases. Conclusion of this Court is fortified by decision of the Hon'ble Apex Court in the case of *Life Insurance Corporation of India & Ors. Vs. Jyotish Chandra Biswas*, reported in (2000) 6 SCC 562, para 6 of which reads as follows :



“6. The order terminating the services of the respondent was passed on 28.1.1969. The writ petition was filed challenging the said order on 25.3.1975, almost after a period of six years. There was no explanation in the writ petition whatsoever for this inordinate delay. The respondent sought for his re-employment in the Corporation by his letter dated 9.1.1974 almost after a period of five years from the date of termination of his services. It only indicated that he accepted the order of termination of his services, if not expressly but impliedly. In the writ petition no ground was raised as to deprivation of right of appeal to the respondent against the order of the termination of his services. It is not the case of the respondent that he was denied any opportunity offending principles of natural justice. An inquiry was held pursuant to the charge sheet; witnesses were examined; and even the respondent examined three witnesses on his behalf. The Inquiry Officer looking to the evidence brought on record found the respondent guilty of the charges. It was also not shown that any prejudice was caused to him in the inquiry. The Disciplinary Authority concurring with the findings recorded by the Inquiry Officer, after giving further opportunity to the respondent, passed the order terminating the services of the respondent. These being the facts and circumstances of the case, in our opinion the learned single Judge was right in dismissing the writ petition. We



find that the order of the learned single Judge is a detailed and considered one. We find it difficult to accept the observations made by the Division Bench of the High court extracted above that the order passed by the learned single Judge was laconic. When there was no explanation whatsoever given by the respondent in the writ petition for delay of about six years, the learned single Judge was right in saying so and dismissing it. When the ground that the respondent was deprived of a right to appeal was not taken before the learned single Judge either in the writ petition or in arguments, the Division Bench was not right and justified in saying that the learned single Judge did not assign any reason whatsoever in support of his judgment in this regard. We fail to understand how such a non-existing ground could be considered by the learned single Judge.”

13. Writ petition is devoid of merit, and dismissed.

(Madhuresh Prasad, J)

PNM

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

