

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20845 of 2018

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Syed Masoom Ali S/o Late Syed Jaffar Hassan, R/o Mohalla- House No. B/4,
Ali Nagar Colony, P.S.- Gardanibagh, District- Patna. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
 2. The Principal Secretary, General Administrative Department, Bihar, Patna.
 3. The Deputy Secretary, General Administrative Department, Bihar, Patna.
 4. The Departmental Enquiry Commissioner, Bihar, Patna.
- Respondents

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Appearance :

For the Petitioner/s : Mr. Amit Srivastava, Sr. Advocate
Mr. Shailesh Kumar, Advocate

For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 17-03-2023 Heard Mr. Amit Srivastava, learned Senior Counsel

assisted by Mr. Shailesh Kumar, learned Advocate for the petitioner

and Mr. Ajay Kumar, learned AC to G.P.-4 for the State.

2. The petitioner in the present case is seeking the
following reliefs:-

“(i) For issuance of a writ of certiorari seeking quashing of departmental proceeding no. 53/2010 initiated by the respondent no.4 at the instance of General Administration Department, Bihar, Patna.

(ii) For issuance of a writ of mandamus for direction to the respondents to drop the departmental proceeding against the petitioner pending since 2010 against all the event which took place more than four years from the date of institution of proceeding.

(iii) For issuance of a writ of mandamus commanding the respondents not to harass and humiliate the petitioner in the name of departmental proceeding even after 11 (eleven) years of superannuation from service on the pretext of awaiting departmental opinion.

(iv) For issuance of a writ of mandamus for direction to the respondents to release all the consequential



benefits accrued to the petitioner upon quashing of departmental proceeding with penal interest.

(v) For issuance of any other relief/reliefs as your lordships may deem fit and proper in the facts and circumstances of the case for which the petitioner may entitled for.”

3. Learned Senior Counsel for the petitioner has submitted that vide Annexure ‘2’ as contained in letter no. 11435 dated 15.11.2007 प्रपत्र ‘क’ containing altogether 19 charges was served upon the petitioner. The charges disclosed above contain the allegations which are also subject matter of the Vigilance P.S. Case No. 19 of 2005, 10 of 2006 and 20 of 2006.

4. Learned Senior Counsel submits that the petitioner submitted his explanations/reply to the show cause notice vide his letter dated 10.12.2007 (Annexure ‘3’). It is stated that the petitioner was placed under suspension and he attained the age of superannuation on 31.12.2007.

5. After his superannuation, it is submitted, that the Department did not take any action upon the reply to the show cause filed by the petitioner on 10.12.2007. The petitioner came to know vide memo no. 900 dated 30.12.2010 issued by respondent no. 4 that a departmental proceeding had been initiated under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as ‘the Pension Rules’).

6. Learned Senior Counsel has drawn the attention of this Court towards the letter as contained in Annexure ‘5’ to the writ



application. It is submitted that as back as on 27.12.2010, the Departmental Enquiry Commissioner pointed out to the Administrative Department certain discrepancies in the matter of the resolution mentioned in his letter and called upon the Administrative Department to remove the defects.

7. Learned Senior Counsel further submits that after about one and half year again another Departmental Enquiry Commissioner vide order dated 14.03.2012 called upon the Administrative Department to submit a written report as to whether the allegations against the petitioner relate to a period within four years prior to the date of his retirement or those are after the prescribed period of four years in terms of Rule 43 (b) of the Pension Rules. Still no report was submitted to the Departmental Enquiry Commissioner.

8. Learned Senior Counsel submits that on 17.04.2013 once again the Departmental Enquiry Commissioner pointed out in his order that a clear departmental opinion be obtained on this point as to whether the charges relate to a period of four years prior to the date of the retirement. In his another order dated 17.07.2013, the departmental proceeding had to be adjourned once again awaiting the response from the General Administration Department.

9. Learned Senior Counsel submits that from the orders passed by the Departmental Enquiry Commissioner as



contained in Annexures '8' and '9', it would appear that the Presenting Officer appointed on behalf of the Department was not present. Learned Senior Counsel has produced order dated 08.12.2022, 10.01.2023 and 03.02.2023 passed by the Enquiry Commissioner from which it appears that the departmental proceeding could not be taken up due to the engagement of the Departmental Enquiry Commissioner in other official work. Learned Senior Counsel, therefore, submits that in this case the Department has miserably failed to conclude the proceeding against the petitioner within a reasonable time. At this stage, more than a decade has gone but because of the proceeding under the Pension Rules, the petitioner is deprived of his full pension.

10. A counter affidavit has been filed on behalf of the State. It is sworn by the Under Secretary, General Administration Department, Government of Bihar. In the counter affidavit, a plea has been taken that the memo of charge was served on the petitioner before his retirement and in this case, the proceeding has been initiated well within a period of four years from the date on which the event leading to the present proceeding took place. In paragraph '31' of the counter affidavit, it is stated that the financial years of the events start



from 2003 to 2005-2006 and the petitioner was made available the article of memo of charge dated 15.11.2007, hence, the departmental proceeding initiated against the petitioner is well within the scope of Rule 43(b) of the Pension Rules.

11. In response to the counter affidavit, the petitioner has submitted that the departmental proceeding has been initiated by Resolution No. 8459 dated 26.08.2009 under Rule 43(b) of the Pension Rules and the first date of hearing was fixed on 09.03.2011. It is his submission that the chargesheets served upon the petitioner vide Departmental Letter No. 11435 dated 15.11.2007 is wrong and it is only to mislead the Hon'ble Court. It is his submission that the stand of the respondents that the memo of charge was made available to the petitioner vide Memo no. 11435 dated 15.11.2007, therefore, it is to be presumed that the proceeding against the petitioner was already initiated is wrong and the same is based on misconception of law.

Consideration

12. Having heard learned Senior Counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds that vide Memo No. 260 dated 07.01.2006, the petitioner was placed under suspension under



Rule 96 of the Bihar Service Code, 1952. This order was passed keeping in view that the petitioner had been arrested in connection with Vigilance P.S. Case No. 19 of 2005 on 29.12.2005. The order was passed under Rule 9(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Service Rules').

13. It further appears on perusal of Annexure '2' as contained in Letter No. 11435 dated 15.11.2007 that the Department of Personnel and Administrative Reforms framed charges against the petitioner in प्रपत्र 'क' and served the same upon the petitioner. Simultaneously, the Department called for an explanation from the petitioner within a period of 15 days. This प्रपत्र 'क' was never challenged by the petitioner and even as in the present writ petition, it is the contention of the petitioner that the said प्रपत्र 'क' was wrongly drawn, the fact remains that there is no prayer in the writ application to quash प्रपत्र 'क'.

14. It further appears that after service of प्रपत्र 'क' upon the petitioner, he submitted an explanation and thereafter he retired from service on 31.12.2007. The Department of Personnel and Administrative Reforms came out with a resolution contained in Memo No. 12805 dated 31.12.2007 (Annexure '4') whereunder it is stated that the allegations



against the petitioner relate to the Bihar Administrative Service Limited Competitive Examination (Advertisement No. 04/2003) which are serious in nature and in connection with the same Vigilance P.S. Case No. 19 of 2005 has been registered and the petitioner was arrested. It further states that the petitioner has attained the age of superannuation, therefore, his suspension is revoked. The Department thereafter came out with a Resolution No. 8459 dated 26.08.2009 by which the proceeding under the Pension Rules has been initiated against the petitioner.

15. In the given circumstance, this Court is unable to accept the submission of learned Senior Counsel for the petitioner as no fault may be found with the ongoing proceeding under the Pension Rules. As stated above प्रपत्र 'क' was served well before the date of retirement of the petitioner and apparently one may find from the allegations mentioned in प्रपत्र 'क' that those relate to a period within four years prior to the date of the retirement of the petitioner.

16. In fact, this Court is further unable to comprehend the reasoning and rationale of the Departmental Enquiry Commissioner in keeping the matter pending since the year 2010 on the ground that the Department should give a clear report with regard to the date on which the alleged event for



which the proceeding under the Pension Rules has been initiated whether fall within a period of four years or thereafter. It was something in form of a duty caste upon the Inquiry Commissioner to find out on the basis of the materials which could have been collected in course of enquiry but instead of doing that the Departmental Enquiry Commissioner seems to have been only interested in adjourning the matter from one date to another awaiting the report of the General Administration Department.

17. This Court further finds that only some orders have been passed at an interval of one year or so for the only reason that the General Administration Department has not submitted its report. No doubt the General Administration Department also seems to be sitting over the matter as its representative who was given the charge to present the Department in the proceeding has not appeared but the question which arises for consideration before the Court is that in these circumstances in exercise of its' extraordinary writ jurisdiction would it be just and proper for this Court to quash and cancel the entire proceeding pending before the Departmental Enquiry Commissioner. Who will be ultimate loser or beneficiary is not the question before the Court. What prevails in the mind of this



Court is that not only the protection granted to an employee under Rule 43(b) of the Pension Rules be looked into but the interest of the State in the matter of recovery of the pecuniary loss or to punish an employee for his misconduct be also taken care of. In this case, the petitioner is being proceeded against altogether 19 charges and prima-facie there is no reason for this Court to interfere with those charges. The only way by which the interest of the petitioner and the State may be balanced is to direct the Departmental Enquiry Commissioner to conclude the Enquiry within a period of four months from the date of receipt/production of the copy of this order. Thereafter the Disciplinary Authority shall pass a reasoned order within a further period of three months.

18. This Court would remind the General Administrative Department, Government of Bihar as well that it may be a good case to make an enquiry as to why the proceeding has remained pending for all these years only on the pretext of a report to be submitted by the Department and why it has not happened for about 10-12 years. This Court sitting under Article 226 of the Constitution of India would exercise self-restraint in not issuing further directions at this stage but if the occasion so arises in future, the Court will have to enter into that



arena as well.

19. For the present, this application is being disposed of with the directions to the Enquiry Commissioner as indicated hereinabove.

20. Direction is also issued to the General Administration Department, Government of Bihar to ensure that the Presenting Officer makes himself present on the date fixed in the matter and no unnecessary adjournment be granted.

21. The Enquiry Commissioner has been adjourning the matter on the ground that he remained busy in the other official work. Let he be reminded that if he has been assigned the responsibility as the Departmental Enquiry Commissioner, he cannot go on adjourning the matter on a vague plea that he remained busy in other official work.

(Rajeev Ranjan Prasad, J)

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