IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6450 of 2021

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Sitaram Mandal, S/o-Late Subodh Mandal, Village and Pot-Parsauni, Police Station-Parsauni, District-Madhubani-847223, (Bihar)

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal Secretary, Department of Labour, Bihar
4. The District Magistrate-Supaul, Bihar.
5. Deputy Labour Commissioner- Darbhanga, Government of Bihar.
6. The District Manager-Bihar State Food and Civil Supply Corporation Ltd.-Suppaul, Bihar.
7. The Accountant General, Veer Chand patel Path, Patna Bihar,

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Binodanand Mishra, Advocate
For the Respondent/s : Mr. Manoj Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 17-08-2023

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has assailed an order of punishment dated 16-9-2019. The same is pursuant to an allegation that in the financial year 2011-12 while the petitioner was posted in the Bihar State Food and Civil Supply Corporation (for short "Corporation") as Labour Enforcement Officer, shortage of 369.97 quintal paddy had occurred. The paddy was valued at Rs. 4,17,318/-.

3. By concluding that the petitioner has occasioned such a loss to the public exchequer, he has been visited with the impugned penalty dated 16-9-2019 directing for the withholding of 20% of his pensionary benefits for 10 years.

4. The learned counsel for the petitioner submits that the petitioner superannuated on 28-2-2014. After his retirement, the authority could have proceeded against him only for the limited purposes of withholding a part of, or the entire pensionary benefits, that also as per procedure prescribed under the Bihar Pension Rules (for short "Rules"), namely, proviso to Rule 43(b).

5. For better appreciation of the submission, this Court would consider it appropriate to reproduce Rule 43(b) of the Rules, being relied upon by the petitioner, which reads as follows:-

> *43(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 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;

...

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

...

(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.

6. The sub-clause (ii) of clause (a) is relevant for considering the submission advanced on behalf of the petitioner.

Simple reading of the provision itself makes it clear that the event in respect of which the proceedings are being instituted shall not have taken place more than 4 years before institution of such proceedings.

7. In the instant case, the proceedings have been instituted on 16-4-2018, whereas it is not in dispute that the alleged occurrence relates to financial year 2011-12, more than 6 years before the date of institution of proceedings.

8. Learned counsel for the petitioner submits that the proceedings therefore are beyond the purview of Rule 43(b) of the Rules, there being no other provision enabling institution of such proceedings beyond more than 4 years prior to the date of institution, the proceedings are fully without jurisdiction.

9. The learned State counsel, on the other hand, submits that on 18-6-2015 the loss was reported by the District Magistrate to the petitioner's parent department, being the Labor Resource Department, which is the petitioner's disciplinary authority. The proceedings have been instituted within 3 years from the date of knowledge/report of the incident. He, therefore, places reliance on paragraph 8 of decision in the case of ***Ashok Kumar Mishra v. State of Bihar & Ors.***, reported in ***2003 (1) PLJR 172***, which reads as follows:

> "8. *As regards the authority of the Supreme Court in the Case of Md. Idris Ansari (supra) I am of the opinion that the same is clearly distinguishable. In the said case the Supreme Court was not faced with the situation in which the misconduct came to the notice of the authority later. The Supreme Court had not addressed itself on the issue involved in the present case."*

10. Since four years has to be reckoned from the date of knowledge of the event by the competent authority which in this case is 18-6-2015, the institution of proceedings on 16-4-2018 cannot be in any manner faulted with having regard to the decision of the coordinate bench of this Court in the case of ***Ashok Kumar Mishra*** (supra).

11. On consideration of rival submissions and the material available in the record, this Court finds that while awarding the punishment to the petitioner the inquiry officer has taken on record the fact that the District Manager, State Food Corporation, Supaul on 20-6-2013 had written a letter bearing No. 1221 to the petitioner asking him to make good the loss occasioned on account of shortage of paddy (369.97 quintal). It is apparent from the inquiry report thus that the competent authority in the Corporation was having knowledge of the loss occasioned or alleged as soon as on 20-6-2013. It is not a case where the petitioner was continuing at the same place after the alleged occurrence and was in any way impeding the knowledge being transmitted to any authority, as has been illustrated in judgment of the coordinate bench in the case of ***Ashok Kumar Mishra*** (supra). It is in fact apparent from the inquiry report that the shortage was alleged as soon as on 20-6-2013. The petitioner's parent department which had disciplinary control was also knowing this fact, which is apparent from the inquiry report itself. It is therefore not a case where the alleged irregularity was suppressed and knowledge could emerge only after a lapse of certain period so as to count the period contemplated under the sub-clause (ii) of clause (a) of Rule 43(b) from a date other than 20-6-2013. Even taking the date of knowledge to be 20-6-2013, the institution of the proceedings is way beyond the four year period specified in Rule 43(b) of the Bihar Pension Rules.

12. The learned counsel for the petitioner submits that otherwise also the findings in the inquiry report are unsustainable for other reasons.

13. Since this Court is satisfied regarding the order being in violation of Rule 43(b) of the Rules and therefore beyond the purview of Rule 43(b), there being no other provision allowing institution of proceedings in respect of occurrence more than four years prior to the date of institution, the Court is of the opinion that the institution of proceedings and the impugned order of punishment are without jurisdiction and unsustainable in the eyes of law. The order of punishment dated 16-09-2019 is quashed.

14. The petition is allowed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
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