

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6302 of 2020

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Dr. Manoj Kumar Srivastava Son of Late Akhileshwar Prasad Srivastava,
Resident of Mohalla- Punaichak, Champaran Bhawan, P.S. Shastri Nagar,
Town/ District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Principal Secretary, Department of Personal and Administrative Reforms, Govt. of Bihar, Patna.
3. The Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.
4. The Additional Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.
5. The Director, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.
6. The Accountant General, Govt. of Bihar, Patna.
7. The Joint Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Priyadarshi, Adv.
For the State	:	Mr. Sajid Salim Khan (Sc25), Mr. Arif D. Siddiqui, AC to SC-25
For Accountant General	:	Mr. Raj Nandan Prasad, Adv., Mr. Vishesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 27-07-2023

Heard Mr. Manoj Priyadarshi, learned counsel appearing on behalf of the petitioner, Mr. Sajid Salim Khan and Mr. Arif D. Siddiqui, learned counsels appearing on behalf of the State and Mr. Raj Nandan Prasad and Mr. Vishesh Kumar Singh, learned counsel appearing on behalf of the Accountant General.



2. Learned counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved by the order dated 27.01.2020, contained in Memo No. 5/Nigrani/Gopniye/Bibhag, which has been brought by way of Annexure-14 to the writ petition. The petitioner was appointed on the post of Touring Veterinary Officer on 21.05.1982 and he had retired from the same post on 30.06.2014. During service period of the petitioner, a criminal case was lodged in 1996 with respect to famous Fodder Scam case bearing R.C. Case No. 45A of 1996. The petitioner has been convicted by the Trial Court and subsequently this Court has suspended the sentence of the petitioner and granted him bail in the Criminal Case. After retirement of the petitioner a show cause was served on 16.04.2019 under Rule 43(a) of the Bihar Pension Rules. Pursuant to which petitioner has replied on 29.04.2019 and 21.08.2019. Considering the fact that in accordance with the Bihar Pension Rules, there is bar of four years to initiate any disciplinary proceeding against a retired Government servant. Penalty order dated 27.01.2010, contained in Memo No. 5 have been passed against the petitioner, imposing deduction of 100% pension and gratuity.



3. Learned counsel appearing on behalf of the petitioner submits that the issue which has to be decided in the present writ petition is no more res integra.

4. In this regard, learned counsel has relied upon the Judgment passed in case of *Nityanand Kumar Singh Vrs. State of Bihar, reported in 2017 (3) PLJR 79*. In paragraph 4 of the Judgment the issues have been framed which inter alia is reproduced hereinafter:-

“4. The core issue raised in the writ petition is whether the State is within its jurisdiction to issue a notice under Rule 43 (a) of ‘the Pension Rules’ to the petitioner for exercising powers of forfeiture of pension.”

5. He further submitted that the issues raised with respect to the petitioner in the said case was referred to the Division Bench for deciding the issue. The Division Bench of this Court by deciding the issue had remanded the writ petition to be decided by the Single Bench Judge after framing the Rules. The matter was remanded back to the concerned Hon’ble Single Judge to decide the case of the petitioner of C.W.J.C. No. 2527 of 2009 (supra) in accordance with issue determined by the Division Bench. So far as Rule 43 (a) and (b) is concerned, the petitioner has further relied on paragraph-7 of the **C.W.J.C. No. 2527 of**



2009 (supra) in which the Coordinate Bench has taken note of Division Bench which inter alia is reporduced hereinafter:-

“7. (7.) In so far as Rule 43(b) is concerned, the division bench has explained that such power is exercisable if the pensioner in a departmental or judicial proceeding is held guilty of grave misconduct or have caused pecuniary loss to the Government by misconduct or negligence during his service including service rendered after reemployment. The relevant part of the order which would govern the issue raised herein, is reproduced here-in-below for ready reference:

“Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not related to his conduct during service and/ or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43 (a) and that of Rule 43 (b). Both the provisions operate different areas having different connotations. The decision under rule 43 (a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State government to



continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a government servant done while he was in service. Such provision in the rules governing pension vests the State Government with necessary powers to maintain action against a retired government employee for his conduct while in service but subject to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43 (a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all. Hence, the requirement of proviso (a) (1) cannot apply to Rule 43 (a). Such provision in the proviso puts a restriction upon the power of the State government to initiate a departmental proceeding if not instituted while the government servant was in service, either before retirement or during re-employment. Such departmental proceeding, by virtue of the provision under consideration cannot be in respect of an event which took place more than four years before the institution of such proceeding. Rule 43 (a) comes into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding Rule 43 (a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later. Hence, it cannot be governed by proviso (a) (ii) to Rule 43 (b) as it can apply only to initiation of departmental proceeding by the Government after an employee has retired. Having



answered the issue referred to the Division Bench, we refer the matter back to the learned Single Judge for hearing the writ petition for its disposal in accordance with law.

As the above order itself reveals we have not gone into the facts of the case."

6. Learned counsel appearing on behalf of the respondents submitted that the petitioner was involved in misappropriation of public money and proceeding was initiated against him also considering the fact that the petitioner was convicted in the criminal case and against the Judgment of conviction the petitioner has preferred **Criminal Appeal (S.J.) No. 822 of 2018**. The sentence has been suspended by the Jharkhand High Court and the petitioner has been granted bail after suspension of the sentence.

7. Learned counsel further submitted that the master and servant relationship will continue so far as the allegation which has been made against the petitioner. However, he has admitted that against the Judgment of the Division Bench no further appeal has been preferred by the State Government before the Hon'ble Supreme Court.

8. Having considered the rival submissions made by the parties, the issues involved in the present writ petition is no more res integra. Similarly situated Government servant, against whom



similar action was taken without initiating disciplinary proceeding in exercise of Rule 43 (a) of the Pension Rules has been quashed by this Court.

9. The arrears of pension of the petitioner is directed to be paid to him along with statutory interest on delayed payment within a period of three months from the date of receipt/production of a copy of this order.

10. At this stage, learned counsel appearing on behalf of the petitioner submits that the order contained in Annexure-14 relates only to withholding of 100% pension and gratuity and the petitioner has been advised to not making payment of leave encashment till date.

11. The authorities are directed to ensure to make payment of leave encashment as well as gratuity within the aforesaid period of three months with all statutory interest.

12. The order contained in Annexure-14 is hereby set aside and quashed.

13. Accordingly the writ petition is allowed.

(Purnendu Singh, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

