

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12168 of 2021

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Sadanand Yadav Son of Late Siyaram Yadav Resident of Village - Kamarganj,
Johangira, Police Station- Sultanganj, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the DGP, Govt. of Bihar, Patna.
2. The Inspector General of Police, Purnea Range, Purnea.
3. The DIG, Purnea Range, Purnea.
4. The Superintendent of Police, District - Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Sharma, Adv.
	:	Mr. Alok Anand, Adv.
	:	Mr. Amresh Kumar, Adv.
For the Respondent/s	:	Mr. Md. N.H. Khan, (SC-1)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 12-01-2023 Heard learned counsel for the petitioner and counsel
for the Respondents.

Learned counsel for the petitioner submits that father of the petitioner, now deceased, was appointed on the post of Constable on 01.01.1969 against the sanctioned vacant post of Constable in Bhagalpur district. He was promoted on the post of Hawaldar and subsequently retired on 30.06.2004. Upon retirement then it came to knowledge that during his lifetime there was a criminal case pending against him in Sultanganj Police Station Case no. 213 of 1989. Upon retirement, the trial of said case was concluded in Session Trial No. 359 of 1990 in which he was punished and sent to jail. Subsequently, released

from the jail on 19.08.2020 and filed several representations before the respondent authorities for payment of pension and other retiral dues but nothing was paid to him and on 02.05.2021 he died due to illness.

He submits that the petitioner has received a letter from the office of Superintendent of Police, Araria bearing Memo No. 989 dated 06.04.2021, according to which, full pension of the petitioner was seized intimating that the said decision is final and conclusive in nature.

He further submits that after death of petitioner's father on 02.05.2021, the petitioner filed the present writ petition for getting the retiral dues of the deceased petitioner and also to quash the order issued vide Memo no. 989 dated 06.04.2021.

In the counter affidavit, ground has been taken by the Superintendent of police, Araria that father of the petitioner was punished for life imprisonment in Session Trial No. 359 of 1990 and therefore in the light of 43-(A) of the Bihar Pension Rule, his entire pension has been forfeited.

Learned counsel for the petitioner submits that petitioner has made reliance on case of Nityanand Kumar Singh Vs. State of Bihar decided on 17.01.2017 in CWJC No. 2527 of

2009 and again in case of Awadhesh Kumar Upadhyay Vs. Bihar State Education Board through Secretary and others dated 09.09.2020 passed in CWJC No. 19985 of 2019 and also relied on division of pension decision represented in 2016 (2) PLJR, 315 (Nityanad Kumar Vs State of Bihar) in the said page. In paragraph no. 4, it has been categorically held by the Divisional Bench that Rule 43 (A) of Bihar Pension Rule, 1950 is not related to case conduct during services rather it is a conduct expected by a pensioner in the future, after he has been granted pension. The decision under Rule 43 (A) is not on account of any departmental or judicial proceeding, it is instituted when the Government servant is in service or instituted later, in respect of an event, which is related to his service rendered before retirement or on re-employment. Here, in the present case, admittedly the criminal case has been instituted during his service period, therefore, in my view, Rule 43(A) Bihar Pension Rule, 1950 is not applicable here at all. It is not in dispute that pension of the petitioner is guided by Bihar Pension Rule, 1950.

In this view of the matter of the order, Annexure-4, which is passed on the basis of Rule 43(A) Bihar Pension Rule, is hereby set aside.

Respondent No. 4, Superintendent of Police, Araria is

directed to assure the entire retiral dues of the petitioner's father within 4 months from the date of filing the fresh representation before him and assure all the admissible dues within 2 months thereafter.

It is made clear that petitioner has nowhere mentioned in the petition that he is only heir and legal representative. It is also directed to the said respondent Superintendent of Police, Araria to ascertain that the payment of retiral dues must be made not only to the petitioner but also to his other heirs and legal representatives.

With this direction, this writ petition is hereby disposed.

(Dr. Anshuman, J.)

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