

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10174 of 2016

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Sri Lakshmi Kant Jha, Son of Late Jaykant Jha Retd. Head Master K.D. High School Malinagar Samastipur. Village and P.O.- Jhakhra, P.S. Sarairanjan, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary Human Resource Development Department, Govt. of Bihar, Patna.
3. The Director Secondary Education, Bihar, Patna.
4. The Joint Director Secondary Education Govt. of Bihar, Patna.
5. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
6. The District Magistrate, Darbhanga District Darbhanga.
7. The District Education Officer Samastipur District- Samastipur.
8. The Treasury Officer, Samastipur District Samastipur.
9. The Head Master K.D. High School Malinagar Samastipur District Samastipur.
10. The Accountant General (A and E), Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Nand Kishore Singh, Advocate
For the Respondent/s	:	Mr. Santosh Kumar Jha, GP-3
		Mr. Durjati Kr. Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 21-09-2023 Let the counter affidavit of the State be taken on the record.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. The petitioner in the present case is seeking quashing of the order as contained in Memo No. 2740 dated 21.09.2015 issued under the signature of Director (Secondary Education) Bihar, Patna (Annexure '9' to the writ application)



whereby and whereunder, the Director (Secondary Education) has passed an order of punishment under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Pension Rules') holding that the charge levelled against the petitioner has been proved in course of inquiry.

4. Learned counsel for the petitioner submits that in the inquiry, the charge was not proved against the petitioner but the Disciplinary Authority proceeded to assume upon himself that the charge against the petitioner has been proved. The Disciplinary Authority passed the order under Rule 43(b) of the Pension Rules whereby he directed to deduct 25% of the pension of the petitioner.

5. Learned counsel for the State has at this stage submitted that he would not contest the impugned order as contained in Annexure '9' to the writ application because it is evident from the records that the Inquiry Officer had exonerated the petitioner but the Disciplinary Authority proceeded to pass the impugned order assuming that the the charge has been found proved against the petitioner. Learned counsel further submits that in such circumstance, the impugned order be set aside and the matter be remitted to the Disciplinary Authority for passing a fresh order.



6. Learned counsel for the petitioner, however, at this stage has strongly submitted that this petitioner having retired from service on 31.01.2011 was proceeded against a charge by drawing a Memo of Charge on 18.05.2011 under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 which was not permissible. The employer and the employee relationship had ceased to exist on 31.01.2011 itself.

7. Learned counsel for the petitioner further submits that in this case even a proceeding under Rule 43(b) of the Pension Rules could not have been initiated four years after the retirement of the petitioner but the respondent authorities in the garb of converting the disciplinary proceeding, claimed to have initiated the proceeding by virtue of Memo of Charge issued on 18.05.2011 after a period of four years. This was done vide Memo No. 486 dated 20.02.2015. It is submitted that such conversion of the proceeding under Rule 43(b) was done on a Memo of Charge which was issued much after the retirement of the petitioner, therefore, it may be concluded that during the service period of the petitioner, no departmental proceeding was initiated against him.

8. Learned counsel for the State does not dispute on facts that the petitioner retired on 31.01.2011 and till the date of



his retirement, no chargesheet had been served upon him. If it is so, this Court is of the considered opinion that no departmental proceeding will be deemed to be pending against the petitioner on the date of his retirement.

9. Rules 43(b), 43(c) and 43(d) of the Pension Rules
read as under:-

“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 a 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 of 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;

(i) shall not be instituted save with the sanction of the State Government;

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

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(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.

Explanation.- For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.

43(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).

43(d) if any departmental or judicial proceeding is pending against the government servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly:

Provided that where Departmental proceedings has been instituted under Rule 19 of Bihar Government Servant Classification, Control and Appeal Rules, 2005 (As amended from time to time) for imposing minor penalties



under Rule 14 (i) (ii) and (v) of the said rules, payment of gratuity may be made to the government servant.”

10. From a bare reading of the aforementioned Rules, it may be found that under proviso (a) of Rule 43(b) of the Pension Rules, it is clearly provided that if the departmental proceeding is not instituted while the Government servant was on duty either before retirement or during re-employment, shall not be instituted save with the sanction of the State Government and shall be in respect of an event which took place not more than four years before the institution of such proceedings. In the present case, even if the order of conversion dated 20.02.2015 is taken as the date of initiation of the proceeding under Rule 43(b), it would be beyond the four years period.

11. This Court is, therefore, of the considered opinion that no proceeding as envisaged under Rule 43(b) having been initiated against the petitioner, at this stage after 13 years of retirement, no liberty may be granted to the Disciplinary Authority by remitting the matter to him to pass a fresh order. Annexure ‘9’ is per se illegal and it is set aside.

12. Having said so, this Court is of the opinion that because the trial of the criminal case is still pending, a judicial proceeding as envisaged under Rule 43(c) of the Pension Rules is pending against the petitioner and this was initiated during the



service period of the petitioner, therefore, he cannot claim the maximum admissible amount of pension at this stage but in his case, the provisional pension shall not be less than 90%.

13. Accordingly, this Court directs the respondents to pass an appropriate order under Rule 43(c) of the Pension Rules within a period of two months from the date of receipt/production of a copy of this order. The difference amount on account of the pensionary benefits which arises out of setting aside of Annexure '9' to the writ application shall also be paid to the petitioner within the aforesaid period.

14. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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