

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9149 of 2022

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Mamta Verma, D/o Late Maheshwari Prasad Verma, W/o Sri Satyendra Prasad Sinha, R/o Kamla Kunj, C/o Santosh Kumar Verma, Post Office Road, Punaichak, P.S- Lal Bahadur Shastri Nagar, Patna (Retired Assistant Director, (Mass Education), Govt. of Bihar, Patna).

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Director (Administration) -cum- the Additional Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna -cum- the Disciplinary Authority.
3. The Director, Secondary Education Department, Govt. of Bihar, Patna.
4. The Reviewing Authority through the Additional Chief Secretary, Education Department, Govt of Bihar, New Secretariat, Patna.
5. The Treasury Officer, Patna Bikash Bhawan.
6. The Accountant General, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Purushottam Kumar Jha Mr. Jitendra Acharya M.r Anand Kumar Tiwary
For the Respondent/s	:	Mr. Jai Prabhat Kishore, AC to SC 13

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
ORAL

Date : 27-04-2023

Heard learned Counsel for the parties concerned.

2. The petitioner has filed the present writ application being aggrieved by the order passed by the Director (Administration) -cum- Special Secretary, Education Department, Government of Bihar, Patna, vide memo no. 170, dated 21.03.2022



(Annexure-18), whereby 100 per cent pension of the petitioner has been directed to be withheld.

3. The brief facts of the case is that the petitioner was appointed on the vacant sanctioned post of Assistant teacher in Government Girls Middle School, Siwan, for two months, in the matric trained pay scale of Rs. 580-10-620-15-770-EB-15-860 and admissible allowances thereupon, pursuant to the order passed by the then School Inspectoress -cum- Deputy Director, Education, Bihar, Patna, as contained in letter no. 6554, dated 18.08.1982, and the then District Inspectoress of School, Chapra, vide memo no. 290, dated 31.08.1982. The petitioner claims to be having the requisite qualification of B.A. and B.Ed, at the time of her appointment. The service of the petitioner was extended from time to time and finally, by memo no. 4082-86, dated 05.11.1984, she has been appointed on regular basis in the Government Girls Middle School, Jehanabad, Gaya.

3. The petitioner was granted promotion by the Director (Secondary Education) Bihar, vide memo no. 683, dated 06.09.1990 from Lower Sub-ordinate Service cadre to Sub-ordinate Education Service cadre, in the pay scale of 600-2780 with effect from 17.05.1990.



4. Vide Notification No. 1751, dated 09.10.2006, issued by the Human Resource Development Department, Government of Bihar (Annexure-8), the services of the petitioner, along with others, were merged in the Bihar Education Service Class II cadre with effect from 17.05.1990. The name of the petitioner figures at serial no. 95 in the said notification.

5. The petitioner was granted financial progression from time to time and finally the petitioner, after rendering 34 years of service, retired on 31.03.2016 from the Bihar Education Service Class-II cadre. At the time of her retirement, the petitioner was working as Assistant Director, Directorate of Mass Education, Government of Bihar.

6. After retirement, 90 per cent of provisional pension of the petitioner was sanctioned by the competent authority, vide memo no. 668, dated 29.03.2016, issued by the Director (Administration) -cum- Additional Secretary, Education Department, Government of Bihar.

7. Merely one year after the retirement of the petitioner, the Director (Administration) -cum- Additional Secretary, Education Department, Government of Bihar, issued a show cause notice and sought explanation of the petitioner, under Rule 139 of the Bihar Pension Rules, 1950 (herein after referred to as 'the



Rules') in connection with the memo of charge framed against the petitioner on 22.07.2017. The petitioner submitted her reply on 13.12.2017 denying the charge levelled against her and stated therein that her appointment was not irregular and she was not overage.

8. After considering the reply submitted by the petitioner, the impugned order, dated 21.03.2022, of stoppage of 100 per cent pension has been passed by the respondent-the Director (Administration) -cum- Special Secretary, Education Department, Government of Bihar, Patna.

9. Learned Counsel for the petitioner submits that the very initiation of department proceeding against the petitioner purported to be under Rule 43 (b) of the Rules is invalid in view of the fact that the charge levelled against the petitioner in the memo of charge dates back to an event, which has taken place more than 32 years prior to the date of serving of memo of charge.

10. Referring to Annexure-14, the memo of charge, in Prapatra "Ka" (क), learned Counsel submits that only one charge has been levelled against the petitioner regarding the irregular appointment of the petitioner. The imputation of misconduct states that the petitioner was earlier selected as teacher in Lower Sub-ordinate Services in Chapra, but was reappointed by BI on the



recommendation of DI without following the proper procedure for such appointments. She was over age by 8 months at the time of appointment. No advertisement of the post was made in any local newspaper or agency of employment exchange. No roaster clearance was obtained and reservation rules were not followed. There is no proceedings of any select committee for her selection through interview/test.

11. Accordingly, the petitioner submits that upon bare perusal of the memo of charge, it would be evident that the charge levelled against the petitioner pertains to an event/misconduct, which took place more than four years prior to the commencement of the department proceeding. Hence, very initiation of the department proceeding against the petitioner, under Rule 43 (b) of the Rules in purported exercise of power under Rule 139 of the Rules is not maintainable and valid. He also submits that memo of charge has been issued by the incompetent authority inasmuch as the petitioner was the member of Bihar Education Service Class-II cadre and the memo of charge has not been issued by the disciplinary authority, who, in the case of the petitioner, is the State Government. He also submits that before initiation of the department proceeding under Rule 43 (b) of the Rules, the sanction of the State Government is required, but no such sanction



has been brought on record for initiation of the department proceeding against the petitioner under Rule 43 (b) of the Rules.

12. Learned Counsel has referred Rule 43 (b) of the Rules, 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 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 proceedings 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;

(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;”

13. In support of his argument, learned Counsel has placed reliance on the decision of the Supreme Court, in the case of **State of Bihar and others v. Mohd. Idris Ansari**, reported in **1995 Supp (3) SCC 56**. He relies on paragraphs 7 to 10 of **Mohd. Idris Ansari** (supra) and submits that before the power under Rule 43(b) of the Rules can be exercised in connection with the misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings, the government servant concerned is found guilty of grave misconduct and this is subject to the rider that such departmental proceedings shall have to be in respect of misconduct, which took place not more than four years prior to initiation of such proceedings. As such, no departmental proceedings could have been initiated against the petitioner on 22.07.2017 relating to the event, which has, admittedly, been taken place in the year 1982.

14. Upon conjoint reading of Rules 43 (b) and 139 (a) and (b), the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings, which might have taken place



during her service tenure or from departmental proceedings, which may be initiated even after her retirement in such type of cases relating to the charge not more than four years prior to the initiation of the department proceeding.

15. Paragraph 7 to 10 of **Mohd. Idris Ansari** (supra) is quoted herein below for ready reference:

“7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period



of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition No. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently it is not open to the learned advocate for the appellant to rely upon the said earlier notice dated 17-10-1987.

8. There remains the question whether any assistance can be derived by the appellant authorities from Rule 139 of the Rules. The said Rule 139 reads as under:

“139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating



to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.”

9. So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired government servant or not in the circumstances contemplated by the rule. The first circumstance is that if the service of the government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further



hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:

1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

2. Even if the service record of the officer concerned is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the officer concerned during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the



revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings,



if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a



notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.”

16. He has also placed reliance on the decision of this Court, in the case of **Kumari Manju Lata v. The State of Bihar and Others**, reported in **2021 SCC online 2265**, in which in the similar facts and circumstances, this Court has held that Rule 139 (b) of the Rules is not applicable in the fact and circumstances of the case inasmuch as the charges levelled against the petitioner is not regarding her services being unsatisfactory, but the charges levelled against the petitioner pertains to her initial appointment being irregular. Consequently, the order of punishment dated 19.09.2019, passed by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, was held to be null and void and was quashed.

17. Per contra, learned Counsel for the respondents submits that there is no procedural irregularity while conducting the departmental proceeding and the initial appointment of the petitioner was irregular inasmuch as the petitioner was over age, which the petitioner failed to defend and further the appointment of the petitioner made in the year 1982 was only for a term of two



months, and, that too, without any advertisement etc, which was subsequently extended and made regular by the Education Department. He also submits that the action against the petitioner has been taken on the basis of an order passed by this Court in a Public Interest Litigation, bearing CWJC No. 10002 of 2016.

18. I have heard learned Counsel for the parties and have carefully perused the materials available on record.

19. From perusal of the memo of charge, it appears that charge, which has been levelled against the petitioner, pertains to the date of initial appointment of the petitioner, i.e. 1982. It has been alleged in the memo of charge (Prapatra क) that the appointment of the petitioner was irregular and the petitioner was overage by eight months at the time of her appointment and her appointment was made without any advertisement and without calling the names from the employment exchange. The petitioner, after being confirmed in the service, got promotion and after rendering 34 years of continuous service, retired on 31.03.2016. Prior to her retirement, no department proceeding and/or criminal proceeding based upon the report of the Central Bureau of Investigation was ever initiated against her. However, after her retirement, on 31.03.2016, the memo of charge purported to be under Rule 43 (b) read with Rule 139 (a) and (b) of the Rules has



been served upon the petitioner. On the bare perusal of the memo of charge, it is evident that charge against the petitioner pertains to an event/misconduct, which took place more than four years prior to the commencement/initiation of the department proceeding. The very initiation of the department proceeding against the petitioner, under Rule 43 (b) of the Rules is bad in law and is contrary to the provision under Rule 43 (b) of the Rules inasmuch as the disciplinary authority or the authority, which issued the memo of charge upon the petitioner, had no power to invoke Rule 43 (b) of the Rules in relation to the event/misconduct, which took place more than four years prior to the date of initiation of the department proceeding.

20. The cases relied upon by the petitioner, i.e. **Mohd. Idris Ansari** (supra) and **Kumari Manju Lata** (supra), are squarely covered in the facts & circumstances of the present case.

21. This Court also finds that even after the memo of charge being served upon the petitioner, the department proceeding was not completed as per the established law inasmuch as no witness was produced during the department proceeding, no Enquiry Officer and/or Presenting Officer was appointed for conducting the department proceeding, the date of enquiry was never communicated to the petitioner, no enquiry report was



furnished and only the final order of punishment has been passed. The order of punishment, therefore, is invalid on two count, firstly because of violation of Rule 43 (b) of the Rules and secondly, on the ground that there was gross procedural defects in holding the department proceeding.

22. Consequently, the order of punishment, dated 21.03.2022, passed by the Director (Administration) -cum- Special Secretary, Education Department, Government of Bihar, Patna, cannot sustain in the eyes of law. Accordingly, the same is hereby quashed and all other consequential order are also set aside. The petitioner shall be entitled to all benefits consequent upon the quashing of the order of punishment, dated 21.03.2022.

23. In the result, this writ application is allowed.

24. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28-04-2023
Transmission Date	N/A

