

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8603 of 2008

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Rajendra Ram Son of Late Jitan Ram at present residing near Kursakanta Block, P.O. and Police Station- Kursakanta, District - Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner and Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
3. The Commissioner and Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
4. The Commissioner, Purnea Division, Purnea.
5. The District Magistrate and Collector, Araria.
6. The Block Development Officer, Kursakanta, District - Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gyanand Roy, Advocate
For the State	:	Mr. S.Raza Ahmed, Sr. Adv. AAG 5
		Mr. Vishwambhar Prasad, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 25-08-2023

In the instant petition, petitioner has prayed for the following reliefs:-

"(i) For quashing impugned order issued vide memo no. 01/Mu.Esst. Dated 2.1.2008 under the signature of District Magistrate, Araria by which the District Magistrate, Araria, agreeing with the enquiry report submitted by the Enquiry officer has passed following order of punishment against the petitioner:-

(A) Petitioner will not be entitled to received any other amount other than the amount he has received as subsistence allowance during the period of suspension and



(B) The amount alleged to have been defalcated by the petitioner will also be recovered from the petitioner.

(ii) For commanding the respondents to treat the petitioner in continuous service and to grant all consequential benefits including payment of full salary for the period of suspension, after adjustment of the amount of subsistence allowance and also to make payment of all the post retiral benefits to the petitioner after the petitioner attained the age of superannuation from service.

(iii) For any other relief/s for which the petitioner is legally round entitled in the facts and circumstances of the case."

2. Petitioner while working as a Cashier in the Revenue Department was subjected to disciplinary proceedings for the alleged allegations relating to misappropriation of a sum of Rs. 18,000/-. Initially, he was placed under suspension. Thereafter, departmental inquiry was initiated and it was concluded in imposition of penalty of dismissal from service on 31.03.1991. Against the dismissal order, petitioner approached this Court *vide* CWJC No. 9889 of 2004 decided on 17.11.2004. The same was allowed and the matter was remanded to the disciplinary authority to initiate fresh departmental enquiry. Further enquiry has resulted in passing penalty order on 02.01.2008. The petitioner has been punished to the extent that he is not entitled to subsistence allowance for the suspension period and further the alleged loss



stated to have been caused by the petitioner was required to be recovered from the petitioner.

3. Feeling aggrieved and dissatisfied with the penalty order petitioner preferred appeal, revision and memorial. In all the proceedings, the petitioner suffered orders, hence, the present petition. Petitioner is stated to have attained age of superannuation and retired from service on 31.01.1991 and it is disputed by learned counsel for the state to the extent that petitioner retired on 31.07.2004.

4. Learned counsel for the petitioner submitted that having regard to the fact that petitioner has attained age of superannuation prior to 02.01.2008, the date on which penalty order was issued. The District Magistrate has no power to impose penalty in the light of Rule 43(b) of Bihar Pension Rules, 1950. The competent authority is the State Government.

5. *Per contra*, learned counsel for the respondent resisted the aforesaid contention and submitted that petitioner was subjected to disciplinary proceeding and it was concluded in imposition of penalty of dismissal from service. Thereafter, it was remanded by the Court and it has resulted in passing penalty order on 02.01.2008. Therefore, there is no infirmity in the order.

6. Heard learned counsels for the respective parties.



7. Dates and events are undisputed except in respect of retirement date of the petitioner to the extent that petitioner has retired on 31.01.1991 and it is being disputed by the respondents that he has attained age of superannuation and retired from service on 31.07.2004. Be that as it may, on 02.01.2008, the date on which the petitioner was punished by the District Magistrate, there was no relationship of employer or employee. Therefore, Bihar Pension Rules, 1950 is attracted in respect of retired employees are concerned. Departmental enquiry was continued while he was in service even after setting aside the order of dismissal and remand of the matter. Therefore, one has to draw inference that petitioner has attained age of superannuation and retired from service before 02.01.2008. In the result, the competent authority to impose penalty is the State Government in terms of Rule 43(b) of Bihar Pension Rules, 1950. It is necessary to reproduce Rule 43(b) of Bihar Pension Rules. It reads 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 specific 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 department 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;

(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 purpose of the rule-*

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the petitioner 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."

8. In the light of the aforementioned statutory provision, District Magistrate has no power to impose the penalty on the retired employee. Secondly, the order dated 02.01.2008 imposition of penalty on the petitioner is without authority of law. Accordingly, the order dated 02.01.2008 (Annexure-1) and consequential orders passed by competent authority in revision and memorial are set aside. The concerned authority is hereby directed to regulate the suspension period as a duty in view of the fact that alleged allegation relates back to the year 1977 and petitioner has attained age of superannuation on 31.01.1991 or 31.07.2004. Difference of salary for the suspension period shall be calculated and disbursed in favour of the petitioner. The above exercise shall be completed within a period of three months from the date of receipt of this order failing which petitioner is entitled to interest @ 6% per annum on difference of arrears of salary.

9. Accordingly, the present writ petition stands allowed.

10. At this stage, learned counsel for the petitioner submitted that petitioner is entitled to certain retiral benefits. On this issue, there is no prayer. Accordingly, the same stands rejected. However, rejection of the said prayer would not be a hurdle in submitting a detailed representation to the concerned



authority within a period of three months from the date of receipt of this order. If such representation is submitted, the competent authority is hereby directed to settle the petitioner's due in accordance with law.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

