IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2056 of 2011

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VIJAY KANT JHA S/O Late Laxmi Kant Jha Reted. A.D.J. Residing At Neel Knath Colony, Phase-2, A.G. Colony Road, P.O.- Ashiyana, Patna-25

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR
2. High Court Of Judicature At Patna Through Their Registrar General, High Court, Patna
3. Accountant General, Birchand Patel Marg, Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Jha, Advocate
		Mr. Anurag Pandey, Advocate
For the High Court	:	Mr. Raj Nandan Prasad, Advocate
		Mr. Vishesh Kumar Singh, Advocate
For the State	:	Mr. Mithilesh Kumar Upadhaya, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-10-2023

The petitioner was a District Judge, who was suspended and the suspension revoked prior to his retirement. Later, a charge-sheet was issued and disciplinary proceedings initiated, which concluded with a withholding of 25% of the pension. In addition to the challenge to the findings in the inquiry report, as based on surmises and conjectures, it is urged that there is no sanction from the Government as required under proviso to Rule 43(b) of the Bihar Pension Rules, 1950. It is also argued that there were two inquiry reports which makes suspect, the action of the High Court and, in any event, the disciplinary inquiry ought not to have been initiated since the allegations were with respect to a judicial order against which a statutory appeal lies and not a disciplinary proceeding.

2. We heard Sri P.K. Jha, learned counsel for the petitioner and Mr. Raj Nandan Prasad, Learned Standing Counsel for the High Court and Sri Mithilesh Kumar Upadhaya, learned counsel for the State.

3. Learned Standing Counsel appearing for the High Court produced before us the Standing Committee minutes which revoked the suspension but also directed the inquiry to be continued. It is pointed out that the Explanation to Rule 43 deems the departmental proceedings to have been instituted when the charges framed against the delinquent are issued to him or, if the Government servant has been placed under suspension from an earlier date, in the latter case on such earlier date. In the present case, the petitioner was placed under suspension prior to the retirement and in such circumstances, there is no requirement to obtain a sanction from the Government as required in the proviso. The inquiry proceeding by virtue of the Explanation is claimed to have commenced prior to his retirement; to continue which, after retirement, no sanction under Rule 43(b) is required. The allegation though arises from a judicial order, does not dwell upon the order itself but is regarding the tampering of the party array, thus, substituting an accused and absolving the actual perpetrator of the crime.

4. We have to first look at the procedural aspect pointed out insofar as no sanction having been obtained from the Government; which would vitiate the very inquiry itself. Rule 43 confers on the State Government the right to withhold or withdraw 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 the pecuniary loss caused to the Government; if the retired employee is found guilty of grave misconduct in a departmental or judicial proceeding or found to have caused pecuniary loss to the Government by misconduct or negligence during his service or during the period when he was re-employed after his retirement. The proviso requires the institution of the departmental proceeding while the government servant was on duty either before retirement or during re-employment and mandates the sanction of the State Government, if the disciplinary proceedings are instituted after the government servant has retired or there is severance from re-employment. The Explanation also deems the institution of the disciplinary proceedings to be from the date of suspension, if the suspension is from a date earlier to the issuance of the charge-sheet. Hence, the trite principle that institution of the departmental proceedings is from the date of issuance of charge-sheet to the delinquent employee, does not apply under the Bihar Pension Rules, 1950.

5. However, what assumes significance is the fact that the petitioner, who was suspended on 20.03.2008, was taken back in service after revoking the suspension on 28.06.2008. On 30.06.2008, he retired from service and by Annexure-1 dated 17.09.2008, the charge memo was issued to him. A disciplinary inquiry was conducted and based on the findings in the inquiry, the petitioner was imposed with the penalty of 25% withholding of pension.

6. The order of suspension dated 20.03.2008 is produced as Annexure-C along with counter affidavit of the second respondent dated 01.11.2017. Revocation of the suspension, dated 28.07.2008 is produced as Annexure-8, along with supplementary affidavit on behalf of the petitioner dated 12.12.2013. Annexure-8 reads as follows:-

> *The order of suspension passed against Sri Vijay Kant Jha, the then additional District and Sessions Judge, Fast Track Court, Begusarai (headquarter of Gaya) issued under Court's memo No.4075-76 dated 20.03.2008 is hereby revoked as he is going to retire on 30.06.2008.*

There is nothing stated in the said order, revoking suspension, about the continuance of inquiry and the reason stated for revoking the suspension is the impending retirement, two days hence.

7. The continuation of suspension as recorded by the Standing Committee, has not been informed to the petitioner nor specified in the order revoking suspension; which puts to peril the argument of the High Court based on the Explanation to Rule 43. For the date of suspension; earlier to the issuance of chargesheet, to be reckoned as the date on which the proceedings have been instituted, it is a necessary corollary that the suspension should continue till the charge-sheet is issued.

8. Often times, when an allegation is brought to the notice of the Disciplinary Authority, especially with respect to extraneous considerations having been employed in the discharge of judicial work, it is necessary that the Officer be kept out of service, not only to ensure the preservation of the records of the case, on which the allegations are raised, which is in the custody of the judicial officer but also to ensure that such acts leading to the allegations are not repeated, thus frustrating the due process in the justice delivery system. However, when the suspension is revoked, even if by reason of impending retirement; the continuance of which would have caused no prejudice to the Department, then the date of suspension cannot be said to be the date of institution of proceedings; which has to go by the trite principle of institution of proceedings being found as on the date of issuance of charge memo.

9. In the present case, admittedly, there is no sanction obtained from the Government for initiating the disciplinary proceedings after retirement. The Officer retired on superannuation with his suspension revoked two days before. The entire proceedings has to be set aside and in the consequence of the retirement of the petitioner, there could be no resumption of the inquiry proceedings from the stage at which the illegality is found, for reason of it not being a mere irregularity, being a violation of the statutory rules and there existing no employer-employee relationship as of now, more than a decade and half from the date of retirement.

10. The learned Standing Counsel for the High Court has referred to a Full Bench decision of this Court in ***Shambhu Saran v. The State of Bihar*** reported ***in (2000) 1 PLJR 665,*** wherein the scope of Bihar Pension Rules, 1950 was examined; but not with respect to the specific aspect now arising in the present case; according to us. Rule 43(b) of the Bihar Pension Rules, 1950, was found to be a provision aimed at punishing a government servant for a wrong committed, in a different way, because after retirement, major or minor penalties could not have been imposed under the Classification, Control and Appeal Rules; as could have been done, when in service. Rule 43(b) was found to safeguard such a limitation of time only to prevent misuse of power, visiting any undue harassment to the government servant after retirement. The said rule has no application when the departmental proceeding is pending against a government servant at the time of retirement.

11. A departmental proceeding pending at the time of retirement would not require a specific or express order of the Government to be continued even after retirement though there is a severance of the employer-employee status. The said status is continued only for the purpose of finding out the complicity or involvement of the employee concerned in the misconduct alleged. A different punishment; if the retired employee is found guilty is contemplated visiting adverse consequences on the retired employee's pension, which acts as a deterrent against every employee who otherwise would be tempted to abuse his authority just prior to retirement. We bow to the above proposition and are also bound by the same. However, the declaration does not hold good in the present case especially since the decision of the Standing Committee to continue the disciplinary proceeding was never communicated to the petitioner, who retired without any pending proceeding or blemish against him.

12. In fact, it is a moot question whether, after revocation of suspension, without issuance of a charge memo, the Standing Committee would have been competent to hold the disciplinary proceedings to be continuing; especially in the context of the rigor of Rule 43(b), when the Explanation to the

Rule enables a continued suspension till the date of issuance of a charge memo; in which event the proceeding would be deemed to have been initiated on the date on which the suspension was ordered. We find no application of the above decision in the peculiar facts coming out in the instant case.

13. The learned counsel for the petitioner also urged that the petitioner is entitled to 5% interest on the pensionary benefits illegally detained by the Government. The petitioner had specifically referred to memo No. P.C.-2-1-46/79/3155 dated 07.11.1981 which 'speaks of payment of interest on delayed payment of all kinds of pension'. The first portion included clause A, which is extracted below:-

> *In spite of the various measures taken so far in checking delay in the disposal of pension cases, Government are distressed to find that the delay has not yet been altogether eliminated resulting in financial distress and pecuniary loss to pensioners and families of deceased Government servants. In view of the above and considering the desirability of paying compensation to sufferers by way of interest and imposing monetary punishment to Government servants responsible for delay the State Government have decided as follows: -*
> *(a) Interest shall be allowed on delayed payment of all kinds of pension (including family pension) and D.C.R Gratuity @ 5% per annum for the period beyond three months after the pension/D. C. R. Gratuity becomes due and shall be payable till the end of the month preceding the month in which the payment of final pension actually begins and/or the payment of D.C.R. Gratuity is actually made. The interest shall be allowed only where it is clearly established that the payment*

> *of pension / D.C.R. Gratuity was delayed on account of administrative laps or for reasons beyond the control of the retired Government servants. Each case of payment of interest shall be considered by the concerned Administrative Department in consultation with the Finance Department and the payment of interest must be authorised through a Government order. In all cases, where interest is paid the entire amount of interest shall be realised from the Government servants responsible for the delay.*

14. The aforesaid provision is an expression and reflection of the distress of the Government, in the retirement dues of employees being not paid in time due to administrative lapses. Such administrative lapses are lapses in the computation and expeditious disbursement of pension dues and not the denial of pension and gratuity for reason of an administrative lapse which occurred in the institution of a disciplinary proceeding. We are, hence, not inclined to grant any interest for the delayed payment. However, we make it clear that the payment of the gratuity and the withheld pension shall be made within a period of 4 months from today and, if it is not disbursed, then the entire amount shall carry interest at the rate of 5% as enjoined upon by the Government in the afore-extracted memo from the next date of expiry of the 4 month period. We also make it clear that in such circumstances, the Government would be entitled to recover the interest portion, if any paid, from the government servant responsible for the delay.

15. The writ petition is allowed setting aside the impugned order of punishment, finding the very initiation of inquiry proceedings to be vitiated with the aforesaid observations/directions.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	NAFR
CAV DATE	
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