

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5565 of 2021

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Srinivas Chandra Tiwary Son of Sri Bharat Prasad Tiwary, resident of E2/8 of Sadhnapuri, P.S.-Gardanibagh, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Additional Chief Secretary, Department of Education, Bihar, Patna.
3. The Director (Administration)-cum-Additional Secretary, Department of Education, Bihar, Patna.
4. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Chitranjan Sinha, Sr. Adv. Mr.Prabhu Nath Pathak, Adv.
For the Respondent/s	:	Mr.Madanjeet Kumar, GP 20

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 25-07-2024

Heard learned Senior Counsel Mr. Chitranjan Sinha assisted by Mr. Prabhu Nath Pathak, learned counsel appearing for the petitioner and Mr. Madanjeet Kumar, GP 20 for the State.

2. The present writ application has been filed for quashing the Resolution contained in Memo No.264 dated 21.07.2020 issued by Director (Administration)-cum-Additional Secretary, Department of Education, Bihar, Patna by which the departmental proceeding under Rule-43(b) of Bihar Pension Rule has been initiated after 7 months from the date of retirement which is wholly misconceived on fact and in law



since no departmental proceeding was pending on or before the date of retirement and as such, the departmental proceeding under Rule-43(b) of Bihar Pension Rule is not maintainable under Rule-43(b) of Bihar Pension Rule.

However, the memo of charge has been framed for the said departmental proceeding on the basis of letter of Investigating Officer issued under Memo No.768 dated 05.04.2017 which is unsustainable in the eye of law as F.I.R. is not substantive evidence, even for the framing of charge in the departmental proceeding.

3. The brief fact of the case is that the petitioner was member of Bihar Education service and retired on 31.12.2019 from the post of Deputy Director (Academic), Bihar Board of Open School, Department of Education, Bihar, Patna. He was Secretary, Bihar School Examination Board (hereinafter referred to as the Board) and transferred to the post of Assistant Director, Mid day meal under Department of Education, Bihar vide notification no.2365 dated 07.09.2015 (Annexure-2).

4. An F.I.R. was lodged against several persons regarding the irregularity conducted in examination of 2016 in Bishun Rai College, Bhagwanpur, Hazipur, Vaishali but the petitioner had no concern since he had already been transferred and thus he



was not named in the F.I.R. but during the course of investigation, the petitioner was made accused for not taking action in pursuant to recommendation of Kadachar Samiti and the deputation of one Anil Kumar as Personal Assistant to the Chairman of the Board. Though he was granted bail, he was put under suspension on 26.12.2016 w.e.f. 18.11.2016 in contemplation of departmental proceeding by the Director (Administration)- cum-Additional Secretary, Education Department, Bihar, Patna, who was neither the appointing authority nor a disciplinary authority and as such, the aforesaid order was challenged in C.W.J.C. No.5978/2017 before this Court.

5. During pendency of the said case, memo of charge was framed by the Secretary of the Board, in pursuance to the letter of Investigating Officer, issued under Memo No.768/2017 dated 05.04.2017 which was treated as evidence.

6. Learned Senior Counsel for the petitioner submits that C.W.J.C. No.5978 of 2017 was allowed on 12.10.2017 (Annexure-6) after hearing the parties and the order of suspension contained in Memo No.1056 dated 26.12.2016 (Annexure-4) along with Memo of Charge (Prapatra-K) framed by the Secretary of the Board (Annexure-5) were set aside. In



compliance of the aforesaid order, the respondent Department cancelled the order of suspension and memo of charge vide notification contained in Memo No.92 dated 06.02.2018 issued by the Director (Administration)-cum-Additional Secretary, Department of Education, Bihar, Patna. Thereafter, the petitioner was posted as Deputy Director (Academic), Bihar Board of Open School, Department of Education, Bihar, Patna and continued till the date of retirement i.e. on 31.12.2019.

7. It is further submitted that no departmental proceeding was initiated on or before the date of retirement and the suspension order and memo of charge were quashed by the Court, therefore, the initiation of departmental proceeding under Rule-43(b) of Bihar Pension Rule after seven month from the date of retirement vide impugned Resolution contained in Memo No.264 dated 21.07.2020 as contained in Memo No.264 dated 21.07.2020 is wholly unsustainable in the eye of law. Learned Senior Counsel submits that it is well established principle laid down by the Hon'ble Court that in absence of any disciplinary proceeding on the date of superannuation, there cannot be conversion of any proceeding into a proceeding u/r 43(b) of Bihar Pension Rule and Resolution seeking to convert a non-existent proceeding into a proceeding u/r 43(b) is held to be



illegal.

8. It is submitted that the Rule 43(b) of the Bihar Pension Rule has provided safeguard to retired person against whom no departmental proceeding was initiated during service for preventing under harassment to the retired government servant. It goes without saying that the departmental proceeding under Rule-43(b) of Bihar Pension Rule for the charge of 2015 is not permissible under proviso (a)(ii) of Rule-43(b) of Bihar Pension Rule which makes clear that proceeding under Rule-43(b) of Bihar Pension Rule can only be initiated for those incidents which took place not more than 4 years and thus, the proceeding under Rule-43(b) of Bihar Pension Rule has been initiated against those charge/allegation of 2015 i.e. after four years from the date of such allegation which is not permissible in the eye of law. In the memo of Charge framed on 07.07.2020, the posting of the petitioner has been given as Secretary, Bihar School Examination Board made upto 2017 which is contrary to the fact as the petitioner was never Secretary of the Board in the year 2017 as the period of the petitioner as Secretary was from 17.07.2014 to 07.09.2015, which is evident from Annexure-2.

9. It is submitted that it is a well settled principle laid down by this Court, that initiation of departmental proceeding under



Rule-43(b) of Bihar Pension Rule after a period of four years of happening of events is not permissible under the said Rule-43(b) of Bihar Pension Rule and thus, the impugned resolution containing Memo No.264 dated 21.07.2020 as contained in Annexure-1 is unsustainable in eye of law. The Hon'ble Apex Court has held in ***Roop Singh Negi Vs. Punjab National Bank 2009 (2) SCC 570***, that the purported evidence collected during investigation by the Investigating Officer cannot be treated as evidence in the disciplinary proceeding and thus, the Memo of Charge framed beyond four years from the date of events of happening is not only permissible under Rule-43(b) of Bihar Pension Rule but is wholly illegal and without jurisdiction.

10. The memo of charge was framed under Rule-43(b) of Bihar Pension Rule on 07.07.2020 against the happening of allegation made in year 2015 which had already been expired four years (stipulated period) in year 2019 on the basis of letter written by I.O. under Memo No.768/17 dated 05.04.2017 to Secretary, Bihar School Examination Board collected during investigation as is more than 4 years from the date of events in Gandhi Maidan P.S. Case No.270/2016 which is wholly unsustainable on facts and in law. Several charges were framed in pursuant to the letter dated 05.04.2017 of I.O.



11. It is further submitted that all the charges were framed in the departmental proceeding under Rule-43(b) of Bihar Pension Rule beyond four years from the date of alleged allegation based on letter of I.O. which is wholly misconceived on facts and in law. The charges were framed without any evidence as purported facts or evidence collected during investigation of F.I.R. which cannot be sustainable in the eye of law as purported evidence collected during investigation cannot be treated as evidence for using in departmental proceeding as held by the Hon'ble Apex Court in the case of **Roop Singh Negi (supra)** and thus, the charges framed after four years from the date of alleged allegation of year 2015 is barred under Rule-43(b) of Bihar Pension Rule. Reliance has been placed upon the judgment of the Apex Court as reported in **AIR 1995 SC 1853** in the case of **State of Bihar & Ors. v. Mohd. Idris Ansari**, para-6 which reads as under:

“6. Having given our anxious considerations to these rival contentions, we find that the decision of the High Court on the facts of the present case is unexceptionable. The earlier notice dated 17.07.1993 by which fresh departmental proceedings were sought to be initiated was rightly quashed by the High Court as it was based on the alleged misconduct of the



respondent during 1986-87 which was more than four years prior to the issue of the said notice. Such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent was clearly hit by the proviso to sub-rule(b) of Rule 43 of the Rules.”

12. Reliance has also been placed upon the Division Bench judgment of this Court, in the case of ***Urmila Sharma @ Urmila Singh & Anr. Vs. The State of Bihar & Ors.*** as reported in ***2010(2) PLJR 845***, which has resolved the issue regarding the basis of calculating four years embargo from date of knowledge of the occurrence or from the date on which the misconduct/occurrence was committed. For better appreciation of the Bihar Pension Rule, para-2 of the said judgment is extracted herein below:-

“2. Chapter-III of the Rules deals with the general provisions relating to grant of pension. Section-I of the said chapter deals with general aspects. Regard being had to the controversy in issue, it is apposite to produce Rule 43(b) in entirety.

“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 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-

(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.”

13. It is further submitted that since the order of suspension of the petitioner dated 26.12.2016 w.e.f. 18.11.2016 (Annexure-4) and memo of charge dated 03.05.2017 (Annexure-5) were found illegal and without jurisdiction by this Court in C.W.J.C. No.5987/2017, the order of suspension and the memo of charges were quashed and cancelled by this Court on 12.10.2017 (Annexure-6) but no salary for the period of suspension i.e.



from 18.11.2016 to 06.02.2018 was paid to the petitioner even when no departmental proceeding was initiated on or before the date of retirement i.e. 31.12.2019 and therefore, the petitioner filed writ petition bearing No.5496/2020 before this Court for directing the respondent to pay salary for period of suspension i.e. from 18.11.2015 to 06.02.2018 which is pending before this Hon'ble Court. Since, no retiral benefit except part payment against provident fund was paid to the petitioner even no departmental proceeding was initiated on or before the date of retirement and as such, writ petition bearing EC- BRHC 99 -08652 -2020 was filed on 09.07.2020 through E-Filing for directing the respondent for payment of retiral benefit which is pending before this Hon'ble Court. The departmental proceeding under Rule- 43(b) of Bihar Pension Rule issued under Resolution dated 21.07.2020 has not been initiated up to the date of filing of the said writ petition bearing EC-BRHC99-08652-2020 i.e. on 09.07.2020.

14. Learned counsel for the State has filed a counter-affidavit on behalf of the State. He submits that the FIR bearing Kotwali P.S. Case No.270 of 2016 was registered in the topper scam which has taken place in the year 2016 for alleged irregularity in examination of 2016. This scam had defamed the image of



Bihar School Examination Board as well as the State of Bihar in the field of education. Accordingly SIT was constituted for disclosure of fact regarding the scam. In course of investigation, several officers were found primarily involved in the conspiracy or guilty for financial corruption or for dereliction in duty while discharging his duty being an officer of the B.S.E.B. and as such, Vigilance P.S. Case No.32 of 2016, arising out of Kotwali P.S. Case No.270 of 2016 has been registered in which the instant petitioner was one of the co-accused in a said case. At the time of lodging of FIR, the petitioner was not officiating as an Officer of the Board but prior to 07.09.2015, he was officiating the Incharge Secretary of the BSEB for near about three years. In course of investigation, several irregularities were found and accordingly, criminal as well as departmental proceeding was initiated against the erring officials and therefore, memo of charge dated 03.05.2017 framed by the Secretary of Bihar School Examination Board, Patna and on the basis of the said memo of charge departmental proceeding was initiated against the petitioner vide order contained in memo no.1056 dated 26.12.2016, which was later on set aside by the order of this Court with a liberty to proceed in accordance with law, if the disciplinary authority, so desires.



15. Since there were several allegations against the petitioner, who was officiating the Authority of the Incharge Secretary of BSEB, Patna being an Officer of Bihar Education Services posted there, the departmental proceeding under the provision of 43(b) of the Bihar Pension Rule has been initiated after the retirement of petitioner and the same is legal and valid proceeding and due to this, the salary for the period of suspension has not been given to the petitioner. It is further submitted that the petitioner superannuated from service on 31.12.2019 and the charge is of the year 2015 and by the order dated 12.10.2017 passed in C.W.J.C. No.5978/17 of this Court with a liberty to procedure according to law, hence, the departmental proceeding initiated under Rule 43(b) is wholly justified.

16. Per contra, a rejoinder to the supplementary counter-affidavit has been filed by the petitioner. It is submitted that the respondent department admits that the charges were framed for the year 2015 and departmental proceedings were initiated under Rule-43(b) of the Bihar Pension Rule initiated on 21.07.2020 i.e. beyond four years from the date of events or charge and hence, the departmental proceeding under Rule-43(b) of Bihar Pension Rule is not maintainable in view of



proviso II of the said Rule. It goes without saying that the petitioner was posted as Secretary, BSEB for the period from 17.07.2014 to 07.09.2015 as is evident from Annexure-2 and the said charges levelled against the petitioner under Rule-43(b) of Bihar Pension Rule relating to period February 2015 to May 2015 and this proceeding has been initiated under Rule-43(b) of Bihar Pension Rule on 21.07.2020 and thus, all charges are beyond four years from the date of initiation of proceeding i.e. 21.07.2020 under Rule-43(b) of Bihar Pension Rule is not maintainable in view of proviso-II of the said Rule.

17. Having heard the rival submissions of the parties and considering the facts and circumstances of the case including the materials available on record. It is an admitted position that the order of suspension contained in Memo No.1056 dated 26.12.2016 (Annexure-4) along with Memo of Charge (Prapatra-K) framed by the Secretary of the Board (Annexure-5) were set aside by a co-ordinate Bench of this Court with liberty to proceed in accordance with law. It is not out of question that the alleged offence was of the year 2015 and the departmental proceeding under Rule-43(b) of Bihar Pension Rule has been initiated against those events which took place before four years from the date of retirement. The respondent is required to be



strictly put to the four years period specified in the proviso to Rule 43(b) of the 1950 Rules. The conclusions being devoid of any substance, are also based on surmises and conjunctures, therefore, this Court does not find the departmental proceeding as a result of such inquiry to be sustainable.

18. The Resolution contained in Memo No.264 dated 21.07.2020 as contained in Annexure-1 to the writ application is hereby quashed.

19. The writ application is accordingly allowed and petitioner is entitled to all retiral benefits.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2024
Transmission Date	NA

