

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4082 of 2020

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Mahendra Prasad Son of Late Harihar Prasad, Resident of Mohalla-Sundargah
(Bhainsasoor), P.O. and P.S.-Biharsharif, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Bihar, Patna.
2. The Under Secretary, Govt. of Bihar, Patna.
3. The Director, Mines and Geological Department, Bihar, Patna.
4. The Deputy Director, Mines and Geological Department, Patna Circle,
Patna.
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Adv. Mr. Satya Ranjan Sinha, Adv. Ms. Seema Kumari, Adv.
For the State	:	Mr. Sangha Mitra Ghosh, (AC to GA-4)
For the A.G.	:	Mr. Bindhyachal Rai, Adv.
For the Mines	:	Mr. Naresh Dixit, Adv. Ms. Kalpana, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 02-02-2024

Learned counsel for the petitioner has filed
rejoinder to the counter-affidavit today in the Court itself which
has been accepted.

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

3. The present writ application has been filed for
quashing of the order contained in Memo No. 4736 dated
12.12.2019 and further for quashing of Memo No. 1188 dated
06.04.2015 passed by Under Secretary, Mines and Geological

Department, Government of Bihar, Patna by which the pension of the petitioner has been forfeited permanently.

4. Learned counsel for the petitioner submits that the petitioner was subject to the departmental proceeding and he has moved earlier before this Hon'ble Court in C.W.J.C. No. 2739 of 2015 in which final order was passed on 13.04.2015. The petitioner further moved in C.W.J.C. No. 8057 of 2015 which was heard and disposed of by this Hon'ble Court on 25.06.2019 with liberty that the petitioner shall file application under Rule 24(2) of the Bihar CCA Rule, 2005.

5. Learned counsel for the petitioner further submits that prior to conclusion of the departmental proceeding against him, he was retired on 31.08.2012 from the post of Stenographer. He further submits that vide Memo No. 1188 dated 06.04.2015, the respondents have decided to continue the proceeding under Rule 43(b) of the Bihar Pension Rule, 1950 (hereinafter referred to as 'the Rule of 1950').

6. Learned counsel for the petitioner further submits that after taking decision that pension rule shall continue, the final order has been passed vide Memo No. 4736 dated 12.12.2019. He further submits that the order dated 12.12.2019 has been passed and based on the decision that the

departmental proceeding shall continue vide Memo No. 1188 dated 06.04.2015.

7. Learned counsel for the petitioner further submits that the said order contained in Memo No. 1188 dated 06.04.2015 is not sustainable in the eye of law, due to the reason that order passed under the Rule of 1950 has to be passed by the State Government, whereas this order has not been passed by the State Government which is apparent from Annexure-2. He further submits that since the transferring of departmental proceeding under the Rule of 1950 is itself bad in law, as without jurisdiction, therefore, any consequential order based on the said decision shall also treated to be non-jurisdictional and illegal.

8. Learned counsel for the State submits that Annexure-2 has not been passed by the State Government, rather it is being passed by the Additional Secretary to the State.

9. In the light of the submissions and upon perusal of the record, it is necessary from this Court to re-look the provision of Rule 43(b) of the Bihar Pension Rule, 1950 which is stated below:

“The [Appointment authority of the post held at the time of retirement] 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.-For the purposes of the Rule-

(a) departmental proceeding shall be deemed to have been instituted when the changes 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”

10. It transpires to this Court that the order passed under the Rule of 1950 is of 06.04.2015, whereas amendment in the said provision has come in the year 2020, therefore, provisions earlier to amendment shall prevail.

11. In this regard, the order dated 02.01.2024

passed in C.W.J.C. No. 4529 of 2018 is very much relevant.

12. In this view of the matter, this Court is of the view that the order contained in Memo No. 1188 dated 06.04.2015 is absolutely without jurisdiction and therefore, the subsequent order passed vide Memo No. 4736 dated 12.12.2019 is also bad in law and therefore, both the orders is hereby set aside.

13. The authority may proceed in accordance with law.

14. With this observation, the present writ application stands allowed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.02.2024
Transmission Date	NA