IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4933 of 2020

Nand Kishore Prasad Son of Late Jai Mangal Prasad, resident of Village- Mohan Khandha, P.S.- Harnaut, District- Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. Special Secretary, Road Construction Department, Bihar, Patna.
4. The Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna.
5. The Accountant General of Bihar, Veer Chand Patel Path, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhu Nath Pathak, Adv.
For the State	:	Mr. Sushil Kumar (GP-22)
		Mr. Uday Prasad (AC to GP-22)
For the AG	:	Mr. Vivekanand Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 09-05-2024

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General, Bihar.

2. The present writ petition has been filed for quashing the notification issued *vide* Memo No.6680(S) dated 22.07.2019 (annexed as Annexure-1) issued by the Special Secretary, Road Construction Department, Bihar, Patna.

3. Learned counsel for the petitioner submits that the petitioner was retired from the service on 29.02.2012 from

the post of Superintending Engineer, Road Construction Department, Bihar, Patna. Counsel submits that the period for which allegation has been made in the present case, the petitioner was posted as Assistant Engineer, Road Sub-Division, Naugachia under Road Division, Khagaria. The relevant period was January, 1992 to 5th April, 1995. Counsel further submits that a departmental proceeding for non-inspection of office of the Junior Engineer in four times in a year has been initiated in the year 2012 i.e. 17 years back which was almost not concerned with the petitioner *vide* resolution contained in Memo No.1609(S) dated 10.02.2012 (annexed as Annexure-2/A). Counsel submits that in the said departmental proceeding, the Engineer-in-Chief was appointed as Enquiry Officer and Presenting Officer was also appointed.

4. Learned counsel for the petitioner submits that a departmental proceeding was initiated against the petitioner on 10.02.2012 for the allegation made for the year 1992 to 5th April, 1995, few weeks prior to retirement of the petitioner as the petitioner retired from service on 29.02.2012. After retirement of the petitioner from the service, the proceeding has been initiated under Rule-17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 which was

converted into Rule 43(b) of the Bihar Pension Rules, 1950 on 14.03.2012 *vide* Resolution contained in Memo No.2860(S) dated 14.03.2012 (annexed as Annexure-3) issued by the Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna. Counsel further submits that after conversion of the departmental proceeding into Rule 43(b) of the Bihar Pension Rules, 1950, a subsequent resolution contained in Memo No.2860(S) dated 14.03.2012 has been passed which is wholly unsustainable in law and on the allegation of non-inspection of the work of the office of his sub-ordinate i.e. Junior Engineer (Sectional Officer) during posting of the petitioner as Assistant Engineer in Road Sub-Division, Naugachia and other allegation relating to year 24.01.1992 to 05.04.1995 made on 10.02.2012 i.e. after about 17 years.

5. Learned counsel for the petitioner further submits that he has raised three legal issue in the present case. Counsel submits that as soon as the petitioner retired from the service and it has been decided to convert the proceeding under Rule 43(b) of the Bihar Pension Rules, 1950, then certain proviso has already been stated in the said provision shall also come forward. Counsel also submits that the proviso categorically states that under Rule 43(b) of the Bihar Pension

Rules, 1950 shall continue only when the matters relating to allegation imposed must not be prior to four years after retirement. Counsel further submits that from the bare reading of the order impugned, it is very much clear that under proceeding has been initiated under Rule 43(b) of the Bihar Pension Rules, 1950, but the final order has been passed under Rule 43(a) of the Bihar Pension Rules, 1950. Counsel further submits that he has relied on the judgment which he has annexed in his rejoinder to the counter affidavit in the case of ***Nityanand Kumar Singh Vs. The State of Bihar & Ors.*** passed in ***Civil Writ Jurisdiction Case No.2527 of 2009 dated 17.01.2017*** in which it has categorically been held by this Hon'ble Court that the proceeding under rule 43(b) and 43(a) of the Bihar Pension Rules, 1950 have different horizons and grounds. It cannot be made that the proceeding has been initiated under rule 43(b) of the Bihar Pension Rules, 1950 and final order as well as the operative portion shall construe the punishment under Rule 43(a) of the Bihar Pension Rules, 1950. Counsel further submits that he also relied on letter issued by the General Administration Department No.1882 dated 06.02.2020 which also indicates that the proceeding under rule 43(a) and 43(b) of the Bihar Pension Rules, 1950 are two different aspect of the matter as well as proceeding as per the proviso of rule 43 must not be more than four years and as such, the said order is not sustainable in the eye of law and be quashed.

6. Learned counsel for the petitioner submits that so far as the merit of the departmental proceeding is concerned is also not sustainable and in this regard, he relied on the judgment passed by this Hon'ble court in case of ***Kumar Upendra Singh Parimar Vs. B.S. Co-oprative Land Development Bank Ltd. & Ors*** reported in ***(2000) 3 PLJR 10*** in which it has been held that in holding of a departmental enquiry, it is required to prove the charges against the delinquent employee by producing the departmental witness and by examining them by Enquiry Officer. If the delinquent employee does not attend the enquiry even then, the department has to prove the charges by examining the witness in support of his own document. Here in the present case, no such criteria has been fulfilled and then Enquiry Officer has passed the order. Counsel further submits that for the purpose of initiation of proceeding under rule 43(b) of the Bihar Pension Rules, 1950, it has to be ascertained by the employer that grave misconduct has been done as well as what actual financial loss has been caused, whereas, in the present

case, there are lacking of both.

7. Learned counsel for the State on the other hand submits that the detailed counter affidavit has been filed and in the counter affidavit, the stand has been taken that when the report of the CAG has been submitted, thereafter the proceeding has been initiated. Counsel also submits that departmental proceeding has been initiated against the petitioner prior to his retirement. But it is true that during his service, the departmental proceeding could not be concluded and conversion of proceeding under rule 43(b) of the Bihar Pension Rules, 1950 has been made well within the law and there is no illegality in conversion of the said proceeding. Counsel further submits that there is no illegality in the said order and this order is sustainable and the present writ petition is fit to be dismissed.

8. In the light of the submissions made by the parties, it is necessary to re-look into the provisions laid down under rule 43(a) and 43(b) of the Bihar Pension Rules, 1950.

Rule 43(a) of the Bihar Pension Rules, 1950 states as follows:-

> *"Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding*

or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this Rule, shall be final and conclusive"

Rule 43(b) of the Bihar Pension Rules, 1950 states as follows:-

"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."

The operative part of the judgment on which the counsel for the petitioner relied in case of ***Nityanand Kumar Singh Vs. The State of Bihar & Ors. (supra)*** states as follows:-

> *"In so far as Rule 43(b) is concerned, the Division Bench has explained that such power is exercisable if the pensioner in a departmental or judicial proceeding is held guilty of grave misconduct or have caused pecuniary loss to the Government by misconduct or negligence during his service including service rendered after re-employment. The relevant part of the order which would govern the issue raised herein, is reproduced here-in-below for ready reference:*
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> *" Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not*

related to his conduct during service and/ or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43 (a) and that of Rule 43 (b). Both the provisions operate in different areas having different connotations. The decision under rule 43 (a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State government to continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a government servant done while he was in service. Such provision in the rules governing pension vests the State Government with necessary powers to maintain action against a retired government employee for his conduct while in service but subject *to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43(a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all.*

Hence, the requirement of proviso (a) (ii) cannot apply to Rule 43 (a). Such provision in the proviso puts a restriction upon the power of the State government to initiate a departmental proceeding if not instituted while the government servant was in service, either before retirement or during re-employment. Such departmental proceeding, by virtue of the provision under consideration cannot be in respect of an event which took place more than four years before the institution of such proceeding. Rule 43 (a) comes into play after retirement and applies till pensioner breathes his last. There *can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Rule 43 (a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later. Hence, it cannot be governed by proviso (a) (ii) to Rule 43 (b) as it can apply only to initiation of departmental proceeding by the Government after an employee has retired.*

Having answered the issue referred to the Division Bench, we refer the matter back to the learned Single Judge for hearing the writ petition for its disposal in accordance with law.

As the above order itself reveals we have not gone into the facts of the case."

It is self eloquent from the issue settled by the division bench that Rule 43(a) of 'the pension rule', is not related to a conduct of a pensioner during service period and/or service rendered on re-employment rather it is a conduct expected from a pensioner after his retirement and after he is granted pension that is to

> *say, his future conduct. The legal position settled by the division bench is that a decision under Rule 43(a) is not on ground of a departmental proceeding or a judicial proceeding instituted while the Government servant was in service or instituted later in respect of an event related to his service rendered before retirement or reemployment which is the arena covered by Rule 43(b).”*

9. Here in the present case, it transpires to this Court that the wrongs alleged to be done by the petitioner in the year January 1992 to April 1995 and proceeding has been initiated in the year 2012 i.e. after lapse of about 17 years i.e. more than four years of such alleged wrong which comes within the proviso of Rule 43 of the Bihar Pension Rules, 1950. Therefore, the conversion of proceeding Rule 43(b) of the Bihar Pension Rules, 1950 is itself bad in law.

10. This Court also upon perusal of the impugned order acknowledge that the proceeding has been initiated under Rule 43(b) of the Bihar Pension Rules, 1950, but in the operative part of the order, the punishment has been imposed according to Rule 43(a) of the Bihar Pension Rules, 1950 which

is also cannot be in accordance with law as laid down in the judgment as well as in the rule itself.

11. State is directed to pay the consequential benefits which has been stopped or not paid in the light of the impugned order within three months from the date of production of the order.

12. In this view of the matter alone, this Court finds that the order impugned is not sustainable and therefore, notification issued *vide* Memo No.6680(S) dated 22.07.2019 (annexed as Annexure-1) issued by the Special Secretary, Road Construction Department, Bihar, Patna is hereby set aside.

13. Accordingly, with the aforesaid observations and directions, this writ petition is hereby allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA