

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4632 of 2020

Harish Kumar Singh S/o Late Haribansh Singh, R/ Flat No.- 302, Prernakunj
Apartment S.K. Puram, Lane No.- 4, P.O. and P.S. Danapur District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Government of Bihar.
2. The Principal Secretary, Minor Water Resource Department, Government of Bihar.
3. The Joint Secretary (in charge of Vigilance), Minor Water Resource Department, Government of Bihar.
4. The Deputy Secretary, Minor Water Resource Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pawan Kumar, Adv.
	:	Mr. Santosh Kumar, Adv.
For the Respondent/s	:	Mr.Sita Ram Yadav (GP15)
	:	Mr. Rakesh Kumar Shrivastava, AC to GP15

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

4 27-06-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ application has been filed for quashing of the notification contained in Memo No.5741 dated 19.08.2019 (Annexure- 16) issued by the Government in purported exercise of power under Rule 43(b) read with Rule 139 of the Bihar Pension Rules, 1950 by which decision was made to deduct 5% pension of the petitioner for a period of 5 years.

3. Counsel for the petitioner submits that the petitioner was joined the post of Assistant Engineer, Irrigation Department, Bihar on 31.01.1979 and till then he was discharging duty to the satisfaction of authority. He submits that the petitioner retired from his service on 31.01.2016 from the



post of Superintending Engineer, Minor Irrigation Circle, Patna.

4. Counsel further submits that after retirement the proceeding has been initiated in which punishment was imposed by the impugned order and those punishment was on the basis of Rule 43(b) read with Rule 139 of the Bihar Pension Rules, 1950.

5. Counsel for the petitioner categorically submits that it is settled principles of law that for initiation of proceedings under section 43(b) of the Bihar Pension Rules, there must be pecuniary loss to the Government and charges be proved against the employee concerned of grave misconduct.

6. Counsel further submits that in the present case, the proceeding has been initiated, but neither the charge of misconduct nor pecuniary loss has been alleged against the petitioner. From the punishment order, it has been categorically mentioned in the 5th paragraph that due to lack of pro-active action against the contractor, he was punished.

7. Counsel further submits that similarly the ingredient of Rule 139 of the Bihar Pension Rules is also not there.

8. Counsel for the State submits that a full fledged departmental enquiry has been conducted and after granting full opportunity following the principles of natural justice, the punishment order has been passed, and therefore, there is no



need of any interference in the same.

9. With a view to decide this case, it is necessary to write the provision of Rule 43(b) as well as Rule 139 of the Bihar Pension Rules, 1950 which are as follows:-

43(b) 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 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

Rule 139. *(a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved.*

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

The [Appointment authority of the post held at the time of retirement] reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under the control, if they are



satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.]

10. Upon bare perusal of those provisions, it become crystal clear that Rule 43(b) of the Bihar Pension Rules shall apply in case of grave misconduct and the case of pecuniary loss. Here both are lacking in the present case which transpires from the punishment (impugned order).

11. It also transpires to this Court that prior to passing this order, opportunity as mentioned under Rule 139 of the Bihar Pension Rules, 1950 has also not been granted.

12. It is due to those reasons mentioned above, this Court is of the firm view that the order impugned is not sustainable in the eye of law, and hence, the order contained in Memo No.5741 dated 19.08.2019 (Annexure-16) is hereby set aside.

(Dr. Anshuman, J.)

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