IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4671 of 2022

Anil Kumar Son of Late Ishwer Sharan Lall Resident of Village - 54A, Anandpuri, West Boring Canal Road, P.S. Srikrishnapuri, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary and Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
3. Mr. Rajesh Gupta, Additional Departmental Inquiry Commissioner cum Enquiry Officer, Government of Bihar, Patna.
4. The Under Secretary, Commercial Taxes Department, Government of Bihar, Patna.
5. The Accountant General, Bihar, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Akhilesh Dutta Verma, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC 11)
		Mr. Sri Ram Krishna, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT
Date : 06-08-2024

The petitioner has filed the instant writ petition under Article 226 of the Constitution praying for issuance of writ in the nature of mandamus directing the respondent for payment of leave encashment and gratuity of the petitioner by way of his retrial dues with interest on and from 31.01.2014, the date of superannuation of the petitioner and for an appropriate direction/order/orders/command/commands as may be deemed fit and proper in the facts and circumstances of the case and also for any other relief/reliefs for which the petitioner may found entitled.

2. For the purpose of adjudication of the instant writ application, it is necessary to delineate some facts as hereunder:-

“The petitioner was posted as an Assistant Commissioner, Commercial Taxes at Ara. Sometimes in the year, 2007, following an allegation of acceptance of illegal gratification, the Vigilance Investigation Bureau constituted a trap and on 31st March, 2007, the petitioner was allegedly caught red handed while taking bribe by the trap members of Vigilance Investigation Bureau. A complaint was lodged against the petitioner by a competent Police Officer at Vigilance P.S. and on the basis of the said complaint, Vigilance Case No. 44 of 2007 under section 7/13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 was registered. Since the petitioner was arrested and subjected to a criminal proceeding, a departmental proceeding was started on 28th May, 2008 on the basis of an information that the petitioner was arrested in Vigilance P.S. Case No. 44 of 2007 while accepting bribe. The said departmental proceeding was continuing and in the meantime, w.e.f. 31st January, 2014, the petitioner retired from service on attainment of age of sixty years. On his retirement, the departmental proceeding pending against him was converted to a proceeding under section 43(b) of Bihar Pension Rules. On 22nd July, 2016, finally the petitioner was awarded major punishment by virtue of which his full pension was stopped. He was also denied payment of gratuity and leave encashment. It is contended by the petitioner that during the period between 31st March, 2007 and 31st July, 2018, he did not get any amount except the subsistence allowance."

3. The said order of punishment dated 22nd July, 2016 was challenged by the petitioner in CWJC No. 19030 of 2016. The said writ petition was disposed of by a Co-ordinate Bench of this Court vide an order dated 28th February, 2019 with the following observation:-

> *"There is no statement that thereafter petitioner was supplied with the documents which were required by him in the proceedings. Admitted position that emerges from the pleadings on record is that documents requested by petitioner were not supplied to him. It is also clear that authorities had not rejected copies of the documents by assigning any reasons.*
>
> *For non compliance of the procedure prescribed under Rule 17(11) of the Bihar CCA Rules, 2005, order passed*

under Rule 43(b) of the Bihar Pension Rules stands vitiated. Neither the documents were made available nor any opportunity was given to the petitioner to inspect or examine the same. No issue has been raised regarding documents being requested by the petitioner as being unnecessary or irrelevant for the purpose of enquiry. In view of such situation, proceedings against the petitioner suffered on account of violation of the procedure prescribed under Rule 17(11) of the Bihar CCA Rules, 2005.

Learned counsel for the respondent State in the proceedings today has objected to the petitioner's approaching this Court directly without following the procedure of Rule 24(2) of the Bihar CCA Rules, 2005. He submits that this Court may not exercise its jurisdiction in favour of the petitioner for such matter where the statutory alternative remedy is available to him. In the instant case, procedural lapse stands admitted from the pleadings available on the record.

The instance of procedural lapse in the departmental proceedings was taken note of by this Court in the earlier writ proceedings arising out of C.W.J.C.No. 12017 of 2010. As such, this Court would *not consider it appropriate to relegate the petitioner to the statutory alternative remedy, more so in view of the fact that the departmental proceedings remained pending for such a long time in spite of specific direction of this Court.*

Order dated 22.7.2016 stands quashed. This Court would observe that it would be open to the respondents to proceed against the petitioner afresh after considering the petitioner's claim for documents requested for by him.

In view of the delay already having occurred in the

instant proceedings, this Court would observe that if the respondents propose to proceed against the petitioner after complying with the said requirements, the same should be done positively within a period of three months.

The issue of consequential arrears only, payable to the petitioner would abide by the proceedings to be conducted against the petitioner. Current pension, however shall be paid to the petitioner within four weeks from the date of receipt/production of a copy of this order.

If the respondents fail to proceed in accordance with law within the aforesaid period, consequential arrears should also *be paid to the petitioner on lapse of three months.*

Writ petition stands allowed."

4. The instance of procedural lapse in the departmental proceeding was taken note of by this Court in earlier writ proceedings arising out of CWJC No. 12017 of 2010. As such, this Court would not consider it appropriate to relegate the petitioner to the statutory alternative remedy, more so in view of the fact that the departmental proceedings remained pending for such a long time inspite of specific direction of this Court.

5. Order dated 22nd July, 2016 stands quashed.

6. This Court would observe that it would be open to the respondents to proceed against the petitioner afresh after considering the petitioner's claim for documents requested for by him.

7. In view of the delay already having occurred in the instant proceedings, this Court would further observe that if the respondents propose to proceed against the petitioner after complying with the said requirements, the same would be done positively within a period of three months.

8. The issue of consequential arrears only, payable to the petitioner would abide by the proceedings to be

conducted against the petitioner. Current pension, however shall be paid to the petitioner within four weeks from the receipt/production of a copy of this order.

9. If, the respondents failed to proceed in accordance with law within the aforesaid period, consequential arrears should also be paid to the petitioner on lapse of three months.

10. It is submitted at the outset by the learned Advocate for the petitioner that as per the ultimate direction made in CWJC No. 19030 of 2016, the petitioner was not paid consequential arrears even after the lapse of three months as directed by the Writ Court. After the said order having been passed in CWJC No. 19030 of 2016, the petitioner submitted a representation on 19th July, 2019 requesting the respondents for payment of his arrear salary, gratuity and leave encashment. On 14th June, 2019, a fresh departmental chargesheet was issued against the petitioner after expiry of about twelve years from the date of the alleged incident. The petitioner was directed to submit reply to the show cause. He duly submitted his reply on 04th July, 2019. The said reply to the show cause was not accepted and departmental proceeding was initiated de novo against him.

11. It is submitted by the learned Advocate on behalf of the petitioner that the departmental proceeding suffers from delay and latches on the part of the respondents. The respondents did not have any authority to institute de novo departmental enquiry on 14th June, 2019 i.e. after a lapse of about four months from the date of passing of the order in CWJC No. 19030 of 2016. The Department was directed to take step after complying all requirements to initiate departmental proceeding positively within a period of three months. On expiry of three months, the respondents cannot initiate the departmental proceeding.

12. It is also submitted by the learned Advocate for the petitioner that the memorandum of charge (Annexure-D to the counter affidavit) does not contain any list of witnesses to be examined during the departmental proceeding to prove the documents proposed to be relied upon during the departmental proceeding. Thus, the impugned memorandum of charge was formulated in violation of Rule 17(3), 17(4) and 17(5) of the Bihar Government Servants (CCA) Rules, 2005 (hereinafter described as CCA Rules, 2005 for short).

13. The learned Advocate on behalf of the petitioner has also challenged the departmental proceeding on the

ground that after filing of the chargesheet, the petitioner submitted his reply to the show cause notice but the said reply of the petitioner was not considered before initiation of departmental proceeding on 2nd August, 2019. No objective observation was made denying acceptance of the reply to the show cause notice. Under such circumstance, the petitioner has prayed for issuance of writ of mandamus commanding the respondents to stop the departmental proceeding which is vitiated by delay and latches as well as against the rule and regulations laid down in Bihar Pension Rules.

14. In support of his contention, he first refers to a decision of the Hon'ble Supreme Court in the case of ***State of Bihar and Ors vs Md. Idris Ansari*** reported in ***1995 SUPP. (3) SCC 56***. In paragraph 10 of the said judgment, it is observed by the Hon'ble Supreme Court that the allegation of grave misconduct will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceeding which may be initiated even after his retirement. But such departmental proceeding will have to comply with the requirement of Rule 43(b) of the Bihar Pension Rules. Consequently, a retired

government servant can be found guilty of grave misconduct during his service period pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within four years of the initiation of such departmental proceeding against him (emphasis supplied by me). Thus, plain reading of the observation of the Hon'ble Supreme Court clearly states that the departmental proceeding under Rule 43(b) shall have to be instituted within four years of an event for which the petitioner was subjected to departmental proceeding. Initiation of proceeding under section 43(b) is subjected to the following proviso:-

> *"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."

15. Thus, as per Rule 43(b)(ii), a departmental

proceeding under Rule 43(b)(ii) shall be in respect of an event which took place not more than four years before institution of such proceedings. In the instant case, the departmental proceeding under Rule 43(b) was initiated after lapse of about twelve years. On this Counts, it is submitted by the learned Advocate on behalf of the petitioner that the departmental proceeding is bad in law and liable to be quashed.

16. On the application of Rule 43(b) of the Bihar Pension Rules, the learned Advocate for the petitioner refers to a Division-Bench judgment in the case of ***Nityanand Kumar Singh vs the State of Bihar and Ors*** reported in ***2016 2 PLJR 315***. In this report, the Division-Bench of this Court have the occasion to discuss the essential and inherent difference of Rule 43(a) and 43(b). It is held by the Division-Bench that there is a clear distinction between aim and object of Rule 43(a) and that of Rule 43(b) and both the provisions operate in different areas having different connotation. Decision under Rule 43(a) is not on account of any departmental proceeding or judiciary proceeding. The purpose of the provisos to Rule 43(b) is to safeguard the pensioners or superannuated employees from loss of pension on account of belated disciplinary or judicial proceedings. Rule 43(b) is

governed by its proviso as it can apply only to initiation of departmental proceeding by the Government after an employee has retired. On the same point, the learned Advocate for the petitioner also refers to the Full Bench decision of this Court in the case of ***Arvind Kumar Singh vs. The State of Bihar & Ors*** reported in ***2018 (2) PLJR 933***. It is held by the Full Bench of this Court that Rule 43(b) is only applicable in such cases where the employee is convicted or found guilty of misconduct. It is only after a finding of guilt is recorded in the departmental or judiciary proceeding that action could be taken for withholding pension in part or full.

17. In the instant case, the order of punishment passed by the department against the petitioner was quashed by this Court in CWJC No. 19030 of 2016. Therefore, institution of a proceeding under section 43(b) was illegal, unjust and unfair, especially after expiry of the period granted by this Court.

18. Lastly, the learned Advocate for the petitioner refers to an unreported decision of this Court in the case of ***Sumit Kumar Bhhatacharya vs State of Bihar and Ors*** in CWJC No. 7243 of 2021 decided on 18th July, 2024. In the aforementioned decision, the Court elaborately discussed the

applicability of the proviso to Rule 43(b). This Court refers to its discussion made in CWJC No. 7243 of 2021 in paragraphs 9 to 15:-

> *"9. Rule 43(b) of the Bihar Pension Rule is curtailed by the following proviso:*
>
> *"(a) departmental proceedings under Rule 43(b) shall not be instituted save with the sanction of the State Government, if not instituted while the Government servant was on duty either before retirement or during re-employment.*
>
> *(ii) such proceeding under Rule 43(b) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and*
>
> *(iii) such proceeding 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."*
>
> *10. Thus, proviso to Rule 43(b)(a) (i) clearly states that a proceeding under Rule 43(b) cannot be initiated except with the sanction of the State Government. The sanction of the State Government is a precondition for initiation of a proceeding*

under Rule 43(b) of the Bihar Pension Rules.

11. It is needless to say that conversion of a proceeding under Rule 43(a) to 43(b) cannot be made automatic in the absence of sanction of the State Government. Sanction of any proceeding, be it departmental or judicial implies application of mind by the sanctioning authority. The sanctioning authority has the duty to consider a case objectively before obtaining sanction for initiation of departmental proceeding under Rule 43(b). On his objective satisfaction on the basis of materials on record, he shall pass the order of sanction of departmental proceeding under Rule 43(b).

12. In the instant case, the respondents fail to produce the order of sanction for initiating proceeding under Rule 43(b) of the Bihar Pension Rules against the petitioner.

13. The factual aspect of the case shows that the petitioner was prosecuted in fodder scam in the year 1996. He was held guilty of charges under different penal provisions of the I.P.C. and the Prevention of Corruption Act, details of which has been narrated herein before. The order of conviction and punishment passed against *the petitioner is under appeal before the Jharkhand High Court and the said appeal is still pending.*

14. The petitioner had been superannuated w.e.f. 30.09.2014 while he was serving as Assistant Commissioner, Commercial Taxes, Bihar at Patna. Commissioner of Taxes- cum-Secretary, Department of Commercial Tax Department issued order of initiation of proceeding under Rule 43(b) against the petitioner on 26.12.2020, i.e. after six years of superannuation of the petitioner. The alleged incident of fodder scam took place in the year 1995-96. Thus, the proceeding under Rule 43(b) was initiated in respect of an event which took place about 24 years before the institution of such proceeding. Therefore, the departmental proceeding under Rule 43(b) is not maintainable in view of the provision contained in proviso (ii) to sub-clause (a) of clause (b) of Rule 43 of the Bihar Pension Rules, 1950.

15. For the reasons stated above, this Court holds that proceeding under Rule 43(b) is not applicable against the petitioner under the facts and circumstances of the case. The order passed by the respondent Authority on 26.12.2020 and communicated vide Memo No.Con/v-

121/2003/58/C-Patna dated 20.07.2021 are quashed and set aside."

19. Learned Advocate on behalf of the respondents, on the other hand, refers to the statement made by him in paragraphs 5, 6, 7 and 8 of the original counter affidavit wherein it is submitted on behalf of the respondents that initially, the respondents filed counter affidavit on 18th July, 2022 but it was misplaced from the office of the Standing Counsel 11 and with the permission of the Court, by way of a supplementary counter affidavit, the original counter affidavit has been filed. I have perused the entire counter affidavit as well as the supplementary affidavit. Before initiation of the departmental proceeding under Rule 43(b), the disciplinary authority did not consider the proviso to Rule 43(b), no government's sanction was obtained before initiation of disciplinary proceeding. The proceeding under Rule 43(b) was initiated after a lapse of about twelve years of the alleged incident, no witness was cited to prove the departmental charge and the departmental proceeding was being continued by the respondents only to assure that the delinquent officer may not get his retiral benefits.

20. In view of the above discussion and the finding of the Hon'ble Supreme Court as well as this Court by the

Division Bench, Full Bench and the present Bench, there is no other alternative but to quash the departmental proceeding initiated de novo against the petitioner on 14th June, 2019.

21. Accordingly, the departmental proceeding against the petitioner is quashed and set aside.

22. The petitioner is entitled to get all pensionary benefits and consequential reliefs.

23. The respondents are directed to release the same within forty-five days from the date of this order.

24. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.08.2024
Transmission Date	