

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.226 of 2022
In
Civil Writ Jurisdiction Case No.1294 of 2021

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1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
 2. The Director Administration-Cum- Additional Secretary, Education Department, Bihar, Patna.
 3. The Deputy Secretary-Cum- Enquiry Officer, Education Department, Bihar, Patna.
 4. The District Programme Officer-Cum- Presenting Officer (Establishment), Buxar.

... .. Appellant/s

Versus

Vinayak Pandey son of Late Vrihaspati Pandey, Resident of Village- Dalippur, P.S.- Dhangai, District- Bhojpur. At present- Ward No. 32, Gajadhar Ganj, Babhani, Buxar, P.S.- Mufassil, District- Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Advocate General Ms. Binita Singh, SC-28 Mr. Nishant Kumar Jha, AC to SC-28
For the Respondent/s	:	Mr. Ranjeet Kumar, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Shikhar Mani, Advocate Mr. Rajnesh Prakash, Advocate Ms. Lakshmi Kumari, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-09-2024

The State is in appeal from the order of the learned Single Judge against the withholding of 100 per cent pension of the petitioner, under Bihar Pension Rules, finding the first charge against the petitioner having been proved. There were



four charges against the petitioner, the first and fourth of which were beyond the four year period, the writ petitioner retired on 30.06.2017. His contention was that no proceedings could be taken under Rule-43(b) of the Bihar Pension Rules.

2. The learned Single Judge accepted the contention of the petitioner and quashed Annexure-17 order dated 29.08.2020. It was also observed that quashing of the order, will not preclude the respondent from proceeding against the petitioner for the lapses other than the charges related to the end of 2008 and 2010, on which fresh order shall be passed against the petitioner initiating fresh proceeding under Rule-43(b) of the Bihar Pension Rules.

3. Learned Single Judge also directed the respondents to take fresh decision on the basis of enquiry report excluding the finding in the report with regard to Charge Nos. 1 and 2.

4. The above said directions are mutually conflicting. If a fresh proceeding has to be initiated under Rule-43(b) of the Bihar Pension Rules there cannot be a decision taken on the basis of the enquiry report. It is also relevant that the learned Counsel for the appellant points out that Charge No. 2 is with respect to a trap case and the enquiry officer refused to put forth a finding, only on the ground that there is a criminal case



pending. The learned Counsel for the respondent, delinquent employee, however submits that even the Presenting Officer filed his submission clearly pointing out that there could be no disciplinary proceeding initiated on that charge.

5. As far as the directions to initiate fresh proceeding and to take fresh decision on the basis of the enquiry report, we are of the opinion that since the enquiry has been conducted and report is before the disciplinary authority, it is for the disciplinary authority to decide, on the basis of the findings in the enquiry report. Hence, there is no question of initiating a fresh proceeding under Rule-43(b) of the Bihar Pension Rules. Admittedly, the proceedings were initiated with respect to four charges, and the two charges i.e. Charge Nos. 1 and 4 were prior to four years before retirement respectively of the years 2010 & 2008. Charge Nos. 2 and 3 were within the four year period.

6. So far as second charge is concerned the Enquiry Officer was obviously wrong insofar as the standard of proof in a departmental enquiry and a criminal trial differs considerably. Whereas in a criminal trial there should be proof beyond reasonable doubt, in a departmental enquiry it is preponderance of probabilities, that matter.

7. In the above circumstances, we uphold the order only



to the extent of the proceedings having been quashed with respect to Charge Nos. 1 and 4. Insofar as Charge Nos. 2 and 3 are concerned the misconduct alleged is within four years prior to the initiation of proceedings. The disciplinary authority would be entitled to take a decision on the same and also order *de novo* enquiry with respect to Charge No. 2.

8. The appeal stands partly allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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