IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22388 of 2011

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Ram Pramod Singh S/O Late Rajendra Singh Resident Of Village- Purbi Kargahiya, Hawai Adda Road, P.S- Mufassil, District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Bihar, Patna
2. The Commissioner, Water Resources Department, Govt. Of Bihar, Patna.
3. Director Revenue Administration, Water Resources Department, Bihar, Patna.
4. The Special Officer-Cum-Deputy Secretary, Water Resources Department, Govt. Of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Valmiki Nagar, West Champaran.
6. The Deputy Collector, Revenue Division, Gandak Project, Bettiah.
7. Sri Parmanand Prasad, Inquiry Officer-Cum-Circle Officer, Revenue Anchal, Bagaha, District- West Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra, Advocate
		Mr. Vatsal Verma, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

Date : 05-01-2024

Heard Mr. Shashank Chandra, learned counsel for the petitioner and Mr. Ajay Kumar, learned AC to GP 4 appearing on behalf of the State.

2. The present writ petition has been filed for quashing the order contained in letter no. 2403 dated 19.09.2011 (Annexure-10) issued by the respondent no. 5 in pursuance of the order dated 03.08.2011 passed in LPA No. 1799 of 2010. By the impugned order dated 19.09.2011 (Annexure-10), the

services of the petitioner has been terminated w.e.f. 04.01.1995 in pursuance of an enquiry conducted by the respondent no. 7 indicting the petitioner of the charges by his enquiry report contained in letter no. 547 dated 22.08.1994.

3. The petitioner was appointed as a Clerk in the Irrigation Department at Muzaffarpur on 22.08.1972 and was suspended vide letter no. 690 dated 11.04.1994 and charge memo dated 13.05.1994 containing 10 charges relating to defalcation and not handling charges to the next incumbent after being transferred by order dated 20.12.1993 was issued. The petitioner was made in-charge of Irrigation Revenue Inspector of Narkatiaganj Circle under Gandak Project, Bettiah, West Champaran. The respondent no. 6 vide letter no. 1344, dated 19.12.1993 posted one Sri Sudama Singh as a regular Irrigation Revenue Inspector of Narkatiaganj Circle under Gandak Project, Bettiah, West Champaran and accordingly the petitioner was directed to hand over the charge to the said Sudama Singh. The petitioner was transferred to Ram Nagar Triveni Circle vide letter no. 1351 dated 20.12.1933 issued by the respondent no. 6 as Muharrir.

4. Learned counsel for the petitioner submits that the post of Muharrir is a lower post than clerk and the pay scale of

Muharrir is Rs. 975-1540 while the pay scale of Clerk is Rs. 1200-1800, as such the petitioner was demoted to a lower post to which he was appointed. The said Sudama Singh has informed the Circle Officer, Narkatiaganj by his letter no. 45 dated 02.03.1994 that the petitioner has not handed over the Kharji Volume and Bipreshan Register, accordingly the petitioner was directed to hand over the said document within 24 hours. The petitioner after joining at Ram Nagar came to Narkatiaganj on 31.03.1994 to give charge of the remaining documents to Sudama Singh, but the said Sudama Singh was not available at the headquarter, hence, the petitioner has filed a representation stating that there was none to receive the charge and the petitioner remained present at Narkatiaganj from 31.03.1994 to 16.04.1994 for handing over the charge, but Sudama Singh was not there to receive the same.

5. Learned counsel for the petitioner submits that all of a sudden the petitioner was suspended vide letter no. 690 dated 11.04.1994 and accordingly charge memo dated 13.05.1994 was issued. The charge memo contained 10 charges, as follows:-

(i) as per letter dated 08.04.1994 of the Circle Officer, Narkatiaganj, the petitioner did not deposit Rs. 7,713/- which was collected during the period 30.06.1993 to 07.07.1993.

(ii) the petitioner did not hand over charge to Sudama Singh since 08.10.1993 till framing of the charge.

(iii) on account of not handing full charge, there was loss in revenue collection for the year 1993-94.

(iv) the petitioner did not hand over charge within the time directed by the authorities.

(v) the petitioner did not deposit Rs. 790/- and odd paisa collected during the period 1990-91.

(vi) the petitioner defalcated Rs. 5,824/- from the amount collected during the period 1991-92.

(vii) the petitioner did not deposit Rs. 7,677/- and 75 paisa collected during the period 1991-92.

(viii) that the petitioner did not deposit Rs. 107/- and 65 paisa.

(ix) the petitioner did not deposit Rs. 200/- which he had received from Parma Prasad revenue collector, for the collection made in the year 1972-73.

(x) the petitioner did not deposit Rs. 843/- and 88 paisa collected during the period 1986-87 and 1991-92.

6. The petitioner by his letter dated 06.06.1994 addressed to the respondent no. 7 requested for supplying the documents relating to charge. The respondent no. 7 by letter dated 08.06.1994 addressed to the Circle Officer, Narkatiaganj

requested him to allow the petitioner to inspect the records. The Enquiry Officer submitted his report contained in letter no. 547 dated 22.08.1994 to the respondent no. 6 exonerating the petitioner of charge no . 5 and the petitioner was indicted for the rest 9 charges. The respondent no. 6 who was the then disciplinary authority of the petitioner merely recorded his opinion with regard to the charge nos. 1, 7 and 9 on the findings of the Enquiry Officer vide his letter dated 08.09.1994. The respondent no. 6 who was the disciplinary authority of the petitioner, at the relevant time, instead of taking any decision on the enquiry report dated 22.08.1994 i.e. either accepting the report or differing with the same merely forwarded his recordings to the respondent no. 4 for taking a final decision.

7. Learned counsel for the petitioner further submits that the disciplinary authority abdicated his power and instead forwarded his report to an authority, who was even superior to the Appellate Authority of the petitioner. The respondent no. 4 issued second show cause to the petitioner asking him to reply as to why he be not dismissed for the charges levelled against, as shown in the second show cause.

8. Learned counsel for the petitioner submits that with respect to the first charge, the petitioner had deposited the

amount alleged to be misappropriated after 21 years, whereas the fact is that the petitioner had deposited the money within a year itself. But the respondent no. 4 has been pleased to dismiss the petitioner from service by a non-speaking order vide order dated 04.01.1995.

9. Learned counsel for the petitioner submits that under the wrong advice the petitioner filed an appeal before the respondent no. 2 against the order of dismissal dated 04.01.1995. Thereafter, the petitioner filed CWJC No. 2806 of 1995 challenging the order of dismissal dated 04.01.1995 and during pendency of the writ petition, the appeal dated 15.03.1995 came to be rejected by the respondent no. 2. He further submits that the Hon'ble Court disposed of CWJC No. 2806 of 1995 by order dated 19.10.1995 quashing the Appellate order and the matter was remanded back to the respondent no. 2 to dispose of the appeal in accordance with law.

10. Learned counsel for the petitioner submits that pursuance to the order dated 19.10.1995 and the liberty given by this Hon'ble Court, the petitioner had filed a supplementary memorandum of appeal on 30.12.1995 raising the ground of jurisdiction but the same was rejected vide order dated 30.12.1995. Then the petitioner filed CWJC No. 4624 of 1996

for quashing the order dated 30.12.1995 along with the order dated 04.01.1995. But the Hon'ble Single Judge after hearing the matter was pleased to uphold the order of punishment dated 30.12.1995 on the ground that the petitioner had deposited the money after some delay, which goes to show that the findings of misappropriation or even temporary embezzlement is accepted. The order of termination was passed by an authority who was superior to the appointing authority and the Hon'ble Single Judge did not appreciate the fact that the order of termination was issued by an authority superior to the disciplinary authority and the amount involved was a petty amount and the petitioner had also deposited the amount and the rest of the amount was being disputed by the petitioner that he had not collected/received.

11. In the aforesaid facts and circumstances, the petitioner has filed LPA No. 1799 of 2010 against the order dated 16.09.2010 in CWJC No. 4624 of 1996 and the same was allowed vide order dated 03.08.2011 wherein it was held that:-

> "*Upon hearing learned counsel for the appellant the admitted position comes out that the appointing authority of the appellant is Deputy Collector while order of punishment has been passed by the Director, Revenue Administration, Water Resources Department, Bihar, Patna. It has not been shown to us that the Deputy Collector has the power of the appointment. Though*

Article 311 provides that order of major punishment can be passed not by the officers rather superior authority of the rank of the appointing authority also. It is well settled that the superior authority may pass the punishment order but since Rules under Article 311 proviso (1) provides that the punishment shall be given by the appointing authority, therefore, the order of punishment de hors the Rules. Hence the order of dismissal is set aside as well as the order of the learned single Judge is also set aside.

The appointing authority is directed to take the decision afresh applying his own mind on the enquiry report which has already been submitted within one month of receipt/production of the certified copy of this order."

12. Learned counsel for the petitioner submits that in pursuance of the order dated 03.08.2011 passed in LPA No. 1799 of 2010 the appointing authority i.e. the Chief Engineer, Water Resource Department, Valmik Nagar, West Champaran has considered the enquiry report and passed order contained in letter no. 2403 dated 19.09.2011 by which the petitioner was dismissed from service w.e.f. 04.01.1995 and it was further directed that the petitioner would be entitled only for subsistence allowance for the period of suspension.

13. Learned counsel for the petitioner submits that the order dated 19.09.2011 is bad in law as well as bad in fact because during the pendency of the writ petition, the petitioner was superannuated from the post in question w.e.f. 31.03.2007

and it is an admitted fact that the petitioner had deposited the defalcated amount and it has come during enquiry that the petitioner had deposited some amount but the authority had not considered the same and dismissed the petitioner from the service. He further submits that after the matter was remanded back to the appointing/disciplinary authority, the disciplinary authority without appropriating the fact that the present case was a case of accounting and not a case of embezzlement, issued the order dated 19.09.2011, terminating the service of the petitioner w.e.f 04.01.1995 with rest of effect and the petitioner is said to have been retired from service from 31.03.2007.

14. Learned counsel for the petitioner has relied upon the judgment dated 13.08.2018 passed in CWJC No. 5120 of 2011 (Janardan Prasad Singh vs. State of Bihar and ors). He further submits that the petitioner has been retired from the service w.e.f 31.03.2007 and by virtue of the paragraph no. 5 of the Full Bench judgment of this Court in the case of Shambhu Sharan vs. State of Bihar reported in 2000 (1) PLJR 665 which is quoted as herein below:-

> *"(5.) The only point involved before us is whether Rule 43(b) is attracted in the facts of this case and whether under the said Rule, even when such disciplinary proceedings was initiated before the retirement, whether it could be continued after the retirement under the provisions of*

> *Rule 43(b). It is true that Rule 43 does not say expressly that such proceeding may be continued after such superannuation. However, in our opinion, it is inherent in the said Rule. The opening words of proviso (a) state that "such departmental proceedings, if not instituted while the Government Servant was on duty either before retirement or during reemployment". In our opinion such expression makes it quite clear that such enquiry if initiated before, may be continued even after such retirement. In any event, by necessary implication also it is quite clear that continuance of such enquiry after superannuation is permitted by the said Rules. In this context, it may be pointed out that if the Government servant is in service, the disciplinary proceedings can be initiated against him and certain punishments may be imposed upon him as provided in the relevant Classification, Control and Appeal Rules. However, such punishments cannot be imposed upon him if retired from service. After his retirement he cannot be punished otherwise but pension can be withheld and other steps taken as contemplated by the said Rule 43. Punishments, major or minor, like dismissal or removal from service or withholdings of increments etc., which contemplates that he is still in service, cannot be imposed upon him. In such view of the matter, if such a person has committed some wrong, merely because he retires and no remedy remains available to the Government even if there was good case against him, then it would be incongruous. Accordingly such a provision was made to that effect. It is in order to fill up this lacuna that provisions like rule 43(b) has been introduced."*

15. The authorities were obliged to continue with the decision of the proceeding under the Bihar Pension Rules and in

the present case, the authority has not considered that the petitioner has retired and the master and servant relation has already been came to an end. By virtue of retirement of the petitioner and the authority cannot proceed except the provisions of Rule 43(B) of Bihar Pension Rules. He also relied upon the paragraph no. 31 of the judgment reported in (2014) 12 SCC 106 (State Bank of Patiala and another vs. Ram Niwas Bansal) which is quoted as under:-

> *"31. In the case at hand, the said stage is over. The Full Bench on the earlier occasion had already rendered a verdict that serious prejudice had been caused and, accordingly, had directed for reinstatement. The said direction, if understood and appreciated on the principles stated in B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , is a direction for reinstatement for the purpose of holding a fresh enquiry from the stage of furnishing the report and no more. In the case at hand, the direction for reinstatement was stayed by this Court. The Bank proceeded to comply with the order of the High Court from the stage of reply of enquiry. The High Court by the impugned order [Ram Niwas Bansal v. State Bank of Patiala, (2002) 2 SLR 375 (P&H)] had directed payment of back wages to the delinquent officer from the date of dismissal till passing of the appropriate order in the disciplinary proceeding/superannuation of the petitioner therein whichever is earlier. The Bank has passed an order of dismissal on 22-11-2001 with effect from 23-4-1985. The said order, as we perceive, is not in accord with the principle laid down by the Constitution Bench decision in B.*

Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , for it has been stated there that in case of non-furnishing of an enquiry report the court can deal with it and pass an appropriate order or set aside the punishment and direct reinstatement for continuance of the departmental proceedings from that stage. In the case at hand, in the earlier round the punishment was set aside and direction for reinstatement was passed. Thus, on the face of the said order it is absolutely inexplicable and unacceptable that the Bank in 2001 can pass an order with effect from 23-4-1985 which would amount to annulment of the judgment [Ram Niwas Bansal v. State Bank of Patiala, (1998) 4 SLR 711 : (1998) 119 PLR 768] of the earlier Full Bench. As has been held by the High Court in the impugned judgment [Ram Niwas Bansal v. State Bank of Patiala, (2002) 2 SLR 375 (P&H)] that when on the date of non-furnishing of the enquiry report the delinquent officer was admittedly not under suspension, but was in service and, therefore, he would continue in service till he is dismissed from service in accordance with law or superannuated in conformity with the Regulations. How far the said direction is justified or not or how that should be construed, we shall deal with while addressing the other points but as far as the order of removal being made retrospectively operational, there can be no trace of doubt that it cannot be made retrospective."

16. He further relied upon the paragraph no. 24 of the judgment reported in (2013) 6 SCC 515 (Anant R. Kulkarni vs. Y.P. Education Society and others) which is quoted as under:-

"24. Thus, it is evident from the above, that

> *the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed."*

17. He further relied upon the paragraph no. 39 of the judgment reported in 2017 (3) PLJR 567 (Dr. Sachindra Narayan Son of Late A.K. Narayan vs. State of Bihar) which is quoted herein as under:-

> *"39. Furthermore, a writ of mandamus cannot be issued to the authorities of the State to act contrary to law. Only because an illegality has been committed by the respondent Institute in grant of pension/family pension to the petitioners for last few years, the same cannot be directed to be perpetuated by an order of the Court."*

18. Learned counsel for the petitioner has relied upon the paragraph no. 22, 23, 24, 25 and 26 of the judgment dated 13.08.2018 passed in CWJC No. 5120 of 2011 (Janardhan Pd. Singh vs. State of Bihar and ors).

19. Learned counsel for the State submits that in compliance of order dated 03.08.2011 passed in LPA No. 1799 of 2010, the service of the petitioner has been terminated w.e.f

04.01.1995, in pursuance of an enquiry conducted by the respondent no. 7 indicating the petitioner of the charge of the enquiry report issued vide letter no. 547 dated 28.08.1994. He further submits that the Annexure-10 is not in a mechanical manner and the same has been passed giving cogent reasons which warrant no interference by this Hon’ble Court. And the charges levelled against the petitioner were proved and after considering the second show cause notice, the impugned order has been passed and the petitioner has been dismissed from service w.e.f 04.01.1995 and ordered for subsistence allowance for the period of suspension. He further submits that pursuant to the order passed in LPA No. 1799 of 2010 by which the order of the learned Single Judge has been set aside and the order of dismissal also has been set aside and LPA Court has directed the appointing authority to take a decision a fresh applying his own mind on the enquiry report which has already been submitted within one month from the receipt/production of certified copy of the order.

20. Learned counsel for the State submits that the Chief Engineer, Water Resources Department, Balmiki Nagar being the appointing authority of Class III and IV employees examined the enquiry report and the documents and found that

there were 10 charges against the petitioner out of which 7 are with respect to defalcation of Government fund and also relating to flouting of the not handing over the charges. The enquiry report also disclosed that the petitioner did not deposit revenue collected amount in time rather some amount has been deposited after suspension. The petitioner has collected Rs. 7713.00 from 30.06.1993 to 07.07.1993 which has been deposited by him in two installments, the first installment was deposited on 26.05.1994 which was Rs. 4768.45 and second installment on 31.05.1994 which was Rs. 2945.05 and with respect to charge no. 5 the defalcated amount of Rs. 790.27 has been deposited by him on 31.05.1994 and with respect to charge no. 6 amount of Rs. 5824.00 has not been deposited by him in treasury in spite of the office order no. 839 dated 09.06.1993, with respect to charge no. 7 out of total amount of Rs. 7677.75 only Rs. 4300.00 has been deposited by him. It appears that the petitioner has defalcated the amount as aforesaid and although charges were proved against him and with respect to charge no. 2, 3 and 4 are regarding not handing over the charge even after the order of the higher authority. The petitioner had been transferred from Narkatiaganj to Ram Nagar, but the petitioner did not prepare any paper regarding handing over the charge for four months due to which he was suspended and it appears that the petitioner has been given sufficient opportunity to defend in the department proceeding but all the charges were found proved. So the respondent no. 5 has passed the order of dismissal and also ordered for subsistence allowance for the period of suspension and there is no infirmity in the impugned order.

21. Having regard to the submissions of the parties, after disposal of LPA No. 1799 of 2010, by virtue of the paragraph no. 5 of the Full Bench judgment of this Court (Shambhu Sharan vs. State of Bihar (supra)), only option with the respondents is to proceed under the provision of Rule 43(B) of Bihar Pension Rule and in the present case it appears that the impugned order dated 19.09.2011 as contained in Annexure-10 clearly shows that the dismissal has been given effect from the date of suspension of the petitioner when the proceeding was initiated against the petitioner i.e. w.e.f 04.01.1995. It appears when the petitioner has already retired from the service w.e.f. 31.03.2007 there is no relation of the master and servant and in absence of provision in the service Rule to treat the petitioner in service even after his superannuation age for the purpose of completion of disciplinary proceeding. The petitioner had

already attained the age of superannuation several years prior to passing of the impugned order of termination and without appreciating the aforesaid fact, the impugned order has been passed. The impugned order dated 19.09.2011 (Annexure-10 of the writ petition) is set aside and as the petitioner had already retired long back in the year 2007, he is entitled to all the consequential benefits.

22. The respondent authority is directed to pay all the consequential benefits to the petitioner within a period of three months from the date of production/receipt of the copy of this order.

23. This writ petitioner allowed to the extent indicated hereinabove.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25.04.2024
Transmission Date	N/A