

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8209 of 2022

Prabhat Kumar S/o Sri Shyam Kishore Prasad Sinha, Resident of 301, TPV
Ashiyana, Police Station- Shastri Nagar, Patna, Bihar, PIN - 800025.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Additional, Building Construction Department, Government of Bihar, Patna.
4. The Executive Engineer, Technical Examiner Bureau, Vigilance Building Construction Department, Government of Bihar.
5. The Principal Secretary, Labour Resources Department-cum-Departmental Inquiry Commissioner, Government of Bihar.
6. The Planning Engineer, Chief Engineer (North Sub-Division)-cum-Presenting Officer, Building Construction Department, Government of Bihar, Patna.
7. The Office of Principal Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Avinash Kumar, Advocate Mr. Krishna Chandra, Advocate Mr. Prabhat Kumar, Advocate
For the State	:	Mr. Sushil Kumar (GP-22) Mr. Uday Prasad, AC to GP-22

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 06-02-2024

The present writ petition has been filed for quashing the
notification dated 08.01.2021, issued by the Under Secretary to
the Government, Building Construction Department,



Government of Bihar, Patna whereby and whereunder punishment of withholding of 5 % pension for one year has been inflicted upon the petitioner.

2. The brief facts of the case, according to the petitioner, are that the petitioner retired on 30.06.2017, while working on the post of Superintending Engineer, Building Construction Department, Government of Bihar, Patna, whereafter a show-cause was issued to the petitioner, vide letter dated 17.10.2017, inter alia alleging therein that in an enquiry conducted jointly by the Executive Engineer, Technical Examiner Bureau and the Additional Secretary, Building Construction Department on 18.08.2017, the petitioner has been found guilty of engaging in various illegalities pertaining to the period 2007-2008, while he was posted as the Executive Engineer, Munger Division. The petitioner had then filed his reply to the said notice dated 17.10.2017 on 27.11.2017, stating therein that since he is now a retired person, he is not in possession of the documents, pertaining to the alleged charges of the year 2007-2008, hence all the relevant documents be supplied to him, nonetheless, only few documents were supplied, whereafter the petitioner had filed his detailed explanation.

3. The respondents had then initiated a departmental



proceeding against the petitioner under Rule 43 (b) of the Bihar Pension Rules, 1950, vide resolution dated 06.06.2018 and the memo of charge contained in प्रपत्र-क was served upon the petitioner, to which the petitioner had filed a detailed reply and then the enquiry officer had submitted his enquiry report dated 19.04.2019/24.04.2019, finding none of the charges to have been proved. The disciplinary authority had then issued a second show-cause notice dated 28.08.2019, to which the petitioner had filed his reply dated 18.02.2020 and then the impugned order of punishment of withholding of 5 % pension for one year has been passed on 08.01.2021.

4. The learned counsel for the petitioner has submitted that the very initiation of the departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 is vitiated in the eyes of law, inasmuch as the said rule stipulates that in case such departmental proceeding has not been instituted while the Government servant was on duty, either before retirement or during re-employment, the same shall not be instituted in respect of an event which took place more than four years before the institution of such proceedings. However, in the present case, though the petitioner has retired in the year 2017, but the charges pertaining to the year 2007-2008, i.e. dating back to 10



years prior to the retirement of the petitioner and about 11 years prior to institution of such departmental proceeding have been levelled. In this connection, reference has been made to a judgement rendered by the Hon'ble Apex Court in the case of ***State of Bihar & ors. vs. Mohd. Idris Ansari***, reported in ***1995 (Suppl. 3) SCC 56***, a judgement dated 10.05.2012 rendered by the learned Division Bench of this Court in ***LPA No.215 of 2010 (State of Bihar & Ors. vs. Bhuwaneshwar Sharma)*** and the one rendered by this Court on 05.07.2019 in the case of ***Mohan Thakur vs. The State of Bihar & Ors. (CWJC No. 3956 of 2014)***. The learned counsel for the petitioner has further submitted that though the enquiry officer, in his enquiry report dated 19.04.2019/24.04.2019, has exonerated the petitioner, but the disciplinary authority while issuing the second show-cause notice dated 28.08.2019, has not recorded the reasons, which might have weighed in the mind of the disciplinary authority to differ with the findings of the enquiry officer, hence the petitioner has been precluded from grant of reasonable opportunity to put forth his defence, resulting in not only breach of the principles of natural justice, but also violation of the provisions contained under Article 311 (2) of the Constitution of India. Reference in this connection has been made to a



judgement rendered by the Hon'ble Apex Court in the case of M.D., ECIL Hyderabad & ors. vs. B. Karunakar & Ors., reported in (1993) 4 SCC 727.

5. *Per contra*, though the learned Counsel appearing for the respondents has supported the impugned order dated 08.01.2021 and has submitted that no procedural lacuna has been pointed out by the petitioner so as to warrant interference of this Court, hence, this Court would not sit in appeal and re-appreciate the evidence, nonetheless, he has not been able to controvert the fact that the departmental proceedings initiated in the year 2018 pertains to the charges, which are of the year 2007-2008, hence, according to the mandate of Rule 43(b) of the Bihar Pension Rules, 1950, in case such departmental proceeding has not been instituted while the Government servant was on duty, either before retirement or during re-employment, the same could not have been initiated for a charge pertaining to a period extending beyond four years of initiation of such proceedings.

6. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that the petitioner had retired on 30.6.2017, whereafter the departmental proceeding has been initiated under Rule 43 (b) of the Bihar Pension Rules, 1950 on 06.06.2018, for irregularities said to



have been committed during the year 2007-2008.

7. At this juncture, it would be relevant to reproduce Rule 43 (b) of the Bihar Pension Rules, 1950 herein below:-

"43(a) xxx xxx xxx

(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 proceedings 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-cause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed."

8. A bare perusal of the aforesaid Rule 43(b) of the Bihar Pension Rules, 1950 would show that the same prescribes a bar with regard to institution of a departmental proceeding in case of a retired employee in respect of an event, which took place more than four years prior to institution of such proceedings. Thus, in the present case, since the alleged irregularities, stated to have been committed by the petitioner, pertain to the year 2007-2008, the respondents could not have initiated disciplinary proceeding after lapse of about 11 years on 06.06.2018, under Rule 43 (b) of the Bihar Pension Rules, 1950, especially since the petitioner has stood retired on 30.06.2017, hence this Court finds that the very initiation of the departmental proceeding qua the petitioner is vitiated in the eyes of law, thus, the resolution contained in memo no.5578 dated 06.06.2018, issued by the Joint Secretary to the Government, Building Construction Department, Bihar Patna is quashed. Consequently, the impugned order of



punishment, as contained in notification dated 08.01.2021, has got no legs to stand, hence is also set aside. At this juncture, it would be relevant to state that the present case is squarely covered by the law laid down by the Hon’ble Apex Court in a judgement rendered in the case of *Mohd. Idris Ansari* (supra), wherein it has been held that before the power under Rule 43 (b) of the Bihar Pension rules, 1950 can be exercised, it must be shown that such departmental proceeding is in respect of misconduct which took place not more than four years before the initiation of such proceedings.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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