

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5215 of 2018**

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Mahendra Prasad s/o late Chhathu Ram r/o village - Mopti Bazar, p.o. -  
Khutaha, p.s. - Sikarhata, district - Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
3. Director, Panchayati Raj Department, Bihar, Patna.
4. District Magistrate, Bhojpur at Ara.

... .. Respondent/s

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**Appearance :**

|                      |   |                              |
|----------------------|---|------------------------------|
| For the Petitioner/s | : | Mr. Baidya Nath Thakur, Adv. |
|                      | : | Mr. Prabhakar Thakur, Adv.   |
| For the Respondent/s | : | Mr. K.P. Gupta- GP10         |
|                      | : | Mr. Anwar Karim, AC to GP10  |

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**ORAL ORDER**

4      16-01-2024                      Heard learned counsel for the petitioner and learned  
counsel for the State.

2. The present writ petition has been filed for setting aside the order dated 18.05.2015 passed by District Magistrate, Bhojpur at Ara in exercise of power under Rule 43(b) of the Bihar Pension Rules, 1950. Further prayer has been made for quashing the order dated 11.05.2015 passed by respondent by which Disciplinary Authority has imposed punishment by which 50% gratuity amount of the petitioner was permanently withheld. Further direction was made to the respondent No.4 to pay gratuity and other retiral benefits as well as arrears of salary to the petitioner for the period of suspension.



3. Counsel for the petitioner submits that admittedly, the petitioner joined the service on 19.03.1990 and superannuated on 31.01.2015. Counsel submits that the Disciplinary Authority has passed the order contained in Memo No. 439 dated 11.05.2015 whereas the order under Rule 43(b) of the Bihar Pension Rules, 1950 has been passed on 18.05.2015 vide contained in Memo No. 443. Counsel submits that as per law, punishment order ought to be passed only after passing order under Rule 43(b) of the Bihar Pension Rules, 1950, but here in the present case, the punishment order has been passed earlier on 11.05.2015 by the Disciplinary Authority which is in violation of the the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and Bihar Pension Rules, 1950.

4. Counsel for the State submits that as per law, the punishment order should be passed only after converting disciplinary proceeding into proceeding under Rule 43(b) of the Bihar Pension Rules, 1950. The provisions under Rule 43(b) of the Bihar Pension Rules, 1950 states as follows:-

*"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 -*

*(underline supplied)*

*(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 as 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.*

*(underline supplied)*

5. Since the departmental proceeding was continuing and petitioner retired, therefore final order shall be passed only



after converting the proceeding under Rule 43(b) of the Bihar Pension Rules, 1950.

6. As such, both the orders in Annexure-5 and Annexure-6 dated 11.05.2015 and 18.05.2015 are hereby quashed. The Disciplinary Authority i.e., District Magistrate, Bhojpur at Ara (respondent No.4 ) is directed to do the needful after going through the the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and Bihar Pension Rules, 1950.

7. With the aforesaid direction, the present writ application is hereby disposed off.

**(Dr. Anshuman, J.)**

Prakashmani/-

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