

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13706 of 2023

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Chandra Kishore Sharma Son of Late Ramagya Sharma Resident of Village-
Mahuli (East Parsa Bazar), P.S.- Parsa Bazar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Water Resources Department, Bihar, Patna.
2. Additional Chief Secretary, Water Resources Department, Bihar, Patna.
3. Deputy Secretary, Water Resources Department, Bihar, Patna.
4. Chief Engineer, Flood Control and Drainage, Water Resources Department, Patna.
5. Executive Engineer, Punpun Flood Protection Division, Anisabad (Patna).
6. Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Harshvardhan Shivsundaram, Adv.
For the State : Mr. Vinay Kirti Singh, GA 2 with
Mr. Venkatesh Kirti, JC to GA 2
For the AG : Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 10-09-2024

This Court has heard Mr. Harshvardhan Shivsundram,
learned Advocate for the petitioner, Mr. Venkatesh Kirti,
Learned Advocate for the State and Mr. Bindhyachal Rai,
learned Advocate for the Accountant General, Bihar.



2. The petitioner is aggrieved by the office order issued under the signature of the Chief Engineer, Flood Control and Drainage, Water Resources Department, Patna, as contained in Memo No. 2637 dated 12.08.2023, by which the pension of the petitioner has been stopped after having worked for 4 years and 8 months of his superannuation from the post of *Mapak* on account of termination of his service with immediate effect. The petitioner also sought quashing of the consequential order contained in Memo No. 1567 dated 16.08.2023 issued by the respondent no. 5 requesting the Accountant General, Bihar, Patna to stop the pension of the petitioner with immediate effect.

3. The short facts which led to filing of the present writ petition are that the petitioner was appointed as *Mapak* vide office order issued by the Rehabilitation Officer, Medium Irrigation Project, Deoghar, as contained in Memo No. 401 dated 27.02.1987, after getting due approval of the Director, Land Acquisition and Rehabilitation, Patna. While the petitioner had been discharging his service on the aforementioned post, all of a sudden, after 14 years of his appointment vide letter No. 2745 dated 11.02.2000, he was terminated by the Director, Land Acquisition and Rehabilitation, Patna. The order of termination was put to challenge in CWJC No. 603 of 2001 and the writ



petition came to be allowed vide order dated 16.01.2001 and the order of termination was quashed with an observation that the case of the petitioner will be governed by the order passed in CWJC No. 6586 of 1998 which was later affirmed by the Division Bench of this Court vide order dated 07.11.2000 passed in LPA No. 207 of 2000; the copy of the order of the learned Single Judge dated 16.01.2001 has been marked as Annexure-P/2. Despite the order of the Hon'ble Court, when the petitioner was not allowed to join his service, a contempt application bearing MJC no. 2934 of 2001 was filed, in the meanwhile, the respondents issued a second show cause notice to the petitioner vide letter No. 971 dated 31.05.2001. The petitioner, left with no option, again approached before this Court by filing CWJC No. 9031 of 2001 challenging the show cause notice. While the writ petition and the contempt petition were pending, the respondent authorities reinstated the petitioner in service with effect from the date of termination and sanctioned payment of salary and other allowances. In view thereof, finding compliance of the order dated 16.01.2001 in CWJC No. 603 of 2001, the contempt petition came be dismissed. On being reinstated, the petitioner has duly discharged his duties without any hindrances and on attaining



the age of superannuation came to be retired on 30.11.2018 while working in the office of the Special Land Acquisition Officer, Patna Flood Protection Project, Patna. After his superannuation, he has been accorded all his post retirement benefits, including full pension and gratuity, vide Pension Payment Order No. 201811081428 dated 05.10.2018.

4. Adverting to the aforesaid facts, learned Advocate for the petitioner thus contended that after having received all the post retiral benefits and while he has been getting his regular pension, the writ application bearing CWJC No. 9031 of 2001 came to be listed, learned Counsel for the petitioner on being found it infructuous sought permission of the Hon'ble Court to withdraw the same. Accordingly, the writ petition was dismissed as withdrawn vide order dated 21.02.2023. Till the pendency of the aforenoted writ petition, the petitioner has never been served with any notice or informed with regard to the dismissal of any SLP or Civil Appeal. However, all of a sudden, after 4 years and 8 months of the superannuation of the petitioner, he was served with a show cause notice, as contained in Letter No. 1154 dated 14.06.2023 issued in the light of departmental instruction contained in Letter No. 2681 dated 01.06.2023. The petitioner in response thereto submitted a detailed show cause/explanation



vide his letter dated 30.06.2023 explaining the entire facts and the circumstances under which he legally and satisfactorily discharged his duties in pursuance of the order of the Hon'ble Court and requested to exonerate from all the baseless charges. The explanation of the petitioner placed before the respondent no. 4 and the Chief Engineer, Flood Control and Drainage, Water Resources Department, Patna but surprisingly without considering the show cause/explanation, the same has been rejected vide office order contained in Memo No. 2637 dated 12.08.2023 as it was found to be not acceptable. It is this order, which has been put to challenge before this Court.

5. Referring to the impugned order, learned Advocate for the petitioner vigorously contended that apart from the order being non-speaking and without application of any mind, the same has been passed on the dictate of the authorities of the Department or in the light of the departmental instruction contained in Letter No. 2681 dated 01.06.2023 and thereby terminated the service of the petitioner with immediate effect and withholding the entire pension of the petitioner. It is also the contention of the learned Advocate for the petitioner that the very termination of service of the petitioner after 4 years and 8 months of his retirement is wholly illegal and unsustainable in



law. The respondent-Chief Engineer was neither the competent authority nor the disciplinary authority, as such, he had no jurisdiction to initiate any proceeding against the petitioner after his superannuation. Any penalty affecting the pension of a government employee can be awarded after only exhausting the due procedure under Rule 43(b) of the Bihar Pension Rules, 1950, that too in respect to an event which took place not more than four years. While passing the impugned order, the respondent authorities have given a complete go by to all the procedures which is bad in law; is the contention of the learned Advocate.

6. *Per contra*, learned Advocate for the State submitted that the appointment of the petitioner was illegal and *void ab initio*, as the petitioner was appointed on a temporary basis only for three months when there was a complete ban on such appointment. The appointment process and reservation policy were not followed in the appointment of the petitioner and all the more right to make *ad hoc* appointments, as earlier had been given to the Special Land Acquisition Officer vide departmental Letter No. 53 dated 18.02.1978, which has already been withdrawn vide departmental letter No. 7836 dated 02.12.1983. On being found the appointment of the petitioner



illegal and void, *ab initio*, the service of the petitioner was dispensed with. However, in the light of the order of this Court in CWJC No. 603 of 2001, the petitioner was re-instated with a caveat, the case of the petitioner was to be governed by the orders passed in CWJC No. 6586 of 1998 and the LPA No. 270 of 2000. Taking note of the aforesaid fact, the petitioner was reinstated and a fresh show cause notice vide departmental order No. 971 dated 31.05.2001 was issued. The Hon'ble Court having heard the parties directed to maintain *status quo* with an observation that his case shall be affected by the final outcome of CWJC No. 9031 of 2001 and MJC No. 2934 of 2001. CWJC No. 9031 of 2001 and other analogous case was heard by the Hon'ble Court and vide order dated 22.11.2004 the Writ Court directed *status quo* to be continued in view of the order passed by the Hon'ble Supreme Court in SLP No. 7233-7235 of 2003. The aforementioned SLP was registered as Civil Appeal No. 5682-5684/2004 and it came to be dismissed on 11.07.2006 in view of the Constitution Bench Judgment in the case of *Secretary, State of Karnataka and Ors vs. Uma Devi* [(2006) 4 SCC 1].

7. It is next contended that subsequent there to, Special Leave to Appeal (Civil No. 3431/2017) has also been dismissed by the Hon'ble Supreme Court on 28.11.2022. The petitioner



knowing the entire facts withdrew the writ petition bearing CWJC No. 9031 of 2001. In such circumstances, the Water Resources Department decided to terminate the service of the petitioner and other similarly circumstanced persons who were illegal appointed in the Department and accordingly letters have been issued to all the Chief Engineers to take action against the illegal/irregular appointments. Pursuant thereto, the Executive Engineer issued show cause notice to the petitioner. In response, the petitioner has submitted his explanation which was duly considered by the Chief Engineer and the final order came to be passed vide Memo No. 2637 dated 12.08.2023. So far the submission of the petitioner that the Chief Engineer lacks jurisdiction to proceed departmentally has no force as after dissolution of the Directorate and offices of the Special Land Acquisition and Rehabilitation in the year 2019, the Water Resources Department, Bihar vide its letter No. 2681 dated 01.06.2023 authorised the Chief Engineer as appointing-cum-disciplinary authority to proceed against the petitioner. In similar terms, the Revenue and Land Reforms Department, Bihar terminated the services of the persons who were appointed illegally in the same fashion. Thus, learned Advocate for the State urged that there is no illegality in the impugned



order as the very appointment of the petitioner was subject to the final outcome of SLP No. 7233-7235 of 2003 which finally came to be dismissed in the light of the Constitution Bench judgment in *Uma Devi's case (supra)*.

8. This Court has given anxious consideration to the submissions advanced and also perused the materials available on record. Some facts are admitted that the petitioner was appointed way back in the year 1987 on the post of *Mapak* and after 14 years, his service was terminated. The order of termination was put to challenge; and this Court while allowing the writ petition by quashing the impugned order of termination in CWJC No.6030 of 2001 had observed that the case of the petitioner will also be governed by the order passed in CWJC No. 6586 of 1998 which was also affirmed by the Division Bench in LPA No. 270 of 2000. In the light of the observation given by the Division Bench, a show cause was issued under Memo No. 971 dated 31.05.2001 and on being challenged in CWJC No. 9031 of 2001 it was directed to list 'for admission' after disposal of LPA No. 1588 of 2000.

9. The learned Division Bench vide its order dated 27.03.2003 disposed of the aforesaid LPA in terms of the order in LPA No. 675 of 2000 and others analogous cases by which



the appeal was allowed and the order of the learned Single Judge setting aside the termination of the petitioner of the said writ petition and others similarly situated person was over turned. The Court, on being apprised while hearing C.W.J.C. No. 9031 of 2001, that the leave was granted in S.L.P. No. 7233-7235/ 2003 and *status quo* was directed to be continued, considering the fact that the petitioners of C.W.J.C. No. 9031 of 2001 as well as C.W.J.C. No. 9037 are also the person affected by the order of LPA Court directed to maintain, *status quo* and order to be listed after disposal of SLP as mentioned above. It is the fact that the aforesaid SLP No. 7233-7235 of 2003 was registered as Civil Appeal No. 5682-5684/2004 and all the Civil Appeals came to be dismissed on 11.07.2006 in the light of the judgment of the Constitution Bench in **Uma Devi** (supra). Despite the aforesaid fact, the petitioner was allowed to continue in service and finally he superannuated on 30.11.2018.

10. At no point of time the respondent authorities brought this fact before the Court in C.W.J.C. No. 9031 of 2001 which remained pending since 2001 till the date on which the petitioner withdrew the writ petition, on 21.02.2023. The Government was well acquainted with all the facts, however, it never bothered to mention the matter in the light of the disposal



of SLP No. 7233-7235/2003 and now after four years and eight months of the retirement of the petitioner the issue of illegal appointment is being raised. Once an employee is allowed to superannuate unconditionally and all the retiral benefits and other dues have been sanctioned and when the employee is getting regular pension, the tie between the employer and employee would automatically severed; in absence of any pending departmental proceeding. Thus, in the opinion of this Court, the only remedy which had left with the State respondent authorities was the procedure available under the Bihar Pension Rules, 1950 but the same has not been done. The termination of the service of an employee after retirement is unknown to the legal jurisprudence in absence of any departmental proceeding on mere show cause notice. Once the relationship of the employer and employee comes to an end, there is no question of termination of service of an employee, that too on the ground that his initial appointment was bad in law. The delinquent employee would be deemed to be in service, although he has reached the age of superannuation, only if a valid departmental proceeding had been initiated. The departmental proceeding can not be said to be initiated merely on issuance of a show-cause notice. It is initiated only when a charge-sheet is submitted. It is



to be noted that for termination of service, the procedure should be in conformity with Article 311 (2) of the Constitution of India even if the employee is not a civil servant, but a government servant.

11. Full Bench of this Court in ***Shanbhu Sharan vs. State of Bihar & Ors.; 2000(1) PLJR 665*** has held that even though the proceeding initiated in service period of an employee can be continued post retirement but the nature of punishment is different and no penalties as envisaged under the Bihar Government Servants (Classification Control and Appeal) Rules, 2005 can be imposed. Law is well settled, in this regard, no punishment order can be imposed with retrospective effect nor any punishment is inflicted on a retired employee as envisaged under 2005 Rules.

12. Coming to the impugned order as contained in Annexure-13, this Court finds that while terminating the service of the petitioner, the respondent no. 4 did not even take pain to consider the explanation of the petitioner and has only given a finding that explanation submitted by the petitioner is found to be not acceptable without assigning the reason for non-acceptance. This Court also finds that the impugned order has been passed at the behest of or in compliance with the letter No.



2681 dated 01.06.2023 issued by the Water Resources Department. Thus, absolutely there is no independent application of mind, which is *sine qua non* while dispensing the services of the petitioner causing civil as well as evil consequences. Thus, the impugned order suffers from the vice of the arbitrariness, apart from complete violation of the principles of natural justice.

13. The withdrawal of the C.W.J.C. No.9031 of 2001 which was preferred only against the show cause notice issued by the Department and even if it stood dismissed as withdrawn, it would how affect the right of the petitioner to continue in service and getting all the benefits is quite surprising. In the earlier round of litigation, the order of termination stood quashed and duly affirmed by the Division Bench with only observation to continue the proceeding in accordance with law. It is also not disputed that the petitioner has not discharged his service to the satisfaction of the authorities concerned. Once the service of the petitioner has been utilized by the Department without there being any condition and even for the sake of argument it is taken note of the fact that the order of *status quo* was granted by the Court in C.W.J.C. No. 9031 of 2001, that was only with respect to the continuance of the proceeding



based upon a show cause notice subject to final outcome of S.L.P. No. 7233-7235/2003 which came to be dismissed on 11.07.2006 in the light of **Uma Devi** (supra). The respondent authorities had the liberty to get the order of *status quo* modified in the light of the subsequent development and to proceed further but the same has not been done and allowed the petitioner to superannuate. Once the petitioner superannuated and the reitral benefits and the pension have been accorded; there is complete severance of the bond of employee and employer relationship and no cause of action exists for continuance of the departmental proceeding by the efflux of time, that too without following any procedure.

14. In the aforesaid facts and circumstances, the impugned order causing termination of the service of the petitioner as contained in Memo No. 2637 dated 12.08.2023 is held to be wholly unjustified, perverse and illegal and not sustainable in the law; accordingly the same stands set aside. The consequential order, as contained in Memo No. 1567 dated 16.08.2023, issued by the respondent no. 5, is also hereby set aside. The respondent authorities are directed to restore the pension of the petitioner forthwith within a period of four weeks from the date of receipt/production of a copy of this order. The



petitioner shall also be entitled to get an amount of Rs.20,000/-
as litigation cost.

15. The application stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2024
Transmission Date	NA

