

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6102 of 2018

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Ram Chandra Chaudhary Son of Late Parmeshwary Chaudhary resident of village - Samasa, Tole - Kastoli, Police Station - Mansur Chowk, District - Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Deputy Secretary Vigilance Road Construction, Bihar, Patna.
3. The District Magistrate, Katihar.
4. The Executive Engineer, Road Construction Department, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhas Ranjan, Adv
For the Respondent/s : Mr.Sushil Kumar- Gp22

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 13-02-2024 Heard learned counsel for the petitioner and counsel
for the State.

2. The present writ petition has been filed for quashing of the order contained in Memo No. 1207(S) dated 13.02.2018 (Annexure-3) issued by the Deputy Secretary (Vigilance) Road Construction Department, Bihar, Patna whereby 10% Pension of the petitioner has finally been deducted. Further relief has been made to direct the respondent to pay the further pension of the petitioner and other consequential benefit along with the arrear with interest.

3. Counsel for the petitioner submits that the petitioner was posted as Junior Engineer, Building Division, Katihar in the year 1997-98 and he has been assigned the work of repair of guard room, library etc of Civil Court, Katihar by



virtue of agreement no. 41F2, 47F2 and 53F2.

4. Counsel further submits that the completion of the work has to be done within 20 days. After completion of work, the enquiry was made by the vigilance and it was observed that work has not been done properly. The petitioner retired on 31.05.2013 from the post of Assistant Engineer, Road Construction Department, Bhagalpur and the departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950 was initiated on 21.11.2014 for the work done in the year 1997-98.

5. Counsel for petitioner submits that the decision of initiation of the departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950 dated 21.11.2014 has been issued after his retirement on 31.05.2013. Counsel further submits that the order of continuation of the departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950 is absolutely bad in law and non-jurisdictional due to the reason that for the alleged wrong of the year 1998, the decision under Section 43(b) of the Bihar Pension Rules, 1950 to initiate proceeding has been taken in the year 2014 i.e. after superannuation and lapse of about 16 years.

6. In this regard, Counsel for the petitioner submits that the proviso of Section 43(b) of the Bihar Pension Rules,



1950 is very much clear that beyond four years, the state cannot take decision of continuation of departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950, and therefore, the decision for continuation of departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950 is bad in law, therefore, the consequential order of deduction of 10% of pension of the petitioner as contained in impugned order dated 31.02.2018 is also bad in law.

7. Counsel for State fairly submits that from record, it transpires that the first letter in this regard has been issued in the year 2014 intimating to the petitioner about initiation of departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950 after his retirement and the event for which the departmental proceeding is alleged to be initiated is of 1998.

8. Upon hearing the parties and considering the documents, it transpires to this Court that petitioner who was working as Junior Engineer has retired in the month of May, 2013 and the decision from the Government under Section 43(b) of the Bihar Pension Rules, 1950 to initiate the departmental proceeding has been taken on 21.11.2014 i.e. about one year after retirement. It also transpires to this Court that the period for which the enquiry has to go is of the year 1998 which is of



about 16 years back from the date of his retirement and from the date of the decision to take action against the petitioner.

9. For the purpose of complete adjudication of the case, it is necessary to quote Rule 43(b) of the Bihar Pension Rules, 1950 which is as follows:

“The Appointment authority of the post held at the time of retirement 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.”

Proviso:-

“(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-clause (ii) of clause (a); and

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

Explanation. For the purposes of the Rule-

(a) departmental proceeding shall be deemed to



have been instituted when the charges framed, against the pensioner are issued to him or; if the Government servant has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to have been instituted;-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court.”

10. After going through the factual as well as the legal matrix in the present case, this Court is of the firm view that the decision to initiate the departmental proceeding under Section 43(b) of the Bihar Pension Rules, 1950 has been made in gross violation of Rule 43(b) of the Bihar Pension Rules 1950, and therefore, every decision contained in Memo No. 1205 dated 13.02.2018 by which the deduction of 10% pension of the petitioner has been made is, absolutely illegal, and therefore, set aside.

11. As such, this writ application stands disposed off.

12. Respondent authorities are directed to make full payment to the petitioner within three months from the production/receipt of the order.

(Dr. Anshuman, J)

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