

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4710 of 2018

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Dhirendra Kumar, son of Late Anandi Prasad Singh resident of Road No. 9,
Sanjay Gandhi Nagar, Hanuman Nagar, P.S. Patrakar Nagar, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Engineer in Chief Irrigation Creation cum Enquiry Officer, Water Resources Department, Government of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Irrigation Creation, Water Resources Department, Dehri, District Sasaram, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate
For the Respondent/s : Mr.Binay Kumar Pandey, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 30-01-2024

Re. Interlocutory Application No. 2 of 2024.

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Learned counsel for the petitioner submits that during the pendency of the writ petition, the petitioner retired from the services on 30.09.2020 and an order contained in Memo No. 24 dated 06.01.2024 has been passed by which pending departmental proceeding against the petitioner has been converted into a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 pursuant to superannuation.

3. Learned counsel for the petitioner further submits



that since the said order is relating to the departmental proceeding, therefore, it is also necessary to be challenged.

4. Learned counsel for the State has no objection to the same.

5. As such, Interlocutory Application No. 02 of 2024 is hereby allowed by which amendment of relief for quashing of the order converting the proceeding of the petitioner under Rule 43(b) of the Bihar Pension Rule, 1950 has also been challenged in the main writ petition.

Re. CWJC No.4710 of 2018.

6. Learned counsel for the petitioner submits that initially the present writ petition was filed challenging the issuance of charge memo contained in Memo No. 2068 dated 28.11.2017, enquiry report contained in Memo No. 295 dated 09.02.2018 as well as consequential decision/direction bearing Memo No. 301 dated 12.02.2018 by which the department has decided to lodge an FIR and finally challenging the order contained in Memo No.24 dated 06.01.2024 by which the pending departmental proceeding against the petitioner has been converted into a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950. Learned counsel further submits that with the span of time relief No. 3, i.e. quashing of Memo No. 301



dated 12.02.2018 by which the department has decided to lodge an FIR against the petitioner has become infructuous and therefore, he is not inclined to pursue the said relief.

7. Learned counsel for the petitioner further submits that the petitioner was initially appointed as Sub-Divisional Officer, Irrigation Sub-Division, Nawa Nagar, but with the span of time, he was promoted to the post of Assistant Engineer. He further submits that the post on which the petitioner was working, the appointing authority is the State, i.e. the Governor and on this ground, he is challenging the issuance of a charge memo that the said charge memo has not been issued in compliance with Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005'). He further submits that whatever the ingredients which have to be followed by which the show cause has been sought for and only upon dissatisfaction with the written statement filed by the delinquent, the appointing authority conclude the departmental proceeding, those are lacking in the charge and, therefore, several consequential decisions thereafter are also bad in law and not sustainable.

8. Learned counsel further submits that the order



contained in Memo No.24 dated 06.01.2024 by which the pending departmental proceeding against the petitioner has been converted into a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 is also bad in law and full of jurisdictional error as well as lack of ingredient as contained in Rule 43(b) of the Bihar Pension Rules, 1950.

9. Learned counsel for the petitioner further submits and relied on judgment decided by this Court in the case of *Uday Pratap Singh Vs. the State of Bihar and Ors.* reported in **2017(4) PLJR 195** and further in the case of **Kamal Kishore Prasad Singh Vs. the State of Bihar and Ors.** decided on 02.01.2024 in CWJC No. 4529 of 2018.

10. In response thereto, learned counsel for the State submits that the complete provision of CCA Rules, 2005 has been followed and in the counter affidavit, the copy of the charge memo, enquiry report, and subsequently after retirement the order passed to convert the departmental proceeding against the petitioner under Rule 43(b) of the Bihar Pension Rule, 1950 have been annexed which and the same have been made completely in accordance with the law. As such, the present writ petition is fit to be dismissed.

11. In the light of the submissions made above as well



as the documents on record, it transpires to this Court that the petitioner was appointed to the post of Sub-Divisional Officer, and at the relevant time when proceeding has been initiated against him, he was working on the post of Assistant Engineer and his appointing authority was the State, i.e. Governor. It also transpires in the light of Rule 17 of the CCA Rule, 2005 as well as the judgment in the case of **Uday Pratap Singh (supra)** that there is a gross violation in the issuance of the charge memo against the petitioner which has been challenged by the petitioner. It also transpires to this Court that the order under Rule 43(b) of the Bihar Pension Rule, 1950 suffers from defect of jurisdiction as the said order has been passed by the Under Secretary and not by the appointing authority after amendment in Rule 43(b) of the Bihar Pension Rule, the word 'State Government' has been amended as 'appointing authority' and Under Secretary is not the appointing authority, hence, the ingredient of section 43(b) of the Bihar Pension Rule are also lacking in the said order.

12. As such, this Court has no option but to set aside the charge memo contained in Memo No. 2068 dated 28.11.2017, enquiry report contained in Memo No. 301 dated 12.02.2018, and Memo No.24 dated 06.01.2024 by which order



has been passed about conversion of proceeding under Section 43(b) of the Bihar Pension Rule. Accordingly, the same are set aside.

13. The State is directed to provide all the benefits to which the petitioner is entitled as per the law within 90 days from the date of production of a copy of this order.

14. The writ petition stands allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	02/02/2024
Transmission Date	NA

