

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4727 of 2018

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Rajesh Kumar son of Late Ganga Prasad, Resident of 9 Galaxy Apartment- I,
Road No. 3, New Patliputra Colony, P.S. Patliputra, District Patna, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
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, Biha

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate Mr. Ansh Prasad, Advocate Mr. Sukarn Gop, Advocate
For the Respondent/s	:	Mr. Anjani Kumar- AAG-4

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 12-02-2024

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

2. Learned counsel for the petitioner submits
that I.A. No.2102 of 2018 has been filed to amend the prayer
by way of addition to quash the notification with regard to the
suspension of the petitioner. Counsel submits that with the



span of time I.A. No.2102 of 2018 has become infructuous. As such, he is not ready to press the said I.A. Accordingly, I.A. No.2102 of 2018 is dismissed as not pressed.

3. Learned counsel further submits that during pendency of the present application, order No.63 dated 16.05.2019 contained in Memo No.1019 dated 16.05.2019 has been passed by which the pending departmental proceeding initiated against the petitioner under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, (hereinafter referred to as 'the CCA Rules, 2005') has been decided to be converted under Rule 43(b) of the Bihar Pension Rules, 1950. Counsel submits that the said prayer has been added in the main writ petitioner by virtue of order dated 09.01.2024 as I.A. No.2 of 2019 has been allowed and petitioner was directed to amend the prayer in the writ petition. Counsel further submits that in the present writ petition the memo of charge and enquiry report have been challenged. Final order has not been passed in this case till date. But with the span of time, vide order dated 16.05.2019 it was ordered to convert the departmental proceeding under Rule 43(b) of the Bihar Pension Rule, 1950. Counsel relied on a judgment of this Court decided on 30.01.2024 passed in



CWJC No.4710 of 2018 (Dhirendra Kumar Vs. The State of Bihar and Others) in which the order converting the proceeding has been set aside on the ground that the decision has to be taken place at the level of the government but it has not been taken at the level of the government and it has been taken at the level of under Secretary of the Government.

4. Learned counsel further submits that in the said decision two aspects have been decided. The first is that initiation of charge memo has not been issued in compliance of Rule 17 of the CCA Rules, 2005. He submits that whatever the ingredients, which have to be followed, by which show-cause has been sought for and only upon satisfaction with the written statement filed by the delinquent, the appointing authority conclude the departmental proceeding. Those are lacking in the charge and, therefore, consequential decisions are also bad in law and not sustainable. In this regard, counsel relied on the judgment of **Shankar Dayal Vs. The State of Bihar and Ors.** reported in **2018 (2) PLJR 308**, and judgment dated 27.06.2018 passed in **CWJC No. 470 of 2018** in the case of **Dharmendra Kumar Vs. the State of Bihar and Ors.**

5. Learned counsel for the State, on the other hand, submits that every decision has been taken by the



disciplinary authorities are made completely in accordance with law. In support of his argument, he has relied on a Full Bench decision of this Hon'ble Court in the case of **Shambhu Saran Vs. The State of Bihar and Others** reported in **2000 (1) PLJR 665 (FB)**. Counsel submits that in the Full Bench decision it has been held that in a case where the disciplinary proceeding has already been started and the delinquent attains the age of superannuation the enquiry may be continued under Rule 43(b) of the Bihar Pension Rules, 1950, for the limited purpose of taking such action as provided under the said Rule even after such superannuation and for that purpose no specific or express order of government is necessary. Therefore, counsel submits that the order No.63 dated 16.05.2019, by which decision was taken converting the departmental proceeding under Rule 43(b) is not required at all.

6. Upon hearing the argument of the parties, considering the documents on record as well as the judgments, this Court is of the view that it is necessary to decide two different aspects of the matter.

(i) First aspect is that whether the initiation of the departmental proceeding against the petitioner is in



accordance with Rule 17 of the CCA Rules, 2005 or not.

(ii) The second aspect is that whether for continuation of the departmental proceeding/conversion of the departmental proceeding specific order under Rule 43(b) is required under Bihar Pension Rules, 1950, particularly when the departmental proceeding has already initiated prior to the retirement/superannuation of any delinquent.

7. So far as the first aspect is concerned, upon minute reading of the alleged charge memo, the authority who has issued the said charge memo, this Court is of the firm opinion that the said charge memo has been issued in gross violation of Rule 17 as well as the order has not been issued by the State on the day memo has been issued, due to the reasons stated in judgments of **Shankar Dayal Vs. The State of Bihar and Ors.** reported in **2018 (2) PLJR 308**, and judgment dated 27.06.2018 passed in **CWJC No. 470 of 2018** in the case of **Dharmendra Kumar Vs. the State of Bihar and Ors.**

8. Therefore, this Court is of the view that when the initiation of a proceeding is bad then every consequential orders shall automatically bad in law.

9. But so far as the second aspect is concerned,



though in the present case it is only for academic purposes that after the decision of the Full Bench which states as follows:

“13. In that view of the matter, we answer the reference by holding as follows:-

(I). In a case where a disciplinary proceeding has already been started, even if the person concerned attains the age of superannuation, the enquiry may be continued under Rule 43 of the Bihar Pension Rules, 1950, for the limited purpose of taking such action as provided under the said Rule even after such superannuation and for that purpose no specific or express order of the Government is necessary.

(ii). The decision of the Division Bench in case of Singeshwari Sahay V. The State of Bihar reported in 1979 BBCJ 735 and the law laid down therein were not correctly decided. ”

10. This Court is of the firm view that once departmental proceeding has been initiated prior to retirement/superannuation, there is no need of formal order under Rule 43(b) of the Bihar Pension Rules, 1950. So far as



the decision of 30.01.2024 passed in CWJC No. 4710 of 2018 (Dhirendra Kumar Vs. State of Bihar) in which it has been held as under:

“It also transpires to this Court that the order under Rule 43(b) of the Bihar Pension Rules, 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 of Rule 43(b) of Bihar Pension Rules, the word ‘State Government’ has been amended as ‘appointing authority’ and Under Secretary is not the appointing authority. Hence, the ingredient of Rule 43(b) of the Bihar Pension Rules are also lacking in the said order.”

11. This finding of CWJC No.4710 of 2018 appears to this Court as per inquiry decision because at the time of passing the said decision the order passed by the Full Bench in the case of **Shambhu Saran Vs. The State of Bihar and Others** reported in (2001) 1 PLJR 665 (FB) was not placed before this Court and the order was passed as such.

12. Conclusively speaking, in the present case



the Resolution dated 28.11.2017 including Memo of charge dated 27.11.2017 and consequential decision, i.e., enquiry report under Memo No.301 dated 12.02.2018, are hereby set aside. The authorities are free to take decision to proceed or not to proceed against the petitioner in accordance with law.

13. With the aforesaid direction, this writ petition is disposed off.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2024
Transmission Date	NA

