

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5921 of 2016

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Bachneshwar Jha Son of Late Sadanand Jha Resident of village - Baruari,
Police Station Town, District - Supaul

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bihar Panchayati Raj, Finance Corporation Limited, Patna through its
Managing Director
3. Managing Director, Bihar Panchayati Raj, Finance Corporation Limited,
Patna
4. District Magistrate, Supaul
5. District Rural Development Authority, Supaul through its Deputy
Development Commissioner, Supaul
6. Deputy Development Commissioner, District Rural Development Authority,
Supaul

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur, Advocate

For the Respondent/s : Mr. Sarvesh Kumar Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-01-2025

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

2. The present writ petition has been filed to quash
the office order dated 07.02.2013, passed by Respondent No. 3,
the Managing Director of Bihar Panchayati Raj Finance
Corporation Limited, Patna, whereby the petitioner was
dismissed from service retrospectively, effective from the date
of superannuation, i.e., 31.01.2012.

3. Learned counsel for the petitioner submits that the
petitioner was appointed as a Clerk in the Bihar Panchayati Raj



Finance Corporation Limited, Patna, and joined service on 02.02.1977 in Patna. Subsequently, he was sent on deputation to the District Rural Development Authority, Supaul, where he joined as a Clerk on 03.05.1999. He superannuated on 31.01.2012 while still on deputation.

4. Learned counsel further submits that subsequently, the petitioner was caught red-handed by the Vigilance while taking a bribe and was placed under suspension by Memo No. 363 dated 02.02.2006, issued by Respondent No. 5, effective from 28.01.2006. Based on this, Vigilance P.S. Case No. 5 of 2006 was registered against the petitioner and others. In the said case, the petitioner was granted bail and, thereafter, submitted his joining on 05.04.2006, which was accepted after his suspension was revoked in accordance with Sub-rule 3(i) of Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005'). However, the petitioner was again placed under suspension by Memo No. 977 dated 03.06.2006, issued by Respondent No. 5, effective from the date of his joining. Subsequently, the petitioner was served with a charge memo (Memo No. 1815 dated 07.11.2006), alleging that the Vigilance had raided the office of the District Rural Development



Authority, Supaul, and caught the petitioner red-handed while taking a bribe. In response, the petitioner submitted his reply on 27.12.2006, denying the charges. Upon conclusion of enquiry, the enquiry officer submitted his report on 19.09.2009, finding the petitioner guilty of the charges. Following this, the petitioner was issued a second show-cause notice regarding the proposed punishment of dismissal from service. In his reply to the second show-cause notice, dated 30.11.2009, the petitioner stated that he had not been given a fair opportunity in the departmental proceedings and was deprived of the chance to lead his evidence. Despite this, the Deputy Development Commissioner, without considering the petitioner's reply, recommended his dismissal from service to the Managing Director of Bihar Panchayati Raj Finance Corporation Limited, Patna, through Memo No. 798 dated 13.06.2011 (Annexure-5 to the Writ Petition). Consequently, the petitioner was dismissed from service vide Memo No. 207 dated 07.02.2013, with effect from the date of his superannuation, i.e., 31.01.2012 (Annexure-6 to the Writ Petition).

5. Learned counsel for the petitioner submits that the punishment order against the petitioner is entirely illegal and not in accordance with the law. The proceedings were conducted *ex*



parte, which violates the principles of natural justice. He further submits that the second show-cause notice was never served upon the petitioner, and, in the absence of this, the petitioner was dismissed. Learned counsel also argues that, instead of a second show-cause notice, a proposal for punishment was served, to which the petitioner responded, but his defense was not considered. Additionally, learned counsel submits that the petitioner superannuated on 31.01.2012, upon reaching 60 years of age, while still under suspension. However, the dismissal order was passed on 07.02.2013, after his retirement, which, according to the petitioner, is impermissible under the law.

6. Learned counsel further submits that there has been a gross violation of Rule 18 of the CCA Rules, 2005. He also submits that a dismissal order cannot be retrospective; rather, it must always be prospective. Under Rule 43(A) of the Bihar Pension Rules, 1950, only the State Government is authorized to inflict punishment, as the employer-employee relationship ends once the employee superannuates. In support of his argument, learned counsel for the petitioner has relied upon a judgement rendered in the case of *State Bani of Patiala and Another Vs. Ram Niwas Bansal (dead) through L.Rs.* reported in *AIR 2014 Supreme Court 1264* and submits that removal from service



ordered without furnishing copy of enquiry report to delinquent and order of removal so passed cannot be given retrospective effect from the date earlier order of removal was passed. Therefore, learned counsel argues that the dismissal order should be set aside.

7. Learned counsel for the State submits that the entire proceeding was conducted in accordance with the law. The petitioner was caught red-handed by the Vigilance Department, leading to his arrest and the lodging of a criminal case. It is also submitted by learned counsel for the State that, despite being served with a charge memo, the petitioner did not appear or defend himself before the enquiry officer. As a result, the enquiry officer proceeded *ex parte*, which, according to learned counsel, is entirely in accordance with the law. The procedure for *ex parte* proceedings was followed, and at this stage, only the issue of violation of natural justice be tested. Learned counsel for the respondent further submits that a show-cause notice was served upon the petitioner, outlining the proposal for punishment, which was also in complete compliance with the law.

8. After hearing the parties and upon perusal of the records, it transpires that Prapatra-Ka was issued to the



petitioner, and he was asked to submit his reply. However, the petitioner neither filed his written statement nor opted to submit his defense. The petitioner however, filed an application before the enquiry officer on 27.12.2006, and the charge memo was served as per Annexure-1. In response, he submitted his reply (Annexure-2) before the enquiry authority, in which he pleaded guilty to the charges. As a result, the enquiry officer followed the procedure laid down under Rule 17(9) of the CCA Rules 2005 and submitted his report in accordance with Rule 17(23) of the CCA Rules 2005. Thereafter, the petitioner was directed to submit a show-cause notice under Rule 18(6) of the CCA Rules 2005. In response, the petitioner submitted his show-cause to the disciplinary authority, who, after considering the reply, recommended the dismissal of the petitioner from service to the Managing Director of Bihar Panchayati Raj Finance Corporation Limited, Patna. The Managing Director, in turn, passed the final order in accordance with the law. However, by that time, the petitioner had already retired, and thus, the punishment was imposed from the date of his retirement.

9. After going through the judgement rendered in the case of *State Bank of India (supra)*, this Court feels it necessary to quote the relevant paragraph 38 whereof as under :-



"38. In the case at hand, the disciplinary proceeding was initiated against the delinquent officer while he was in service. The first order of dismissal was passed on 23-4-1985. The said order of punishment was set aside by the High Court and the officer concerned was directed to be reinstated for the limited purpose i.e. supply of enquiry report and to proceed in the disciplinary proceeding from that stage. The said order was not interfered with by this Court. The Bank continued the proceeding. Needless to emphasise, the said continuance was in pursuance of the order of the Court. Under these circumstances, it has to be accepted that the concept of deemed continuance in service of the officer would have full play and, therefore, an order of removal could have been passed after finalisation of the departmental proceeding on 22-11-2001. We have already held that the said order would not have been made retrospectively operative, but that will not invalidate the order of dismissal but it would only have prospective effect as has been held in *R. Jeevaratnam* [*R. Jeevaratnam v. State of Madras*, AIR 1966 SC 951] ."

10. Upon perusal of the aforesaid judgment, it is clear that the disciplinary proceedings against the petitioner were initiated while he was in service, and the order of removal was passed only after the petitioner's retirement. The order is valid



in view of the concept of deemed continuance in service for the purpose of completing disciplinary proceedings. Therefore, the said judgment will not help the petitioner in any manner.

11. In light of the reasons made above, this Court does not find any lapse in the impugned order of punishment dated 07.02.2013 which has been passed by respondent No.3, namely, the Managing Director, Bihar Panchayati Raj Finance Corporation Limited, Patna.

12. Accordingly, the present Writ Petition stands dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06/02/2025
Transmission Date	NA

