IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.836 of 2024
In
Civil Writ Jurisdiction Case No.7243 of 2021

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1. The State of Bihar through the Principal Secretary cum Commercial Tax Commissioner, Commercial Tax Department, Government of Bihar, Patna.
2. The State Tax Commissioner cum Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Treasury Officer, Government of Bihar, Vikash Bhawan, Patna.
4. The Accountant General (A and E) Bihar at Patna.

... ... Appellant/s

Versus

Subeer Kumar Bhattacharya son of Kanai Lal Bhattacharya resident of House No. D-30, Kharkai Enclave, near Bharat Sevashram, P.S.-Sonari, Jamshedpur, District-East Singhbhum (Jharkhand), Pin-831011.

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vivek Prasad, GP-7 Ms. Roona (AC to GP-7)
For the Respondent/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Bhola Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 17-03-2025

Heard Mr. Vivek Prasad, the learned Advocate for the State/appellants and Mr. Rajendra Narain, the learned Senior Advocate for the respondent.

2. After the conviction of the respondent in the year 2017, his pension was withheld, leading to the present litigation.

3. The short facts necessary for deciding this appeal is that the respondent served as an Assistant Commissioner of Commercial Taxes, who superannuated on 30.09.2014. However, during the tenure of his service, a criminal case was instituted against him and others vide R.C. Case No. 64A of 1996 for the offences under Sections 120B read with Sections 420, 467, 468, 477A of the I.P.C and Sections 13(1)(c)(d) of the Prevention of Corruption Act, 1988.

4. The trial continued after the retirement of the respondent, on completion of which he was convicted vide judgment dated 23.12.2017.

5. The respondent, before his conviction and after his retirement, was getting 90 % pension in accordance with the provisions contained in Rule 43(b) of the Bihar Pension Rules, 1950.

6. Immediately after his conviction, the payment of pension was stopped, taking recourse to the provisions contained in Rule 43(a) of the Bihar Pension Rules, 1950,

which reads as follows :

> *(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this Rule, shall be final and conclusive.*

7. The respondent / petitioner challenged the aforenoted decision of the appellant / respondent vide CWJC No. 4614 of 2020 on the ground that Rule 43(a) of the Bihar Pension Rules, 1950 would not relate to the conduct of the person during service and/or service.

8. In ***Nityanand Kumar Singh Vs. State of Bihar; 2016(2) PLJR 315 (DB)***, it was held that it is a conduct expected of a pensioner in future after he is granted pension which falls for desideratum while

invoking the provision under Rule 43(a).

9. The decision under Rule 43(a) cannot be taken on account of any departmental proceeding or a judicial proceeding instituted while the Government servant was in service or instituted later in respect of an event which related to the service rendered before retirement or on re-employment.

10. The contention was challenged by the State, taking the plea that the respondent had retired from service on 30.09.2014 and no departmental proceeding had been initiated under Rule 43(b) of the Bihar Pension Rules but a criminal case was pending against him in which he was convicted and sentenced to undergo imprisonment for three and half years and to pay a fine of Rs. 5,00,000/-.

11. The learned Single Judge vide his judgment dated 24.09.2020 passed in C.W.J.C No. 4614 of 2020, referred to above, set aside the order of the appellants/State in withholding the entire pension of the

respondent.

12. Shortly, thereafter, Rule 43(b) of the Bihar Pension Rules, 1950 was invoked and 15 days notice was given to the respondent for responding. A final order, thereafter, was passed against the respondent on 20.07.2021 contained in Memo No. Con/v-121/2003/58/C-Patna, withholding the full pension and gratuity of the respondent.

13. This was challenged by the respondent again before this Court vide CWJC No. 7243 of 2021.

14. A learned Single Judge of this Court vide his judgment dated 18.07.2024 found that only after the decision of the respondents under Rule 43(a) did not find favour with the Court, a proceeding was initiated under Rule 43(b) of the Bihar Pension Rules, 1950 without any sanction of the State. The order of withholding of pension and gratuity was set aside.

15. According to the learned Single Judge, sanction of any proceeding, be it departmental or judicial,

implies application of mind by the sanctioning authority. The sanctioning authority has the duty to consider a case objectively before granting sanction for initiation of any departmental proceeding. The judgment of the learned Single Judge, thus, solely depended on the appellants/State having failed to produce the order of sanction for initiating a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950.

16. The State has preferred the instant appeal on the solitary ground that no sanction of the Government is required in case where a criminal proceeding has been initiated against such an employee during his service tenure and which culminated in his conviction after his retirement.

17. Rule 43(b) is being extracted here for ready reference :-

> *"(b) 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:

Provided that-

(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."

18. The opening line of Rule 43(b) grants the

State the power to withhold or withdraw the pension or any part of it either permanently or for specified period as also the right to order recovery of pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary losses to Government by misconduct or negligence during his service including service rendered on re-employment. As can be very clearly gleaned, the proviso to Rule 43(b) provides for the circumstances and the manner in which a judicial or departmental proceeding is required to be initiated, if not already started after the superannuation of an employee.

19. In the present case, the respondent had already been made accused in a criminal case in which chargesheet was submitted before his superannuation. In that case, there was no necessity of initiating any proceeding under Rule 43(b) but the State had the jurisdiction to take a decision under Rule 43(b) for

withholding the entire pension or part of it.

20. For the sake of completeness, we would also like to extract Rule 43(c) and 43(d) of the Bihar Pension Rules, which provide the manner in which, till the conclusion of judicial or departmental proceeding, the pension or gratuity could be withdrawn :-

> *"43(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).*
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> *43(d) if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be with held till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly:*
>
> *Provided that where Departmental*

proceedings has been instituted under Rule 19 of Bihar Government Servant Classification, Control and Appeal Rules, 2005 (As amended from time to time) for imposing minor penalties under Rule 14(i) (ii) and (v) of the said rules, payment of gratuity may be made to the government servant."

21. Mr. Rajendra Narain, the learned Senior Advocate for the respondent, while defending the judgment of the learned Single Judge, submitted that when a decision by the State was taken to invoke Rule 43(a) of the Bihar Pension Rules, 1950, all the materials were available before the authorities. The decision to withhold pension of the respondent was not found to be good by a judicial order. Slapping the respondent again with a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 could only be seen as an over-arching in order to frustrate the judgment of the Court against such withholding of pension of the respondent. Once the decision of the State to withhold the pension of the

respondent because of his conviction in a criminal case post his retirement was disapproved of, another provision under the pension rules could not have been invoked on the same ground.

22. In order to support his contention, Mr. Narain has cited ***the State of Bihar & Ors. Vs. Laxmi S. Prasad & Anr.; 2001 (3) PLJR SC 149***, wherein it was held that the power to be exercised by the State Government, at the time after the incumbent had superannuated, while fixing the pension, the full pension admissible under the rule is, where the service rendered has been approved under sub-clause (b) of Rule 139 of the Bihar Pension Rules, 1950 and their service has been thoroughly satisfactory, if not the authority sanctioning the pension is authorized to reduce the amount of pension as it thinks fit and proper.

23. The Supreme Court was of the view in that case, that it was not open to the authority concerned to consider the entire records of an incumbent to come to a conclusion again after having exercised that power earlier

while reducing the pension of the incumbent, which was quashed by the High Court earlier. The quashing of the earlier order would not give a fresh right to the authorities to re-consider the same records afresh.

24. We are afraid the facts of that case would not be applicable to the case of the respondent. In the aforenoted case, the decision was taken under Rule 139 of the Bihar Pension Rules, lessening the pension amount of the incumbent.

25. In the present case, as has been noted above, a criminal case was initiated against the respondent during his service tenure but trial was concluded after his retirement. No doubt the authorities had taken a decision in the first instance to withhold the pension under Rule 43(a) but that decision not having approved of for the reason that future conduct would not be relatable to a conduct during the service of the employer. However, that would be no embargo on the authorities taking a call in withholding the pension under Rule 43(b) of the Bihar Pension Rules.

26. Merely using the phrase of "initiating a

proceeding" under Rule 43(b) would not *ipso facto* bring the respondent within the application of the proviso to Rule 43(b).

27. The order withholding the pension and gratuity of the respondent is not by virtue of any proceeding initiated under Rule 43(b) of the Bihar Pension Rules but a decision which the State is empowered to take on the conviction of an employee post his retirement for which the chargesheet was filed during his tenure of service.

28. The other argument raised on behalf of the respondent that the judgment setting aside the application of Rule 43(a) against the respondent would act as constructive *res-judicata* for the authority to take another action under Rule 43(b) in withholding his pension, is only being noted to be rejected.

29. There cannot be any *res-judicata* against a statute which is clear in its intendment and import that the State has within its plenary powers the right to withhold a pension in case a pensioner is found to have been convicted

for a criminal offence suggesting grave misconduct.

30. Perhaps the learned Single Judge mistook the decision of the authorities in seeking for a proper sanction order for initiating a proceeding which was not required in the present case as chargesheet had already been submitted against respondent in the criminal case during his tenure of service.

31. For the aforenoted reasons, we set aside the judgment of the learned Single Judge and uphold the order dated 20.07.2021 contained in Memo No. Con/v-121/2003/58/C-Patna.

32. The appeal stands allowed.

33. The interlocutory application/s, if any, also stands disposed of.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Shiv/Sunil

AFR/NAFR	
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