

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14644 of 2024

Sudha Devi, Wife of Vimal Kumar, Resident of Sadhogope Lane, Near Durga Asthan, Village/Mohalla- Mayaganj, Apartment, P.S. - Barari, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
2. The Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
3. The Under Secretary, Minor Water Resources Department, Patna.
4. The Chief Engineer, Minor Water Resources Department, Bhagalpur.
5. The Superintendent Engineer, Minor Irrigation Circle, Bhagalpur.
6. The Executive Engineer, Minor Irrigation Division, Bhagalpur.
7. The District Magistrate, Bhagalpur.
8. The Executive Engineer, Minor Irrigation Division, Munger.
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vikash Kumar Pankaj, Advocate
For the Respondent/s	:	Mr. Yatindra Narayan, AC to GP- 16
For the AG, Bihar	:	Mr. Vivekanand, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 13-08-2025

Heard the Parties.

2. The petitioner on being aggrieved with the action of the respondents in not extending her retiral benefits and other dues, despite having been superannuated from service of 31.03.2022 after serving more than 39 years of service on the post of *Neel Chitrak* (Blue Printer) has invoked the prerogative writ jurisdiction of this Court seeking a direction to ensure payment of retiral benefits and other dues. The challenge is also



made to a show-cause notice, as contained in Letter No.1170 dated 27.07.2024, issued by the respondent no.5 whereby the petitioner has been directed to furnish explanation as to why not her entire pension be forfeited under Rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950').

3. The petitioner was initially engaged in the office of Minor Irrigation, Munger Division, on 26.02.1985, as a daily wager and subsequently her services was absorbed in the regular service with effect from 01.12.1986 in pursuant to the letter contained in Memo No. 1757 dated 01.08.1986. The services of the petitioner was, later on, confirmed vide Office Order contained in Memo No. 859 dated 06.07.2012 w.e.f. 01.12.1989. During the service period, the petitioner was transferred to different offices and in consequent to order dated 29.12.2014, the petitioner submitted her joining in the office of respondent no.5. While the petitioner was discharging her duty in the year 2019, in the meanwhile one Kishore Mahto lodged complaint regarding the appointment of the petitioner being illegal, however, the said complaint was dropped by the Chief Engineer (Planning and Monitoring) Minor Water Resources Department vide Memo No. 910 dated 22.08.2019, based upon the report of



the Internal Complaint Committee, who did not find any evidence in supported of the allegation. The copies of which are annexed as Annexures-P/6 and P/7. Upon attaining the age of superannuation, the petitioner retired on 31.03.2022. The petitioner was asked to submit requisite documents/pension papers with photographs, the same was done and finally charge was handed over to new incumbent.

4. Notwithstanding the aforesaid fact, the respondent authorities did not take any steps in extending the retiral benefit and other dues of the petitioner, compelling her to run from pillar to post craving for her own retiral benefits/other dues. Representations were also filed before all the concerned authorities but went in vain. In the meantime, all of a sudden vide letter, as contained in Memo No. 1170 dated 27.07.2024, a show-cause notice was issued directing the petitioner to ensure her reply, within three weeks, as to why not a proceeding be initiated to forfeit the entire pension amount under Rule 139 of the Rules, 1950. It is further made clear that earlier the petitioner was asked to make available the necessary documents. In response thereto the petitioner filed a detailed reply, but no action has been taken, hence the petitioner has approached this Court.



5. Mr. Vikash Kumar Pankaj, learned Advocate for the petitioner assailing the impugned show-cause, as contained in Memo No. 1170 dated 27.07.2024 has submitted with all vehemence, that apart from it is cryptic, arbitrary and perverse, the same is violative of the principles of natural justice and arbitrarily issued at such belated stage. The material imputation leading to issuance of impugned show-cause does not attract Rule 139 of Rules, 1950; nowhere it remotely suggests that the services of the petitioner was unsatisfactory. During the entire service period of the petitioner, there had never been any departmental enquiry or judicial proceeding and moreover the services of the petitioner has been found satisfactory to all the concerned, thus in any view of the matter any action forfeiting the retiral benefit and other dues and initiation of the proceeding in terms with Rule 139 of the Rules, 1950 is wholly illegal and without jurisdiction.

6. Reliance has also been placed on a decision rendered by the Apex Court in the case of **A.P. Srivastava Vs. Union of India and Others**, reported in, (1995) 6 SCC 627 to reinforce his submission that the pension is not a charity or bounty nor it is conditional payment solely dependant on the sweet will of the employer. It is earned for rendering a long



service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated government servant. If a temporary government servant who has rendered 20 years of service, is entitled to pension and thus even if a person voluntarily retires, there, is no justification for denying the right to him, when he is required to retire by the employer in the public interest.

7. Learned Advocate for the petitioner further placed reliance on a Division Bench decision of this Court in **Joint Secretary, Bihar State Electricity Board Vs. Muneshwar Prasad Sinha**, reported in, (2007) 1 PLJR 111 where the Court while affirming the order of the learned Single Judge has found no fault in holding the actions of the appellants Bihar State Electricity Board bad, illegal and wholly without jurisdiction, as requirements of law were not followed, inasmuch as the authorities, at no point of time, had found the services of the writ petitioners unsatisfactory during their service tenure nor there was prior adjudication about their misconduct. In such circumstances, the actions of the authorities in terms of Rule 139 of the Rules are held to be not sustainable

8. Refuting the aforementioned contention, learned



Advocate for the State Mr. Yatindra Narayan, has submitted that without having been issued any appointment letter to the petitioner by the competent authority i.e. the Chief engineer for her absorption in regular establishment, the Superintending Engineer directed the Executive Engineer, Minor Irrigation Division, Munger vide letter no. 1757 dated 01.08.1986 to pay her salary in the pay scale in the regular establishment of Blue Printer. The petitioner was transferred on different places, but her status of having been working as a Daily Wages Employee was concealed; and there was no valid order of absorption of the petitioner. Nonetheless her services was confirmed w.e.f. 01.12.1989 vide office order as contained in Memo No. 859 dated 06.07.2012.

9. In the aforesaid premise, complaint was made in the year 2019, which was dropped, but subsequent thereto another complaint was filed in the Department on 08.01.2022 alleging the very appointment of the petitioner was illegal. The matter was examined by the Chief Engineer and a report was submitted in the Department vide letter no. 1567 dated 13.10.2022 whereupon he was directed by the department to take disciplinary action against the petitioner. The persons, who were involved in illegal appointment of the petitioner were also



identified against whom decision was also proposed to be taken. Since the petitioner had worked without any appointment/absorption letter and illegally received a huge amount of Government exchequer in connivance with the officials, a show-cause notice has been issued to her by the Superintending Engineer vide impugned letter dated 27.07.2024 as to why not her full pension be withheld under Rule 139 of the Rules, 1950 for causing financial irregularity and loss to the Government money.

10. Having bestowed anxious consideration to the submissions set forth by the learned Advocate for the respective parties and on perusal of the materials available on record, it would be evident that the petitioner was initially engaged as a daily wages employee on Muster Roll by the order of the Superintending Engineer, Minor Irrigation Circle, Bhagalpur vide Memo No. 454 dated 26.02.1985 against the post of Nil Chitrak (Blue Printer) till further order. From the letter aforesaid, it appears that the appointment of the petitioner was completely provisional, which was required to be sanctioned and approved by the Chief Engineer. Subsequent thereto the petitioner was brought to the regular establishment against the vacant post of Nil Chitrak (Blue Printer) in the admissible pay



scale and finally her services have got approval of the Chief Engineer and Minor Water Resources Department, Bhagalpur, and duly confirmed w.e.f. 01.12.1989 under Memo No. 859 dated 06.07.2012. The complaint filed against the petitioner regarding her illegal appointment was also examined by the internal committee and on being found no evidence in support of the allegation, the same was dropped. Thus, from the discussion aforenoted it is evident that the shortcomings, which was there at the very inception that has been taken away with the approval of the services of the petitioner by the competent authority.

11. This Court, even if, accepts the contention of the State respondents that the petitioner had been discharging her duties against the post of Nil Chitrak (Blue Printer) and the same has never been approved, this fact cannot be ignored that she has been allowed to work on temporary basis for a period of 39 years and at no point of time she was subjected to any departmental enquiry or judicial proceeding, rather she has been allowed all the benefits of regular pay scale and other allowances at par with the Government employees.

12. Prima facie, it appears that there was lack of adherence to procedural formalities, which was required to be followed at the level of the concerned authorities. It is not the



case of the respondents that the appointment of the petitioner was fraudulent or void ab initio, rather she has been brought to regular establishment by an officer, who was not competent in this behalf. At this juncture, it would be relevant to refer to the decision rendered by the Hon'ble Supreme Court in the case of **Jaggo Vs. Union of India & Ors.**, reported in, **2024 SCC OnLine SC 3826** where the Court taking note of the nature of the work performed by the temporary employees, which was perennial and fundamental to the functioning of the offices and have been allowed to work for a substantive period of time directed to regularize their services by setting aside their termination order.

13. In the case at hand, the question involved herein only relates to the applicability of Rule 139 of the Rules, 1950; it is needless to observe that an employee, as a matter of course, is not entitled to full pension, which is payable on satisfaction of his service being approved and thoroughly satisfactory, failing which the authority sanctioning the pension should make such reduction, as it thinks proper. The aforementioned rule also clarified that while past record including conduct as recorded is required to be seen for grant of full pension under Rule 139(a), future good conduct is an implied condition of every grant of a pension



under Rule 43(b). Rule 139(a) is interlinked to Rule 139(b) and (c). Rule 139(a) speaks that the pension is not payable to the employee, as a matter of course but it is subject to the service rendered by the employee unless the service is satisfactory. This power can be exercised after giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension. Rule 139(c) of Rules, 1950 makes it clear that this power cannot be exercised after expiry of three years from the date of the order sanctioning the order first passed.

14. The scope and applicability of Rule 43(b) and Rule 139 of Rules, 1950 was duly considered by the Hon'ble Supreme Court in the case of *State of Bihar Vs. Md. Idrish Ansari*, reported in, *1995 Suppl. (3) SC 56* where the Hon'ble Supreme Court observed as follows:

“So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired Government servant or not in the circumstances contemplated by the Rules. The first circumstance is that if the service of the Government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is



found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the Government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time”.

15. The petitioner was all along allowed to discharge the duty and there had never been any complaint to the extent of her efficiency, thus in view of the discussed legal position, Rule 139(b) of Rules, 1950 does not attract, more so when it is only alleged that her regularization has been made without following any rules and regulation.

16. Notwithstanding the, aforementioned, fact the petitioner already attained her age of superannuation on 31.03.2022, the initiation of any proceeding or issuance of show-cause under Rule 139 of Rules, 1950 on account of her service being allegedly not confirmed by following the due



procedure could not be allowed to be reopened after severance of the tie of employer and employee. Rule 139 of Rules, 1950 cannot be read in isolation, which would qualify the effect of Rule 43 of Rules, 1950 under which power to withhold or withdraw the amount of pension or any part thereof, whether permanently or specified period is to be exercised only when the pensioner is found guilty in judicial proceeding or departmental enquiry or not otherwise.

17. A Bench of this Court in the case of **Satyendra Narain Sinha @ Dr. Satyendra Narain Sinha Vs. The State of Bihar & Ors.**, reported in, **1999 (3) PLJR 939** has observed that Rule 139(a) has to be read in the context of its sub-rule (b) which empowers the sanctioning authority to make such reduction in the amount of pension where the service has not been thoroughly satisfactory.

18. Further, the impugned show-cause does not speak as to under which specific provision, the same has been issued, as the authority concerned conveniently mentioned only Rule 139 of Rules, 1950.

19. It is trite that a valid show-cause notice must include both specific provision under which it is issued. Besides the specific allegation and the proposed punishment to ensure



the principles of natural justice. The notice should clearly detail the facts constituting the alleged breach, the specific legal provisions violated and the potential consequences if the individual failed to respond or if their response is deemed unsatisfactory.

20. This Court has time and again reminded that pension and gratuity are being retiral benefits falling under the definition of property under Article 300(A) of the Constitution of India, bestowed to the workman on account of his/ her continuation of long services which would be enabled him to save for a rainy day. It should be assured the social security to some extent in the form of either pension, gratuity or provident fund. In this regard reference may be taken to a decision of the Hon'ble Supreme Court in the case of ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.***, reported, (2013) 12 SCC 21.

21. In view of the discussions made hereinabove, this Court is of the opinion that initiation of any proceeding without any material, to attract applicability of Rule 139 of Rules, 1950, after this belated stage, is wholly without jurisdiction and *per se* illegal. Accordingly, the impugned notice is hereby set aside. The respondent authorities are directed to



compute the pension and other retiral benefits taking into account her past services and to ensure consequential benefits preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

22. The writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2025
Transmission Date	NA

