

(1999) 09 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 11616 of 1998

Bholan Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2000) 1 PLJR 186

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : R.N. Mukhopadhyay, for the Appellant; G.P. Rai for the State and Mr. J.P. Karn for the A.G., for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—This writ petition is directed against the Government order dated 10.10.1998 issued by the Under Secretary in the Water Resources Department, Government of Bihar, contained in Memo No. 2872 (Annexure-1) in purported exercise of the power under Rule 43(b) of the Bihar Pension Rules withholding 100% pension of the petitioner for one year. Petitioner was initially appointed as Junior Engineer (Mechanical) in the then Irrigation Department now Water Resources Department with effect from 10.8.1961 and was promoted to the post of Assistant Engineer (Mechanical) in March, 1973. According to him due to clean service he was promoted as Executive Engineer in March, 1983 in November, 1986 he was transferred to Mechanical Division, Mohammadganj (Daltonganj) as Executive Engineer (Mechanical) and functioned there till August, 1988, from where he was transferred in Swarnrekha Project. In February, 1991, the petitioner was transferred and deputed in the Minor Irrigation Department, but before he could join his posting he was placed under suspension on 8.2.1991 and an F.I.R. was also lodged against him. However, since after his suspension no charge sheet was served, he moved this Court by filing C.W.J.C. No. 2929 of 1991 challenging the validity of the order of suspension, which was passed in

contemplation of the departmental proceeding. This Court Vide order dated 19.9.1991, contained in Annexure-2 disposed of the said writ petition directing the Police authority to complete the investigation and submit final form within four months. As regards disciplinary enquiry this Court directed that as the suspension order provides that it was passed pending disciplinary enquiry against the petitioner, the Respondent shall submit a charge sheet within a period of six weeks, but thereafter no further steps shall be taken by them and the petitioner shall not be required to furnish reply to it until the criminal case comes to an end. With respect to the order of suspension, the Court directed that the petitioner, if so advised, may file representation for revocation of suspension order, which shall be disposed of by the authority concerned within three weeks. Accordingly the petitioner was served with charge sheet vide letter dated 13th September, 1994, contained in Annexure-3. Petitioner submitted his show cause on 6.12.1994 vide Annexure-4. The charge sheet related to the year 1987-88.

2. The Deputy Secretary, Water Resources Department on 17th September, 1997 came out with a notification ordering revocation of the order of suspension of the petitioner. It is alleged that the Respondent-authority irrespective of the directions of this Court in C.W.J.C. No. 2929 of 1991 inflicted the following punishments :

(i) Recovery of Rs. 1.60 lacs from the salary of the petitioner at the rate of Rs. 4,000/- per month; and

(ii) In case of non-recovery during the service period, the rest amount be recovered from the gratuity and pension of the petitioner.

3. On 31.1.1998, petitioner superannuated and later filed C.W.J.C. No. 1135 of 1998 challenging the validity of the said order in this Court. This Court vide order dated 24.2.1998, contained in Annexure-5, while hearing I.A. adjourned the matter for filing counter affidavit and rejoinder and in the meantime directed that if no recovery from the pay of the petitioner has already been started then such recovery may not be started until further orders of this Court. In view of the aforementioned order dated 19.9.1991 passed in C.W.J.C. No. 2929 of 1991 the order dated 17.9.1997 was withdrawn vide Government notification dated 27th March, 1998, contained in Annexure-6. Thereafter vide order, contained in Annexure-7, 90% provisional pension of the petitioner was sanctioned, with effect from his date of retirement. In the order dated 16.9.1998, contained in Annexure-8, it was, however, stated that a show cause notice was issued under Rule 55A vide letter no. 2647 dated 13.9.1994, which however, could not be converted before the petitioner superannuated. As such, the said proceeding was converted under Rule 43(b) of the Bihar Pension Rules by the said order; and thereafter vide impugned order, contained in Annexure-1, the petitioner was inflicted with the punishment in purported exercise of the power under Rule 43(b) of the Bihar Pension Rules.

4. In the counter affidavit filed on behalf of the Respondents, the facts

aforementioned have not been disputed. In paragraph 9, however, it is alleged that in the year 1987-88 the petitioner while posted at Mechanical Division, Mohammadganj, Daltonganj did not place the claim of Contractor of Rs. 12 lacs before the Liability Committee together with the liability of Rs. 56 lacs. When the payment of Rs. 56 lacs was made then the matter of liability of Rs. 12 lacs was placed before the Liability Committee after getting notice u/s 80 C.P.C. However, it is admitted that the petitioner superannuated on 31.1.1998 and the proceeding under Rule 55(A) initiated on 13.9.94 was converted to Rule 43(b) of the Bihar Pension Rules vide letter no. 1099 dated 16.9.1998 and thereafter the show cause of the petitioner was considered and the impugned order, contained in Annexure-1 was passed.

5. Learned counsel for the petitioner contended that the impugned order cannot be sustained as the entire so-called proceeding purported to be under Rule 43(b) is vitiated as it was in respect of an event which took place much beyond four years before the institution of such proceeding. It is submitted that no proceeding in terms of Rule 43(b) can proceed if it is in respect of an event which took place more than four years before the institution of such proceeding.

6. Learned counsel for the State submitted that according to the principles decided by this Court in the case of Ram Nandan Singh Vs. The State of Bihar and Others, the proceeding initiated under Rule 55A can be continued under Rule 43(b) of the Bihar Pension Rules and the bar of four years shall not apply. This Court is unable to appreciate as to how the said decision is of any help to the learned counsel for the State.

7. In fact, the present case is squarely covered by the principles decided by the Apex Court in the case of State of Bihar and others Vs. Mohd. Idris Ansari, . In the said case, the facts were that in the year 1986-87, the Respondent while working in Irrigation Department was involved in respect of certain irregularities. After calling for explanation etc. from the said Respondent, the State Government found him responsible for the irregularities and excess payment made by him to the parties concerned. The Government awarded punishment to him vide order dated 6.6.1992, the validity of which was challenged in a writ petition in this Court. On 16.11.1992 the said writ petition was allowed as the Court found that there was violation of principles of natural justice and the order impugned therein was quashed with a liberty to the State Government to proceed afresh against the Respondents. Thereafter on 31.1.1993 the Respondent on reaching the age of superannuation retired from service. On 17.7.1993 he was again served with a notice requiring him to submit explanation regarding irregularities. Before the said notice could be processed another show cause notice was issued to him on 27.9.1993 intimating him that as he has already retired from service and the period of charges were prior to four years, no action could be taken against him under Rule 43(b) of the Rules and thus the Government had decided to issue show cause notice under Rule 139 of the Rules. He submitted his show cause and on consideration of the same the State

Government passed final order on 13.12.1993 in exercise of power under Rule 139(a) & (b) withholding 70% of pension payable to him. The Respondent had filed another writ application challenging the notice dated 17.7.1993 and by way of amendment he also challenged the subsequent show cause notice dated 27.9.1993 and the final order passed on 13.12.1993. The writ petition was allowed and the State went in Appeal before the Apex Court.

8. The Apex Court on conjoint reading of Rule 43(b) and Rule 139 found that the following picture emerges :

I. A retired Government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

II. Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by sanctioning authority and not beyond that period.

9. While dealing with second type of cases held that proof of grave misconduct on the part of the concerned Government Servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings, which might have taken place during his service tenure or from the departmental proceeding, which may be initiated even after his retirement. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired Government Servant can be found guilty of grave misconduct during his service career, pursuant to the departmental proceedings conducted against him even after his retirement but such proceedings could be initiated in connection with only such misconduct which might have taken place within four years of the initiation of such departmental proceedings against him.

10. This Court in the case of Ram Ekbal Sharma vs State of Bihar & ors, reported in 1997(1) All P.L.R. 61 while dealing with the scope of Rule 43(b) in a case of an enquiry or proceeding initiated and continued even after retirement of the Government Servant and on consideration of the principle decided by the Apex Court in the case of State of Bihar vs. Md. Idris Ansari (supra) that merely because a Government Servant is allowed to retire, the Government does not lack jurisdiction or power to continue the proceeding already initiated to logical conclusion thereto and, as such, it was held that the enquiry or proceeding initiated under Rule 43(b) is to continue even after the retirement of the Government servant in accordance with the procedure laid down in terms therefor, but there must be specific order passed continuing such proceeding just before retirement, obviously because unless there is an order before retirement

in terms of the aforementioned Governmental decision, the proceeding initiated under any other provision meets its natural death after the employee ceased to be in employment after his retirement and the only course remains open for withholding and withdrawing his pension on account of conviction or grave misconduct of an employee is the proviso to Rule 43 (b) or Rule 139 of the Rules. Plain reading of Rule 43(b) shows that it has to be exercised by the State Government strictly in terms thereof. Under its proviso the State Government has been vested with the power to institute a departmental proceeding even if not instituted while the Government servant was on duty either before retirement or during re-employment with the rider mentioned therein. One of the riders is that it shall not be in respect of an event which took place not more than four years before the institution of such proceedings. There is no provision like one contained in Rule 9(2) of the Central Civil Services (Pension) Rules which specifically provides that departmental proceeding initiated while in service against the Government Servant shall be deemed to be continuing even after his retirement and it shall be concluded by the authority in same manner as if the Government Servant had been continued in service. Under such circumstances, the proceeding initiated under Rule 55A against the petitioner stood terminated in absence of any order passed for continuance of the said proceeding in terms of Rule 43 (b) just before his retirement. Admittedly with respect to the conversion of the proceeding under Rule 43(b) of the Bihar Pension Rules, the order was passed much after retirement and as such in the light of the law laid down in the case of *State of Bihar vs. Md. Idris Ansari* (supra) the riders provided in its proviso is attracted.

11. Having regard to the fact that the present proceeding admittedly is in respect of the event taken place in the year 1987-88, which obviously is much more than four years before the institution of the proceeding and the same was not sustainable. Thus, it has rightly been contended by the learned counsel for the petitioner that the entire so-called proceeding purported to be under Rule 43(b) is vitiated and the impugned order passed pursuant thereto cannot be sustained. The writ petition is, thus, allowed. The impugned order, contained in Annexure-1 is quashed. The Respondents are directed to release the remaining pensionary benefits by issuing necessary sanction order/authority slip within two weeks of the receipt/production of a copy of this order.