

(2009) 11 PAT CK 0013
In the Patna High Court

Bhubneshwar Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0013

Final Decision : Allowed

Judgement

Navin Sinha, J.—I.A. No. 6973 of 2009 has been filed challenging the fresh order of punishment dated 8.10.2009 passed during the pendency of the writ application.

2. Having heard counsel for the parties, I.A. No. 6973 of 2009 is allowed and the challenge shall form part of the original pleadings.

3. Heard learned Counsel for the petitioner and learned Counsel for the State.

4. The petitioner was subjected to departmental proceedings on certain allegations of the year 1989.

5. The petitioner is aggrieved by the order dated 17.9.2009 passed in pursuance of the orders of this Court in L.P.A. No. 571 of 2008 seeking to explain that the order dated 25.5.2009 was not a fresh proceeding under Rule 43(b) of the Bihar Pension Rules but was a continuation of the earlier departmental proceedings initiated against the petitioner on 24.3.1993. The subsequent order of punishment dated 8.10.2009 is also under challenge.

6. The petitioner on 24.12.1992. He came to this Court in CWJC No. 5451 of 1996 aggrieved by the order for dismissal from service inter alia on the ground that the petitioner had not shown any cause in reply to the second show cause notice issued.

7. This Court noticed the admission of Respondent Nos. 1 to 5 in the counter affidavit that a second show cause notice had been filed but beyond time. The order of dismissal was set aside with directions to consider the matter.

8. The petitioner superannuated on 31.7.1997. On 24.1.1998 the authorities passed a fresh order of modified punishment in view of his superannuation in exercise of powers under Rule 43(b) of the Bihar Pension Rules withholding 100% pension. The writ application challenging the same by the petitioner came to be dismissed. In L.P.A. No. 571 of 2008 preferred by the petitioner, the Division Bench on 7.4.2009 set aside the order of punishment dated 24.1.1998 noticing that after the earlier order of punishment was set aside and the proceedings were converted to Rule 43(b) of the Bihar Pension Rules, no notice was given to the appellant nor further proceedings were conducted. The Division Bench also noticed that final order converting the proceedings into one under Rule 43(b) of the Rules were in fact passed on 27.1.1998 when final order of punishment under Rule 43(b) had been passed on 24.1.1998. The Division Bench, however, observed that the Government was free to proceed under Rule 43(b) of the Bihar Pension Rules in accordance with law.

9. Learned Counsel for the petitioner submits that the Division Bench had further directed that if the proceedings are not concluded within six months from that date full pension and gratuity has to be paid. Final order of punishment has been passed afresh on 8.10.2009 appended to I.A. No. 6973 of 2009 imposing punishment of withholding 100% pension again and the provisional pension paid to him to be recovered by a money suit. It is submitted that the initiation of a fresh proceeding on 25.5.2009 is barred by Rule 43(b) of the Bihar Pension Rules as the allegations which were the subject matter of the departmental proceedings relate to the year 1989 well beyond the period of four years.

10. Counsel for the State urged that the order dated 25.5.2009 was not the initiation of a fresh proceeding but was only continuation of the earlier proceeding initiated on 24.3.1993 as explained in the impugned order dated 17.9.2009.

11. The order passed by a Government functionary shall be tested on basis of the recitals contained in the order. This Court shall, therefore, primarily consider the recitals in the impugned order dated 25.5.2009 to decide whether it was the initiation of a fresh departmental proceeding under Rule 43(b) of the Bihar Pension Rules or was it continuation of a proceeding initiated on 24.3.1993. It is only in the event of any ambiguity in the order that the question of this Court taking into consideration any interpretation by the Respondents of their own order shall arise.

12. This Court on a bare perusal of the order dated 25.5.2009 is satisfied that it was not a continuation of the earlier proceedings dated 24.3.1993. The order specifically states that the Government has resolved to initiate proceeding for the narrated charges under Rule 43(b) of the Bihar Pension Rules. It encloses as item 4, Annexures-1 & 2 in support of the charges and calls upon the petitioner to submit his show cause and also grants him opportunity that if he so wants he can ask for documents or takes the same by making a request before the Inquiry Officer. The order also appoints an Inquiry Officer and a Presiding Officer afresh.

Had the order stated that the Respondents propose to hold further enquiry into the earlier memo of charges dated 24.3.1993 and for reasons of facilitation the Inquiry Officer and the Presenting Officer were changed by passage of time, the matter would have been otherwise. In fact, this Court has noticed from the facts that it was procedural non-compliance on the part of the Respondents, which led this Court to interfere both in CWJC No. 5451 of 1996 and L.P.A. No. 571 of 2008. There was no need to commence a fresh proceedings, serve fresh memo of charges, call for fresh show cause from the petitioner, if it was a continuance of the earlier proceeding. All that was required to be done was to rectify the procedural irregularity found by this Court in the earlier proceedings.

13. In the case of State of Bihar and others Vs. Mohd. Idris Ansari, , the Respondent was punished in a departmental proceeding. On challenge the Court set aside the punishment for procedural violations during the enquiry. However, liberty was given to the State to proceed afresh against the Respondent. In the meantime, after the order of the Court, the Respondent superannuated whereafter show cause notice was issued to him stating that as the event was more than four years old action was not possible under Rule 43(b) of the Pension Rules and, therefore, show cause was being issue under Rule 139 of the Bihar Pension Rules and where after final order withholding the pension was passed. The Supreme Court at paragraph 7 held as follows:

7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired Government servant, it must be shown that in departmental proceedings or judicial proceedings the concerned Government servant is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken under Rule 43 (b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently it is not open to the learned Advocate for the appellant to rely upon the said earlier notice dated 17-10-1987.

14. If the Respondents have chosen to initiate a fresh departmental proceeding under Rule 43(b) of the Bihar Pension Rules for an event beyond four years from the date of the resolution dated 25.5.2009, the allegation relating to the year 1989, this Court holds that the entire fresh proceedings and the order of fresh punishment dated 8.10.2009 is barred by Rule 43(b) of the Bihar Pension Rules and is not sustainable. The order of punishment dated 8.10.2009 is, accordingly, set aside. The petitioner is entitled to all consequential benefits pursuant to his superannuation.

15. The writ application stands allowed.