

(2024) 02 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2752 Of 2018

Diwakar Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)

Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 — Rule 9, 15, 16

Citation : (2024) 02 PAT CK 0022

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Ranjeet Kumar, S. D. Yadav, Atul Kumar Verma

Judgement

1. Heard learned counsel for the petitioners and learned counsel for the State.
2. The present writ petition has been filed for the following reliefs:
 - i. For setting aside the enquiry report contained in letter no. 233 dated 4-8-2016 submitted by the Enquiry Officer cum Additional Chief Medical Officer, Purnea, whereby the charges of misconduct has been found to be proved.
 - ii. For setting aside the order of punishment contained in memo No. 2027 dated 3-8-2017 passed by the Civil Surgeon cum Chief Medical Officer, Purnea, whereby 100% pension and gratuity of the petitioners' father has been withheld permanently and further the petitioners' father has been found entitled only for subsistence allowance for the period remained under suspension.
 - iii. The petitioners further prays that after setting aside the aforementioned punishment his 100% pension with interest and gratuity with statutory interest may be directed to be paid immediately.
 - iv. For any other relief for which the petitioners may be deemed entitled to.
 - v. For setting aside the reasoned order contained in Memo No.1295(4) dated

25.10.2018, passed by the Director-In-Chief (Disease Control) Health Services, Bihar, Patna, whereby the service appeal filed by the petitioners' father was rejected.

3. Learned counsel for the petitioners submits that the petitioners' father was posted as clerk in the office of Superintendent of Sadar Hospital, Purnea, in additional charge of clerk in the office of Licensing Officer, Sadar Hospital, Purnea. Counsel submits that a Vigilance Case No.076 of 2014 was registered against him under the Prevention of Corruption Act and petitioners' father was arrested on 21.10.2014. He was subsequently allowed bail on 04.03.2015. Counsel submits that during his custody in jail he retired on 31.01.2015, when he came out then a departmental proceeding has been initiated against him and in this regard a letter in the form of order has been issued vide Memo No.1686 dated 02.06.2015 by the Civil Surgeon-cum-Chief Medical Officer. Counsel submits that from the said letter it transpires that the Director-in-Chief, Health Services, Department of Health, Government of Bihar, Patna, has ordered vide letter No.559(4) dated 22.05.2015 to initiate the departmental proceeding and prior to that different letters were communicated to the Principal Secretary for initiation of proceeding under Rule 43(b) of the Bihar Pension Rules, 1950, as the petitioner has already been retired. Counsel for the petitioners further submits that vide order dated 18.12.2023 this Hon'ble Court has pleased to direct to produce the original copy of the disciplinary proceeding before this Court. The original copy of the record is available and he submits that the order of initiation of the departmental proceeding has been taken after his retirement, i.e., on 25.05.2015 and, therefore, the true compliance of Rule 43(b) of the Bihar Pension Rule, 1950 is a necessary ingredient under which the State Government has to take a decision for initiation of the departmental proceeding but here in the present case the decision has not been taken by the State Government and, as such, the said order for initiation of the departmental proceeding is bad in law and, therefore, all other subsequent decisions, i.e., enquiry report, the original order passed by the disciplinary authority as well as the appellate authority are also bad-in-law and not fit to be sustained.

4. Learned counsel for the State, on the other hand, submits that the writ petition of the petitioners is not maintainable due to the reason that petitioners' father was apprehended in a vigilance case and he has been caught red handed by taking bribe money, on the basis of which vigilance case was initiated against him and he was arrested by the Vigilance team on 20.10.2014. Learned counsel for the State further submits that the petitioners' father was suspended on 21.10.2014 just after one day of the arrest by the police and the order to initiate the departmental proceeding has been issued vide Annexure-3 dated 02.06.2015. But he submits that the suspension order may be construed positively, as authority has taken decision to continue the departmental proceeding and only due to this reason this suspension order has been issued under Rule 9 of the CCA Rules, 2005. Counsel further relied on a Full Bench decision of this Hon'ble Court, in the case of Shambhu Sharan Vs. State of Bihar

reported in 2000 (1) PLJR 665 Full Bench, in which it has been held by the Hon'ble Full Bench that in case where a disciplinary proceeding has been initiated against any employee prior to his superannuation/retirement, it shall continue and there is no need for any order under Rule 43(b) of the Bihar Pension Rules, 1950. Counsel submits that since suspension order has been issued prior to his retirement, therefore, it may be assumed that the decision for initiation of departmental proceeding has been taken by the State. Counsel further submits that according to Rules 15 and 16 of the CCA Rules, 2005, any person who is appointing authority or disciplinary authority or higher authority are competent to take a decision/institute a case and, therefore, the Director-in-Chief in the health services is the authority which comes within the purview of Rules 15 and 16 of the CCA Rules, 2005 is competent authority to take decision under Rule 43(b) of the Bihar Pension Rules, 1950. Therefore, on this ground the present writ petition may not be allowed and enquiry report, disciplinary order and appellate order have been passed are completely in accordance with law and there is no need of any interference.

5. In the light of the submissions made by the parties and upon perusal of the documents on record as well as the original copy of the departmental proceeding, which has been produced by the State counsel, upon direction of this Court. Certain things which are apparent from the record is as follows:

(i) Petitioner has been arrested on 20.10.2014, (ii) He was suspended on 21.10.2014,

(iii) He retired on 31.01.2015,

(iv) Bail has been granted on 04.03.2015,

(v) The decision for initiation of departmental proceeding has been issued vide Memo No.1686 dated 02.06.2015 served upon the petitioner on 24.06.2015.

6. It transpires to this Court that after retirement/superannuation, the role of CCA Rules, 2005 used to be ended and there are only two exception for this;

(i) Authority has already taken a decision for initiation of departmental proceeding prior to his retirement/superannuation as decided by Full Bench of this Hon'ble Court in the case of Shambhu Sharan Vs. State of Bihar reported in 2000 (1) PLJR 665.

(ii) Under Rule 43(b) of Bihar Pension Rules, 1950, the proceeding may continue within four years from the date of cause of action for initiation of the departmental proceedings only upon the decision taken by the State Government, prior to 13.05.2020 and after 12.05.2020, upon the decision taken by appointing authority.

7. Therefore, the argument made by the State that appointing authority/disciplinary authority or any higher authority and their decisions to continue the departmental proceeding even after retirement shall not be a correct position of

law. Prior to the retirement, they may but after retirement it is the State Government who is competent authority and this position continued up to 12.05.2020. Since on 13.05.2020, the law has changed and the State Government has been replaced by the word 'appointing authority'. Due to this reason, the pleadings of the State Government is not acceptable to this Court.

8. From the perusal of the original record, it transpires to this Court that order No.559(4) dated 25.05.2015 has not been made by the State Government. Therefore, the said decision to initiate the departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950, is not correct. In the light of the argument made by the State that by virtue of issuance of suspension order, the decision for initiation of departmental proceeding has already been made. According to him, which has been narrated in the suspension order itself. If this is the correct position, then there is no necessity for the authority to pass order under Rule 43(b) of the Bihar Pension Rules, 1950, meaning thereby the State by its action itself admits that since petitioners' father has retired, and, therefore, it is necessary to take decision under Rule 43(b) of the Bihar Pension Rules, 1950.

9. In the light of the above discussion, this Court is of the firm view that the order contained in Memo No.1686 dated 02.06.2015 (Annexure-3) has not been passed in accordance with law and, therefore, quashed. In the result, the consequential effect based on the said Memo, i.e., enquiry report contained in letter No.233 dated 04.08.2016 submitted by Enquiry Officer-cum-Additional Chief Medical Officer, Purnea, disciplinary order contained in Memo No.2027 dated 03.08.2017 passed by the Civil Surgeon-cum- Chief Medical Officer, Purnea, and appellate order contained in Memo No.1295(4) dated 25.10.2018 passed by the Director-in-Chief (Disease Control) Health Services, Bihar, Patna, are hereby set aside.

10. Learned counsel for the petitioners submits that the alleged delinquent has already died during pendency of the proceeding and, therefore, heirs and legal representatives have already been substituted.

11. It is directed to the State-respondents that upon filing the representation by the substituted legal heirs, the State shall calculate all his dues in accordance with law and ensure the payment within six months from the date of receipt/ production of a copy of this order.