
(2016) 11 JH CK 0066
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4787 of 2011

Jag Narayan Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules, 1930 — Rule 55

Citation : (2017) 2 JCR 416

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Saurabh Shekhar, Advocate, for the Petitioners; Mr. Anoop Agrawal, J.C. to S.C. V, for the Respondent-State

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J.—In the accompanied writ application, the petitioner has, inter alia, prayed for quashing the Circular as contained in Circular No. 4538, dated 22.07.2008, issued under the signature of the Respondent No. 3 for initiation of the departmental proceedings in exercise of power conferred under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 and the petitioner has further prayed for quashing the second show cause notice as contained in letter dated 4601 dated 06.08.2011, which has been issued by the Respondent No. 4 in pursuance to the departmental proceeding initiated vide Circular dated 22.07.2008.

2. Bereft of unnecessary details, the facts, as disclosed in the writ application, are that the petitioner, initially after being successful in the 22nd Combined Competitive Examination conducted by the Bihar Public Service Commission, was appointed and has been allotted the Bihar Administrative Service Cadre. After entering into service and putting on a considerable length of service, the petitioner retired from service on 30.06.2008 on attaining the age of superannuation. It has been averred in the writ application that after retirement

from services to the utter surprise and consternation, the petitioner was served with the Circular dated 22.07.2008, issued by the Respondent No. 3, intimating about the decision of the Government to initiate departmental proceeding under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 along with the memorandum of charges. After receipt of the said Circular, the petitioner submitted his explanation, clearly stating about the bar of initiation of departmental proceeding against a member of service under the provisions of Rule 55 of the aforesaid Rule. The Enquiry Officer conducted the enquiry and submitted report before the Disciplinary Authority, as evident from Annexure-3 to the writ application. Thereafter, a second show cause notice was issued on 06.08.2011 by which a proposed punishment of recovery of 20 per cent of pension under the provisions of Rule 139 (b) of the Jharkhand Pension Rule was issued to the petitioner and the petitioner has given his reply to the second show cause notice as evident from Annexure-4 to the writ application. Being aggrieved and dissatisfied with the impugned Circular dated 22.07.2008 vide Annexure- 1 and the second show cause notice dated 06.08.2011 vide Annexure-4 to the writ petition, the petitioner having no speedy, efficacious and alternative remedy, has been constrained to approach this Court for redressal of his grievances.

3. When the matter was taken up on 16.09.2011, an interim order has been passed to the effect that the Respondent No. 2 has been restrained from taking a final decision pursuant to the Memo No. 4538, dated 22.07.2008 and letter No.4601, dated 06.08.2011.

4. Learned counsel for the petitioner submits that in pursuance to the interim order passed by this Court, dated 16.09.2011, no final order has been passed in the aforesaid proceedings. Learned counsel for the petitioner has vehemently submitted that the very decision to initiate the departmental proceeding against the petitioner vide Annexure-1 to the writ petition, is contrary to the provisions of Rule 43 (b) of the Pension Rules. Learned counsel for the petitioner further submits that invoking Rule 139 (b) of the Pension Rules by the Respondents was a ruse and subterfuge to overcome the impediments of Rule 43 (b) of the Pension Rules. Learned counsel for the petitioner further submits that after retirement of the petitioner from services on 30.06.2008, the proceeding was initiated and the decision to initiate proceeding was taken on 22.07.2008 and the alleged misconduct pertains to the year 1986-87-88 and since the alleged misconduct relates to pretty old matter, the respondents are estopped to initiate proceedings under Rule 43 (b) of the Jharkhand Pension Rules. Learned counsel for the petitioner further submits that Rule 139 (b) of the Jharkhand Pension Rules is also not available to be invoked in the instant case, as there has been no proved misconduct, nor there has been any decision that the services of the petitioner was thoroughly unsatisfactory, so Rule 139 (b) of the Pension Rules, as has been taken recourse to, in the instant case is thoroughly misconceived. In this respect, learned counsel for the petitioner has relied upon the decision of the Hon'ble Apex Court, reported in (1995) Supp (3) SCC 56, in the case of State of Bihar and others v. Mohd. Idris Ansari and relevant paragraph 9 and 10 has been

pressed into service by the learned counsel for the petitioner. Learned counsel for the petitioner further submits that the grounds taken in the counter affidavit, that the proceeding was initiated on 14.03.2005, vide Annexure-B to the counter affidavit, is also thoroughly misconceived. In this respect, learned counsel for the petitioner has referred to the decision rendered in Civil Appeal No. 1240 of 1993, decided on 07.04.1993, in the case of Delhi Development Authority v. H.C. Khurana reported in (1993) 3 SCC 196. Learned counsel for the petitioner has referred to paragraph 9 of the aforesaid judgment to buttress his arguments. Learned counsel for the petitioner by referring to the aforesaid judgment, has submitted that the service of charge-sheet on the Government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. By referring to the aforesaid decision, learned counsel for the petitioner further submits that the charge-sheet follows the decision to initiate departmental proceedings, since in the instant writ petition, decision to initiate departmental proceeding was taken on 22.07.2008, but, by no stretch of imagination, before the decision to initiate departmental proceeding, charge-sheet would have been taken prior to the aforesaid date, so the ground taken in the counter affidavit regarding Annexure-B, that the proceeding was initiated on 14.03.2005 is of no avail as far as the decision of initiation of issuance of charge-sheet is concerned. Learned counsel for the petitioner further submits that as has been held by the Privy Council in the case of Nazir Ahmad v. Emperor, it is no more *res integra* that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all, as has been mentioned in paragraph 12 and the aforesaid maxim has been followed consistently in later judgments of the Hon"ble Apex Court. To buttress his arguments, learned counsel for the petitioner further submits that the power to initiate a proceeding, is envisaged under Rule 43 (b) of the Pension Rules, but, because of the bar of 4 years, the respondents authorities would not be authorised under the law to take recourse to Rule 139 (b), preferably on the ground that the misconduct proved during the course of enquiry and Rule 139 (b) of the Pension Rules follows the proved misconduct, always precedes the decision to take recourse to do with Rule 139 (b) of the Pension Rules, therefore, on both counts, the Respondents are not empowered to initiate proceeding under Rule 43 (b) as well as Rule 139 (b) of the Pension Rules. Hence, the very decision to initiate proceeding vide Annexure-1, the issuance of the show cause notice dated 06.08.2011 vide Annexure-4 as well as the question of proposed punishment under Rule 139 (b) of the Pension Rules being against the provision of law is not maintainable and the same is fit to be set aside.

5. Controverting the averments made in the writ application, a counter affidavit has been filed by the respondents, wherein, it has been inter alia, submitted that the petitioner is an officer of Jharkhand Administrative Service, who superannuated from service w.e.f. 30.06.2008. The Commissioner-cum-Secretary, Revenue and Land Reforms Department, Jharkhand sent memo of charges in Form "K" with evidences vide his letter no. 5087/R dated 08.11.04 to

the department and requested to take action against him as per Annexure-A to the counter affidavit. It has further been stated that the memo of charges relates to complaint no. 9 and 12 of famous land scam of Ranchi. It has been alleged that while petitioner was posted as Circle Officer, Sadar Anchal, Ranchi, he passed order for mutation of urban ceiling land of mauza Gari in mutation case of 106/87-88, 229/87-88, 436/86-87 and 298/85-86 in contravention of provisions of the Urban Land Ceiling Act and direction of senior Officer and so, a show cause notice was issued to the petitioner vide department's letter no. 668 dated 14.03.2005 to submit his explanation enclosing the said memo of charges along with documentary evidence, as per Annexure-B to the counter affidavit. It has further been stated that instead of submitting his explanation, the petitioner demanded some documents vide his letter no. 06 (s) dated 24.03.2005 as per Annexure-C to the counter affidavit. Therefore, the petitioner was directed to obtain the documents demanded by him from the office of the Deputy Commissioner, Ranchi and reminded to submit his explanation immediately, as evident from Annexure-D to the counter affidavit. Thereafter, the petitioner submitted his explanation vide letter no. 31 (NC) dated 03.06.2008 in which he denied all charges levelled against him and the Conducting Officer has submitted the Enquiry Report vide letter dated 27.10.2010, in which the charges levelled against the petitioner have been found proved. So, after consideration of the charges and the enquiry report, the second show cause notice was issued to the petitioner vide department letter no. 4601 dated 06.08.2011 to award punishment upon the petitioner under Rule 139 (b) of the Jharkhand Pension Rules.

6. Mr. Anoop Agrawal, learned J.C. to S.C. V appearing for the Respondent-State has reiterated these submissions made in the counter affidavit. Learned counsel for the Respondent-State has vociferously submitted that on perusal of Annexure-B to the counter affidavit, it would be crystal clear that prior to the retirement of the petitioner from services i.e. on 14.03.2005, the petitioner was asked to submit his reply to the show cause to the department, so the argument of the learned counsel for the petitioner cannot be accepted on the ground that the show cause notice was issued, prior to the retirement of the petitioner and hence, the respondents authorities have rightly initiated the proceeding after the retirement of the petitioner and the respondents authorities are within their competence to invoke Rule 139 (b) of the Pension Rules, because of proved misconduct, as found out by the enquiry officer. Learned counsel for the Respondent-State further submits that considering the gravity of the misconduct, the proposed punishment, as has been decided by the respondents-authorities, appears to be commensurate with the alleged misconduct of the petitioner. Therefore, the challenge to the decision of initiation of the departmental proceeding and the proposed punishment ought not to be entertained by this Court invoking extraordinary jurisdiction of judicial review of this Court under Article 226 of the Constitution of India.

7. Learned counsel for the petitioner by referring to Annexure-B i.e. the show-

cause notice dated 14.03.2005, submits that at the time of issuance of show-cause notice, the petitioner was in the rank of the Deputy Secretary, hence, the show cause notice issued by the officer of the same rank is also permissible in view of Article 311 of the Constitution of India.

8. After hearing the learned counsel for the respective parties and on perusal of the records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts, reasons and judicial pronouncements :-

There is no gainsaying of the fact that the petitioner retired from Government service on 30.06.2008 on attaining the age of superannuation. Annexure-1 to the writ application is the decision by the Government, taken admittedly after the retirement of the petitioner to initiate the proceeding under Rule 55 of the Civil Services (Classification, Control and Appeal) Rule, 1930 and according to the said Circular, the alleged misconduct pertains to the Mutation Order of the year 1986, 1987 and 1988. So, after retirement from the Government service, Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 is not available to be taken recourse to. After retirement from Government service, the only Rule, which can be taken recourse to, is Rule 43 (b) or 139 (b) of the Pension Rules.

For better appreciation, it would be apposite to refer to proviso to sub-rule (b) of Rule 43 and Rule 139 (a) and (b) of the Bihar Pension Rules.

Rule 43 (b) reads as under : -

"(b) The State Government 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 proceedings 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 evident 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;"

Rule 139 (a) and (b) of the Pension Rules reads as under :-

"139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper."

On conjoint reading of the aforesaid provisions, it would be apparent that the respondents-authorities are bereft of the power to initiate proceedings of the misconduct beyond four years from the date of institution of charges. In the instant case, the decision to initiate proceeding was taken on 22.07.2008 and the alleged misconduct pertains to the year 1986, 1987 and 1988, so there was complete bar, under the aforesaid Rules to initiate a proceeding under Rule 43 (b) of the Pension Rules, therefore, the authorities are not competent to initiate the proceeding under Rule 43 (b) of the Pension Rules as also under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 as mentioned under Annexure-1 to the writ application. So far as Rule 139 (b) of the Pension Rules, the aforesaid Rule clearly envisages that before invoking Rule 139 (b) of the Bihar Pension Rules, the authority must be satisfied that the service of the pensioner was not thoroughly satisfactory or that the service rendered has been really approved while in service. In the instant case, it has not been proved by the respondents that the performance of the petitioner was thoroughly unsatisfactory or that there was a grave misconduct on the part of the petitioner. The ground taken in the counter affidavit that the alleged charges have been proved by the enquiry officer, in the year 2010 i.e. after the retirement of the petitioner, so there has been no findings by any authority regarding the unsatisfactory service rendered by the petitioner prior to the retirement or the grave misconduct, so the enquiry report vide Annexure-3, is of no avail to take recourse to Rule 139 (b) of the Pension Rules. The view of this Court gets fortified by the decision rendered by the Hon"ble Apex Court in the case of State of Bihar and others v. Mohd. Idris Ansari reported in (1995) Supp (3) SCC 56 and therefore, the impugned decision to initiate the proceeding vide Annexure-1, dated 22.07.2008 and the proposed punishment dated 06.08.2011 (Annexure-4) under Rule 139 (b) of the Pension Rules cannot be sustained in the eyes of law.

9. In view of the aforesaid position, and the reasons stated in the foregoing paragraphs and as a logical sequitor to the aforesaid reasoning, the impugned decision to initiate the proceeding vide Annexure-1, dated 22.07.2008 and the proposed punishment dated 06.08.2011 (Annexure-4 to the writ petition) under Rule 139 (b) of the Pension Rules, being thoroughly misconceived, are hereby quashed and set aside and the respondents-authorities are directed to provide all post-retirement benefits within a period of 16 weeks from the date of receipt/ communication of a copy of the order.

10. With the aforesaid direction, the writ petition stands disposed of.