
(2012) 07 PAT CK 0077
In the Patna High Court
Case No : CWJC No. 15592 of 2009

Nagendra Nath Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b), 43(b)(a)(ii)

Citation : (2013) 137 FLR 43 : (2012) 4 PLJR 373

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Anil Singh, for the Appellant; A.N. Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioner and the State. Petitioner seeks quashing of memo no. 1499(4)/Health dated 23.9.2009, as contained in Annexure 8, issued by the respondent no. 3, the Director-in-Chief, Health Services, Bihar, Patna imposing penalty of deduction of 50% of pension amount of the petitioner u/s 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as "the Rules"). It has also been stated in the impugned order that it can also be modified upon submission of a report by C.B.I. after completion of investigation.

2. At the time of point of hearing of this case a short question has been raised on behalf of the petitioner that the whole action of the respondents is invalid being contrary to the Proviso (a)(ii) Rule 43(b) of the Rules as according to such Rule no departmental proceeding can be initiated in respect of an event that had taken place more than four years before the institution of such proceeding.

3. Learned counsel has submitted that by Annexure 1/1 petitioner was directed to explain regarding some irregularities which had been committed by him in the year 1993. Thereafter, resolution dated 2.7.2005 (Annexure-3) declaring

initiation of departmental proceeding alongwith a memo of charges was served upon the petitioner. The memo of charge has not been appended by the parties, however, in view of limited issue, as above, raised by the petitioner, I would proceed to consider the case even in its absence. It has been stated by the petitioner that the show cause was submitted by him. However, in view of the disagreement with the inquiry report submitted by the Inquiry Officer another show cause notice was issued on 26.2.2007 by the competent authority which is contained in Annexure-6. Thereafter, petitioner again gave his reply, a copy of the reply is appended as Annexure-7. It has been clarified therein that the petitioner had taken the charge of the Head Clerk on June 1993 whereas the purchase order is of January 1993. Therefore, there would be no question of his signing the purchase order in above facts and circumstances. However, finally Annexure-8 has been passed withholding 50% of pension of the petitioner in gross violation of the aforesaid proviso to the Rule 43(b) of the Rules. Learned counsel for the petitioner has placed reliance upon a decision of this Court rendered in Sukdeo Narain Verma Vs. State of Bihar and Others, . It is contended that in the aforesaid decision, the order impugned was quashed with a direction to pay arrears of pension alongwith current and future pension forthwith on the ground that any proceeding under Rule 43(b) of the Rules could not have been initiated in respect of misconduct that had taken place more than four years before the initiation of such proceeding.

4. A counter affidavit has been filed on behalf of the State taking a stand that inquiry has been conducted in accordance with law and thereafter punishment has been imposed after examination of the reply to the second show cause notice submitted by the petitioner which was not found satisfactory.

5. Memo of charges has not been appended by any of the parties but it is stated on behalf of the State that alleged misconduct is of the period commencing from 16.6.1992 to 26.11.1993 and the memorandum containing charges alongwith the resolution declaring commencement of the proceeding has been served vide Annexure-3 dated 2.7.2005.

6. However, the learned counsel for the State has not been able to answer the issue raised by the petitioner and has not been able to demonstrate that the departmental proceeding has been initiated for a misconduct which had taken place within the four years from the date of initiation of proceeding. As noticed above, it is admitted fact that the memo of charges along with resolution declaring initiation of departmental proceeding under Rule 43(b) of the Rules has been served on 2.7.2005. Even if the stand of the State is taken to be correct then the period of alleged misconduct it would be of from 16.6.1992 to 26.11.1993, admittedly, the date of alleged misconduct is much beyond the period of 4 years which has been enumerated in the proviso to the relevant Rules. For better appreciation the relevant Rule alongwith the proviso is reproduced as under:--

43(b) The State Government further reserve to themselves the right of

withholding or withdrawing a pension or any part of its, 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 proceeding 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 reemployment 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 Government;

(ii) shall be in respect of an event 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;

7. From bare perusal of the aforesaid Rule it would appear that it would not open for the authority to examine and initiate departmental proceeding under the aforesaid Rule if the misconduct is of a period of more than 4 years earlier to the date of initiation whereas in the case in hand it appears that the same has been initiated after a lapse of about 12 years. It is also a fact that the petitioner has retired on 31.10.1993 itself.

8. In a recent decision of this Court in Haridwar Pandey Vs. The State of Bihar and Others, similar line has been adopted holding that the entire departmental proceeding is vitiated in view of its initiation in violation of the proviso of Rule 43(b) of the Rules. This Court also would have no difficulty in adopting the same view. Thus, it is held that the entire departmental proceeding, since the period of misconduct was about more than 12 years prior to the date of initiation of such proceeding, has proceeded contrary to the Rule 43(b) as has been discussed above and, thus, the impugned order cannot be sustained. As a result, the impugned order dated 1499(4)/Health dated 23.9.2009 as contained in Annexure-8 is quashed and set aside. The respondents are directed to pay the entire amount of pension of the petitioner which has been withheld by the authorities and pay full current and future pension as well.

9. Accordingly, this writ application stands allowed. It is expected that the respondents would take immediate steps for payment of the pension amount which has been deducted by them in compliance of the impugned order preferably within six months from the date of receipt/production of a certified copy of this order.