
(2010) 09 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 10548 of 2005

Raj Ballav Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : (2013) 1 PLJR 743

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh, Manoj Kumar and S. Parasmani, for the Appellant; Rabindra Priyadarshi for the State and Mr. J.P. Karn for the A.G., for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner, the State, AC to AAG-3. Petitioner is aggrieved by the order of the Collector, Sitamarhi bearing Memo No. 361 dated 17.5.2005, Annexure-6, whereunder his 50% pension has been withheld under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as the Rules). Learned counsel for the petitioner assailed the order dated 17.5.2005 on the ground that proceeding under Rule 43(b) was initiated under notice dated 26.7.2003 i.e. after more than four years of the date of misconduct as is provided under proviso (ii)(a) of Rule 43(b).

2. It is submitted on behalf of the petitioner that at the relevant time petitioner served as Head Clerk in the office of the Sub-Divisional Officer, Pupri, wherefrom he was transferred to Sitamarhi on 13.1.1999. While serving as Head Clerk at Sitamarhi petitioner superannuated with effect from 30.6.1999. Notice alleging misconduct on his part while he served as Head Clerk in the office of Sub-Divisional Officer, Pupri was served on the petitioner on 26.7.2003 i.e. beyond four years of the date of transfer from Pupri i.e. 13.1.1999 and the date of retirement i.e. 30.6.1999. Proceeding under Rule 43(b) should have been initiated within four years from the date of the misconduct i.e. 13.1.1999 or in any case within four years from the date of retirement i.e. 30.6.1999 in the light

of the clear embargo in proviso (ii)(a) of Rule 43(b). It is submitted that the proceeding was initiated under notice dated 26.7.2003 for an event which took place on or before 13.1.1999 i.e. more than four years prior to the issue of notice dated 26.7.2003. It is submitted that in view of clear embargo in proviso (ii)(a) of Rule 43(b), the proceeding initiated under notice dated 26.7.2003 is void ab initio and the order withholding 50% pension ought not to have been passed.

3. Counsel for the State does not dispute the fact that petitioner was transferred from the office of the Sub-Divisional Officer, Pupri on 13.1.1999. He also does not dispute that petitioner superannuated with effect from 30.6.1999 and that notice alleging misconduct committed by him while he served as Head Clerk in the office of Sub-Divisional Officer, Pupri was served on the petitioner on 26.7.2003 i.e. much beyond four years of his transfer i.e. 13.1.1999. It is, however, pointed out that First Information Report was lodged against the petitioner earlier i.e. within four years of the occurrence and such lodging of the First Information Report may be treated as notice under Rule 43(b) of the Rules.

4. I regret not to accept the submission of the counsel for the State. First Information Report alleging misconduct is for punishing the petitioner in terms of the provisions of the Penal Code and if petitioner is convicted in such proceeding, appropriate action may be taken in the light of his conviction but the First Information Report alleging misconduct cannot be treated as notice under Rule 43(b) of the Rules. In view of the fact that notice initiating proceeding for misconduct was issued on 26.7.2003 i.e. beyond four years of the misconduct and retirement of the petitioner, I have no option but to quash the impugned order dated 17.5.2005, Annexure-6, which is, accordingly, quashed. It is, however, observed that in the event, petitioner is convicted in the criminal case appropriate action be taken against him in accordance with law. The writ application is, accordingly, disposed of.