
(2009) 08 PAT CK 0118
In the Patna High Court
Case No : CWJC No. 11009 of 2009

Ramanuragi Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Citation : (2009) 4 PLJR 612

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

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner at the relevant time served as Junior Engineer. He superannuated with effect from 30.6.2007. He is aggrieved by initiation of proceeding by serving memo of charge under order of the Engineer-in-Chief, Respondent No. 2, bearing letter No. 4632(E) dated 17.11.2008, Annexure-9 as also the order bearing memo No. 5021(E) dated 12.12.2008, Annexure-10 hereunder the Enquiry Officer has been appointed to conduct the proceeding initiated in terms of the Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as the Rules). Having received the orders Annexures-9 and 10 containing memo of charge, the order appointing the Enquiry Officer, he represented before the Engineer-in-Chief, Respondent No. 2 under representation dated 6.4.2009, Annexure-13 highlighting that the proceeding initiated under Rule 43(b) of the Rules is in teeth of the provisions contained in sub-clause (ii), proviso (a) to Rule 43(b) of the Rules, which inter alia, requires the State Government to initiate the proceeding with respect to an event which took place not more than four years before the institution of the proceeding. The representation of the petitioner dated 6.4.2009, Annexure-13 has been rejected under office order, bearing Memo No. 2730(E) dated 28.7.2009, Annexure-4 admitting that the misconduct on the basis of which the proceeding has been initiated is of the year 2002 and more than four years old, but as the matter remained pending before the Lokayukta vide Case No. 19 of 2002, delay in initiating the proceeding is to be condoned in the light of Clause-3 of the resolution of the State Government, bearing Memo No. 3406 dated

8.10.2007, whereunder the time taken in initiating the proceeding on account of the pendency of the matter before the Lokayukta is to be condoned.

2. Counsel for the petitioner states that the resolution of the State Government, bearing Memo No. 3406 dated 8.10.2007 condoning the delay in initiating the proceeding on the ground of pendency of the matter before the Lokayukta cannot be a ground to extend the time required for initiating the proceeding against the Govt, servant de hors the provisions contained in sub-clause (ii) of proviso (a) to Rule 43(b) of the Rules, which specifically mandates the State Government to initiate the proceeding within four years of the alleged misconduct and there is no scope for extending the time provided in sub-clause (ii) of proviso (a) to Rule 43(b) of the Rules.

3. Having heard counsel for the petitioner and the State, I deem it expedient to direct the petitioner to assail the order bearing Memo No. 2730(E) dated 28.7.2009, Annexure-14 by filing representation before the State Government and the State Government shall be obliged to consider the representation assailing the order bearing Memo No. 2730(E) dated 28.7.2009, Annexure-14 in accordance with law in the light of the provisions contained in sub-clause (ii) of proviso (a) to Rule 43(b) of the Rules as early as possible, in any case within one month from the date of receipt of the representation. In the representation, petitioner is also at liberty to request the State Government to stay the recovery of the amount, which is sought to be recovered from him under the impugned order dated 28.7.2009, Annexure-14, which request be also considered by the State Government in accordance with law within the same time. This application is, accordingly, disposed of.