

(2002) 02 PAT CK 0034

In the Patna High Court

Case No : Civil Appeal No. 1760 of 2002 (Arising out of Special Leave Petition (C) No. 12022 of 2001)

Shyamsundar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2002) 02 PAT CK 0034

Hon'ble Judges : S. Rajendra Babu, J; Ruma Pal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The Appellant before us retired as Head Assistant on 31.1.1997 from the Water Resources Department-Government of Bihar. Certain disciplinary proceedings were sought to be initiated against the Appellant by an order made on 16.11.2000 in relation to certain incident which had taken place four years prior to the date of the institution of the proceedings. The Appellant filed a writ petition before the High Court stating that the incident in respect of which disciplinary proceedings have been initiated have taken place four years before the institution of the proceedings, contrary to the bar under Proviso (a)(ii) to Rule 43(b) of the Bihar Pension Rules, 1950. The High Court, however, felt that misconduct alleged against the Appellant is of such nature which continued even after his retirement and the bar under Proviso (a)(ii) to Rule 43(b) would not apply in his case. Thus the High Court dismissed the writ petition and the writ appeal filed against the said order met with similar fate. Hence this appeal by special leave.

3. The contention urged before the High Court is reiterated. The Respondent did not avail of several opportunities given to make available the relevant documents. Moreover, when we look at the incident, alleged against the

Appellant which is said to have taken place four years prior to the institution of the proceedings, it is difficult for us to conceive as to how the High Court could state that the misconduct alleged against the Appellant could be treated as continuing misconduct which is not covered by the provisions of the said rules and the departmental proceedings could be continued. Therefore, we set aside the order made by the learned Single Judge as affirmed by the division Bench of the High Court and allow the writ petition filed by the Appellant. The proceedings initiated against the Appellant shall stand quashed. In view of the order made by us, balance of the pension as due to the Appellant shall be released within three months from today. The appeal is allowed accordingly.