

(2002) 02 PAT CK 0122
In the Patna High Court
Case No : L.P.A. No. 28 of 2001

The State of Bihar and Others

APPELLANT

Vs

Gauri Shankar Sinha and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Bihar Pension Rules, 1950 — Rule 139, 43

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

Citation : (2002) 1 PLJR 774

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Satish Chandra Jha, for the Appellant;

Judgement

1. The Appellants being aggrieved by the judgment dated 20.4.2000, passed in C.W.J.C. No. 9152 of 1998 Gauri Shankar Sinha v. The State of Bihar and Ors. has filed this appeal under Clause-10 of the Letters Patent of the Patna High Court.

2. In the writ petition, the Petitioner assailed the validity of the order contained in Memo No. 2233 dated 17.8.1998 (Annexure-3) issued by the Joint Secretary in the Water Resources Department, whereunder in the purported exercise of the powers under Rule 139(a)(b) of Bihar Pension Rules, the pension of the Petitioner has been reduced to 50%. The Petitioner contended before the learned single Judge that the order purported to have been passed pursuant to the notice contained in Annexure-4, was never served upon him and as such the same should be quashed. The stand of the State Government before the learned single Judge was that by some mistake wrong provisions were mentioned in the impugned order while in fact the said order was passed in exercise of powers conferred under Rule 43(b) of the Bihar Pension Rules, pursuant to the departmental proceeding initiated against the Petitioner prior to his superannuation from service on 31.1.1993. It was also contended that the proceedings were initiated vide order dated 29.7.92 as contained in Annexure-A

to the counter affidavit and the order dated 29.3.1993 contained in Annexure-A/1 pursuant to which the Petitioner submitted his show cause, but no final order could be passed and as such the Petitioner was given show cause notice in exercise of the powers conferred under Rule 139(a)(b) of the Bihar Pension Rules. The learned single Judge after going through the order Annexure-A observed that even before calling for the explanation from the Petitioner, the authority had already formed an opinion that the Petitioner was guilty and thereafter called upon the Petitioner to submit his explanation pursuant to the charge sheet attached to Annexure-A. The learned single Judge also observed that from perusal of those two Annexures, it does not appear that the authority ever proceeded departmentally against the Petitioner before his retirement in terms of the provision of Rule 55 of the Civil Service (Classification, Control and Appeal) Rules. The learned single Judge also found that the Government later decided to take action under Rule 139(a)(b) of the Bihar Pension Rules, issued show cause notice, but the notices show that the same were issued only with respect to the allegations for which Annexures-A and A/1 were issued and not on the ground that the services of the Petitioner has not been thoroughly satisfactory. On the basis of the said findings, the learned single Judge held that reliance could not be placed upon Rule 139(a)(b) of the Rules and the same was patently misconceived. The learned single Judge after holding that no proceedings were ever initiated and further that no final order was passed and that the action of the State Government was illegal, accordingly allowed the writ petition, quashed the order Annexure-3 and further directed the State authorities to issue necessary sanction for payment of his remaining pension.

3. Despite notice, the Respondent did not prefer to appear in the Court, therefore, we have heard the Appellants only. Learned Counsel for the Appellants after taking us through Annexures-A and A/1 (annexed to the counter affidavit), submitted that a bare perusal of Annexure-A would clearly show that the writ Petitioner was prima-facie found guilty and an explanation was called from him and he was also required to submit his show cause to the charge sheet. According to him once the proceedings started then it could not be said nor it could be held against the State that no show cause notice was issued, no charge sheet was serve and the State authorities, without holding any enquiry found the Petitioner guilty.

4. He also placed reliance upon the judgment of this Court The State of Bihar and Others Vs. Ganga Bishun Mahto and Others .

From a perusal of the chargesheet annexed with Annexure-A, it would appear that the department was requiring the writ Petitioner to submit his show cause as according to the department, the writ Petitioner was guilty of misconduct.

5. In the matter of State of Bihar v. Ganga Bishun Mahto, a Division Bench of this Court after conjoint reading of Rule 43(b) and Rule 139 observed as follows:

I. A retired Government servant can be proceeded against under Rule 139 and

his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the Respondent was not thoroughly satisfactory.

II. Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

The Division Bench further observed as follows:

Thus, it is clear that pension can be withheld or reduced under Rule 139(b) by the competent authority if the service of a government servant is not thoroughly satisfactory. Even if the service record of the concerned government servant was found satisfactory by the sanctioning authority, power of revision is vested in the State Government to withhold pension, if according to it, the service is not found thoroughly satisfactory or there is proof of grave misconduct during his service tenure. Proof of misconduct has to be determined by taking recourse to the provision contained under Rule 43(b) of the Rules.

6. The Appellants submit that notice dated 29.7.1992, 29.1.1993 and 17.6.1992 were served upon writ Petitioner, the writ Petitioner submitted his reply on 14.8.1992. If that was so it cannot be held that no proper opportunity of show cause was given to the Petitioner or the authority had pre-decided the issue. The contention of the learned Counsel for the State that the language of the notice dated 29.7.1992 was little erratic has to be accepted because from perusal of Annexure-A, it would appear that the department has formed a prima-facie opinion into the misconduct of the writ Petitioner and required him to show cause. In our opinion, when a notice was already issued to the writ Petitioner and the reseedings were pending at the time of his retirement, an order under Rule 139(a)(b) could not have been passed, therefore, the order passed under 139(a)(b) deserves to and is accordingly set aside.

7. The State Government, however would be at liberty to proceed further in the matter keeping observance of Rule 43(b) of the Bihar Pension Rules. The concerned authorities are hereby directed to issue notice to the Petitioner, secure his attendance and decide the matter in accordance with law within a period of six months from today. The attendance of the Respondent is required to be secured by the State, because the Respondent is not present in court and we decided the matter ex-parte.