**(2008) 09 PAT CK 0127**

**In the Patna High Court**

**Case No :** LPA No. 1467 of 1999

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| The State of Bihar and Others | APPELLANT |
| Vs | |
| Sachidanand Singh | RESPONDENT |

**Date of Decision :** 05-09-2008

**Acts Referred:**
Bihar Pension Rules, 1950 — Rule 43(b)
Civil Services Rules — Rule 55

**Citation :** (2009) 1 PLJR 816

**Hon'ble Judges :** Ravi Ranjan, J;Chandramauli Kr. Pd., J

**Bench :** Division Bench

**Advocate :** Neelu Agrawal and J.N. Sinha, for the Appellant; Chandra Shekhar and Rana Randhir Singh, for the Respondent

**Final Decision :** Dismissed

## Judgement

Prasad & Ranjan, JJ.—The State of Bihar and its functionaries, aggrieved by the order dated 14th September, 1999 passed in C.W.J.C. No. 7550 of 1998 allowing the writ application, setting aside the punishment of recovery of Rs. 2.55 lacs and withholding 25% of his pension have preferred this appeal under Clause 10 of the Letters Patent. Short facts, giving rise to the present appeal, are that the writ petitioner-respondent herein, hereinafter referred to as the writ petitioner was posted as Superintending Engineer, Irrigation Circle, Jamui, during the period April, 1988 to October, 1991. He was found prima facie guilty of irregularity in the original work of spill channel and faulty work done under Upper Kiul Reservoir Scheme during 1988-89. The aforesaid conclusion was arrived at on the basis of spot verification report and the inquiry report of the Flying Squad Wing of the Department. Accordingly, vide Resolution dated 28.6.1996, a departmental proceeding was initiated against him under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930. Writ petitioner superannuated from service on 30th of June, 1996. Notwithstanding the superannuation of the writ petitioner, the State Government continued the said proceeding under Rule 43(b) of the Bihar Pension Rules. Ultimately, in the said proceeding, writ petitioner was found guilty and he was visited with the penalty of recovery of Rs. 2.55 lacs in one instalment from the dues and pensionary benefits and further, withholding of 25% of his pension in future.

2. Writ petitioner challenged the aforesaid order, inter alia, contending that no order for initiating any proceeding under Rule 43(b) of the Bihar Pension Rules was ever taken and therefore, the penalty inflicted is bad in law. It was specifically averred that the order initiating the proceeding under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930, hereinafter referred to as ''the Civil Services Rules'' was put in transmission and sent on 1.7.1996 by registered post but prior to that, the writ petitioner had already superannuated from service on 30th of June, 1996.

3. The learned Single Judge, on consideration of the material placed before it, came to the conclusion that the punishment inflicted on the writ petitioner is bad in law as the order initiating proceeding under Rule 55 of the Civil Services Rules was issued only after his superannuation and no order converting the departmental proceeding into a proceeding in terms of Rule 43(b) of the Bihar Pension Rules was ever issued or communicated to the writ petitioner.

4. Mrs. Neelu Agrawal, Government Advocate-X, appearing on behalf of the appellant, submits that as the departmental proceeding was initiated against the writ petitioner prior to his superannuation, there was no occasion to pass specific order for continuance of that proceeding under Rule 43(b) of the Bihar Pension Rules. She submits that the view taken by the learned Single Judge that specific order requires to be passed for continuance of the departmental proceeding in terms of Rule 43(b) of the Bihar Pension Rules is wrong. In support of the submission. reliance has been placed on a Full Bench decision of this Court in the case of Shambhu Sharan vs. The State of Bihar and Others, 2000(1) PLJR 665 and our attention has been drawn to the following passage from paragraph No. 8 of the judgment, which reads as follows:-

"8. xxxx Accordingly, in our view, it is open to an authority concerned to continue with a disciplinary enquiry which was initiated before his retirement. In our opinion, once such proceeding is started, even if the person conerned retires from service, such proceeding can be continued and it is not required that there must be any Government order to that effect before it can be allowed to continue. No such condition has been laid down in Rule 43 in respect of a case where such a proceeding has already been initiated as required by the three conditions in respect of initiation of a fresh proceeding after such retirement. We cannot import the requirement of such a condition which is not in the rules. This would be against the principle of cassus omissus. If we accept the contention that such an order of the Government is required before such proceeding can be continued, then we shall be introducing a condition in the rule, which the rule does not provide for." xxxx

(underline ours)

 

5. Having appreciated the rival submission, we find substance in the submission of Mrs. Agrawal. In view of the decision of the Full Bench in the case of Shambhu Sharan (supra), there is no escape from the conclusion that for continuance of a departmental proceeding initiated while the Government servant is in service, into a proceeding under Rule 43(b) of the Bihar Pension Rules, no specific order is required to be passed by the State Government. We, however, hasten to add that if the departmental proceeding is not initiated while the Government servant is in service, there is no question of continuing it under Rule 43(b) of the Bihar Pension Rules.

6. Mrs. Agrawal, then submits that the departmental proceeding was initiated against the writ petitioner while he was in service.

7. Mr. Chandra Shekhar, however, submits that the departmental proceeding shall be deemed to have been instituted only when the charge framed is issued to the employee. According to him the Resolution initiating the departmental proceeding and the charge framed against writ petitioner were issued after his superannuation. In that view of the matter, Mr. Chandra Shekhar contends that such a proceeding cannot be allowed to continue and for that, fresh order has to be passed.

8. We do not find any force in this submission of Mrs. Agrawal. Rule 43(b) of the Bihar Pension Rules reads as follows:-

"43. (a) xxxx

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, 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 State Government;

xxxx

Explanations.-For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and xxxx"

9. The question, therefore, is as to whether the departmental proceeding was instituted against the writ petitioner while on duty. Proviso (a) to Rule 43(b) of the Bihar Pension Rules provides for continuance of the proceeding instituted while the Government servant is on duty. According to the Explanation (a), for the purpose of Rule 43(b) of the Bihar Pension Rules, a departmental proceeding shall be deemed to have been instituted when the charges against the pensioner is issued. The use of the expression "issued" in the explanation settles the controversy beyond doubt. On fact, the learned Single Judge has found that the resolution initiating the disciplinary proceeding, and the memo of charge were put in transmission on 1st July, 1996, whereas the writ petitioner had superannuated from service prior to that date on 30th June, 1996. In this background, 1st of July, 1996 shall be the date of issuance of charge. Said finding of the learned Single Judge has not been assailed nor could be assailed on the basis of the materials on record. In that view of the matter, it cannot be said that the departmental proceeding was instituted against the writ petitioner, while he was in service. Once it is found so, it has to be held that for institution of the proceeding under Rule 43(b) of the Bihar Pension Rules, specific decision was required to be taken. Undisputedly, no such decision has been taken. From what we have said above, it is evident that the learned Single Judge did not commit any error, while setting aside the punishment inflicted on the writ petitioner. In the result, we do not find any merit in this appeal and it is dismissed accordingly, but without any order as to cost.