

**(2008) 04 PAT CK 0050**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 343 of 2000

The State of Bihar and Others

APPELLANT

Vs

Udai Shankar Prasad and Another

RESPONDENT

**Date of Decision :** 16-04-2008

**Acts Referred:**

Bihar Pension Rules, 1950 — Rule 139, 43

**Citation :** (2008) 56 BLJR 1905 : (2008) 3 PLJR 137

**Hon'ble Judges :** Shiva Kirti Singh, J; Rekha Kumari, J

**Bench :** Division Bench

**Advocate :** Prabhat Kumar Singh, S.C. 21 and Sanjeev Kumar Singh, J.C. to S.C. 21, for the Appellant; Manojeshwar Pd. Sinha, Suresh Chandra Pd. Sinha and Madhukar Pandey, for the Respondent

## Judgement

Shiva Kirti Singh and Rekha Kumari, JJ.—Heard the parties. This letters patent appeal has been preferred by the State of Bihar against the judgment and order dated 5th January, 2000 whereby the writ court has allowed the claim of the writ petitioner (respondent No. 1 to this appeal) and has quashed order dated 2nd November, 1996 whereby the Government had reduced the pension of the petitioner to zero per cent on the basis of findings of mis-conduct in a disciplinary proceeding initiated much before the retirement of the petitioner on 31-5-1994, on the ground that power under Rule 139(a) and (b) of the Bihar Pension Rules (hereinafter referred to as "the Rules") could not be invoked by the government to reduce the pension on the basis of findings in a departmental proceeding which remained pending till the date of retirement of the petitioner.

2. Learned Counsel for the appellant/State has submitted that the relevant rule which shall govern this case ie. Rule 43(b) of the Rules permits continuation of a disciplinary proceeding against a delinquent employee even after his superannuation but the final order has to be in accordance with the provisions of the rules. To support the aforesaid submission he has placed reliance upon a Full Bench Judgment of this Court in the case of Shambhu Saran Vs. The State of

Bihar and Others, . It has further been submitted that on a conjoint reading of Rule 43(b) and Rule 139(a) and (b) of the Rules the State Government has sufficient powers to withhold pension or a part of it on the basis of proved misconduct as indicated in Rule 43(b) of the Rules. He has further submitted that even if Rule 43(b) of the Rules is not mentioned in the impugned order such omission will not affect the power of the State Government because the law is well settled that labeling is not important provided the authority has the requisite power under the law. On behalf of writ petitioner (respondent No. 2 to this appeal) it has been submitted that the disciplinary proceeding was kept pending for a very long period without any justification and the findings of the conducting officer indicate that other officers of the department were also partly responsible for the lapses and some of the charges do not relate to financial irregularities. Hence it has been submitted that since petitioner had a satisfactory service records except the disciplinary proceeding in question, the authorities of the of the State Government were not justified in withholding his entire pension under Rule 139(a) and (b) of the Rules. Lastly, it has been submitted that the authorities have not acted in a fair manner in reducing the pension of the petitioner to zero per cent when they have themselves given a show cause notice to the petitioner on 27-1-1995 vide annexure-19 to the writ petition as to why his pension should not be reduced to 50%. It appears that by a subsequent notice dated 11-6-1996 (Annexure-22 to the writ petition) the writ petitioner was asked to show cause as to why his pension be not reduced to zero per cent. There is no material on record to show that there was any fresh material available for consideration of the authorities to change their mind and make out a fresh proposal for reducing the pension of the petitioner to zero per cent instead of 50%.

3. Learned Counsel for the writ petitioner has also placed reliance upon a judgment of the Supreme Court in the case of State of Bihar v. Idrish Ansari reported in 1995 (2) PLJR 51 (SC). On going through the said judgment it is noticed that the facts of that case were entirely different and the issue involved was whether after retirement of the employee a proceeding was possible to be initiated for reduction of his/her pension against the limitation of four years provided under the Rules. In fact the discussions made in paragraphs 8 and 9 of that judgment based upon a conjoint reading of Rule 43(b) and Rule 139 of the Rules indicates that the Apex Court held that even if the service records of the concerned officer is found 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 against the concerned officer during his service tenure, the State Government can exercise its revisional power to reduce the pension but as provided in Rule 139 such revision should be exercised within three years from the order sanctioning pension was first passed. On a careful reading of the said judgment we find that the same is in agreement with the views expressed by the Full Bench of this Court in the case of Shambhu Saran (supra) that a disciplinary proceeding initiated prior to superannuation can be

continued under the Provisions of the Rules without requiring any specific order for such continuation.

4. Thus, on proper consideration of rival contentions it is found that the State Government had the legal power to reduce the pension of the petitioner on the basis of findings of misconduct on several counts in a properly constituted disciplinary proceeding. To that extent the judgment and order under appeal cannot be sustained. However, it is further found that there is substance in the submission advanced on behalf of petitioner that the authorities have failed to exercise their discretion in a fair and judicious manner while reducing the pension of the petitioner to zero per cent when they had themselves earlier given a show cause notice for reducing his pension to 50%. As there was no material for taking a subsequent view that petitioner is only to be paid zero per cent pension, we find that the impugned order reducing pension of the petitioner to zero percent deserves to be interfered with.

5. In the facts of the case no useful purpose will be served by remitting the matter to the State Government for re-deciding the percentage of pension to be paid to the petitioner. In accordance with the earlier show cause notice dated 27-1-1995 (Annexure-19 to the writ petitioner), it is hereby ordered that petitioner's pension will be reduced only by 50% and he will be entitled to receive 50% of his pension along with arrears of pension on such redetermination. On account of this order dues on this account must be paid to the petitioner, who allegedly retired long back, expeditiously, preferably within three months from the date of production/communication of a copy of this order. The impugned order of the Government dated 2nd November, 1996 (Annexure-24 to the writ petition) shall stand modified to that extent. As a result this appeal is allowed only in part. There shall be no order as to costs.