

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P. (S) No. 6876 of 2019**

Jagannath Prasad Sah

... .. **Petitioner****V E R S U S**

1. The State of Jharkhand
2. The Principal Secretary, Water Resources Department, Government of Jharkhand, Ranchi
3. The Deputy Secretary, Water Resources Department, Government of Jharkhand, Ranchi
4. The Under Secretary, Water Resources Department, Government of Jharkhand, Doranda, Ranchi
5. The Accountant General (A & E), Jharkhand.

... .. **Respondents****CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK**

For the Petitioner :Mr. Amit Kumar Sinha, Advocate

For the Respondents: Mr. Shivam Singh, AC to AAG-III

For the Accountant General: Mr. Prabhash Sinha, Advocate

06/22.03.2021

In view of outbreak of COVID-19 pandemic, case has been taken up through Video Conferencing and heard at length. Concerned lawyers have no objection with regard to the proceeding which has been held through Video Conferencing and there is no complaint in respect to audio and video clarity and quality and after hearing at length, the matter is being disposed of finally.

PRAYER

2. Petitioner has approached this Court with a prayer for quashing of order issued vide Memo No. 1543, dated 19.02.2014, under the signature of the Under Secretary, Department of Water Resources, Government of Jharkhand by which decision has been taken by the respondents for deduction of 5% of pension of petitioner for the next fifteen years.

Petitioner has further prayed for quashing of memo no. 47, dated 07.01.2019, issued under the signature of Under Secretary, Department of Water Resources, Government of Jharkhand, by which appeal preferred by petitioner against the order issued vide memo no. 1543, dated 19.02.2014 has been dismissed.

Petitioner has further prayed for a direction upon the respondents to pay full pension after quashment of impugned orders.

FACTUAL MATRIX

3. The factual exposition as has been narrated in the writ petition is that petitioner was initially appointed as Assistant Engineer at Bhagalpur in the erstwhile State of Bihar on 26.01.1979 and on attaining age of retirement, he superannuated from the service on 29.02.2008 from the post of Executive Engineer. After his retirement, a departmental proceeding was initiated against him under Rule 43(B) of the Pension Rules, vide Resolution No. 445, dated 05.02.2009, alleging therein that there was violation of departmental rules in Tender invitation, tender disposal, work allocation and back dating by the petitioner with regard to works of Tender Invitation Information No. 1/05 – 06. After enquiry, the report was submitted by the enquiry officer on 10.07.2011 wherein none of the charges against the petitioner was found proved and noting was given to exonerate the petitioner from the charges. However, thereafter petitioner was served with a letter no. 5748, dated 30.09.2013, issued by Under Secretary, Department of Water Resources, Government of Jharkhand wherein he has been informed that allegations levelled against him has been found true and Government is in consideration for imposing punishment of deduction of 5% of Pension under Rule 139 of Pension Rules and 15 days' time was granted to the petitioner to file show-cause. Petitioner denied the allegations and submitted his reply on 28.10.2013. Without any second show-cause, petitioner was served memo no. 5748 dated 30.09.2013 wherein it was disclosed that petitioner shall be imposed punishment of deduction of 5% of pension under Rule 139 of the Pension Rules. After departmental proceeding, an order vide memo no. 1543, dated 19.02.2014 was issued wherein petitioner was informed that he has been inflicted with punishment of deduction of 5% from his pension under Rule 139 of Pension Rules. Accordingly, the Accountant General (A & E), Jharkhand was also intimated vide letter no. 2198, dated 11.03.2014 recommending deduction of 5% of Pension of the petitioner for the fifteen years from the date of his superannuation. Petitioner preferred an appeal but the same was also dismissed vide memo no. 47, dated 07.01.2016.

ARGUMENTS ON BEHALF OF THE PETITIONER

4. Mr. Amit Kumar Sinha, learned counsel appearing on behalf of the petitioner submits that from the Enquiry Report it clearly reveals that though petitioner was exonerated from the charges but the same has been given go bye and he has been given harsh punishment at his old age. The impugned orders of punishment and appellate orders are cryptic and liable to be quashed. The deviation from the enquiry report mandates specific show cause to that effect but the same was never served upon the petitioner in total violation of principles of natural justice. Even prior to awarding punishment, the respondents had already disclosed their mind that they are going to inflict punishment and identical punishment was inflicted to him, which shows biasness.

5. Learned counsel further submits that during service period of the petitioner, no departmental proceeding was ever initiated against him and surprisingly after his retirement, impugned action has been taken against him which is totally against the settled principles. The impugned proposal of deduction from pension of the petitioner is totally in violation of principles of natural justice. Learned counsel further submits that letter proposing deduction from pension under Rule 139 of the Jharkhand Pension Rules is wholly unlawful, improper, unjust and without authority of law. Learned counsel further argues that it is settled principle of law that if no departmental proceeding was ever initiated against an employee in respect of irregularities, there is no justification to issue impugned notice against a retired employee. In the instant case, the alleged irregularities relates to the year 2005 – 06 whereas petitioner retired on 29.02.2008 and impugned proceeding was initiated vide resolution dated 05.02.2009 and impugned orders have been passed on 19.02.2014 and 07.01.2019 respectively, which are fit to be quashed

ARGUMENTS ON BEHALF OF THE RESPONDENTS

6. Mr. Shivam Singh, AC to learned AAG-III argues that petitioner was supposed to be a responsible government servant. During his service period, the Chief Engineer, Department of Water Resources, Government of Jharkhand issued a letter vide memo no. 1107, dated 13.05.2008, to the

Engineer-in-Chief, Department of Water Resources, Ranchi for framing charges against the petitioner for violation of departmental rules in tender invitation, tender disposal, work allocation and back dating by the petitioner with respect to works of tender invitation notice no. 1/05-06. In the meantime petitioner retired from the service and after his superannuation, vide memo no. 445, dated 05.02.2009, the department passed a resolution to initiate departmental proceeding against him under Rule 43(B) of the Jharkhand Pension Rules. After due process and giving opportunity to the petitioner, impugned orders have been passed which are fully justifiable. Learned counsel further submits that though the enquiry was started but in the meantime, petitioner retired and as such appropriate action could not be taken. In view of irregularities committed by the petitioner, action of the respondents is justified. There is no infirmity in the impugned order and as such instant writ petition is fit to be dismissed

FINDINGS OF THE COURT

7. I have heard counsel for the parties and gone through the records. To decide the issue involved in this case, it is important to refer to the provisions, as contained in Rule 43(b), Rule 139(a), (b) and (c) of the Bihar Pension Rules, which are being quoted herein below:

"43(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 proceedings 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 re-employment 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;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at

such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;
(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during reemployment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and
(c) Bihar Public Service Commission, shall be consulted before final orders are passed.”

"139 (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.
(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.
(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.”

8. It has been specifically provided under Rule 43(b) of the Bihar Pension Rules that a departmental proceeding, if instituted in course of service of a Government employee, that will be deemed to be a departmental proceeding even after retirement of the delinquent employee for the purpose of imposing punishment or withholding of part or full amount of pension, subject to certain limitations, as contained in proviso to Rule 43(b). Foremost requirement under Rule 43(b) of the Bihar Pension Rules is that there must be pecuniary loss caused to the Government and if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct. Under Rule 139(b) of the Bihar Pension Rules, it has been provided that if the service of a delinquent employee is not found to be thoroughly satisfactory, the sanctioning authority of pension has got power to make reduction in the amount of pension. Under Rule 139(c) of the Bihar Pension Rules, the State Government has been vested with the

revisional power against the order passed by the sanctioning authority, subject to limitation of 3 years from the date of the order of the sanctioning authority by providing a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension.

9. Admittedly, petitioner retired from the service on 29.02.2008 and during his service tenure, no proceeding was ever initiated against him. It is settled legal proposition that if a proceeding has been initiated or not completed in course of service under Rule 43(b) of the Bihar Pension Rules, the same cannot be converted under Rule 139(b) of the Bihar Pension Rules, rather the same will be deemed to have been converted under Rule 43(b) of Bihar Pension Rules, as has already been held in the case of *Shambhu Saran Vs. The State of Bihar* reported in *2000(1) PLJR 665 (FB)*, wherein at Paragraph-8 it has been held as follows :

"In our opinion, once such proceeding is started, even if the person concerned 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."

10. As a sequel of the aforesaid guidelines, judicial pronouncements and facts and circumstances, this writ petition stands allowed. The impugned orders issued vide Memo No. 1543, dated 19.02.2014, issued under the signature of the Under Secretary, Department of Water Resources, Government of Jharkhand as also the memo no. 47, dated 07.01.2019, issued under the signature of Under Secretary, Department of Water Resources, Government of Jharkhand, are hereby quashed. Respondents are directed to pay full pension as also arrears thereof to the petitioner.
11. The writ petition stands allowed.

(Dr. S.N. Pathak, J.)