

(2020) 08 PAT CK 0087

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 10307 Of 2017

Krishna Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Aug. 31, 2020

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 43(b), 139

Hon'ble Judges: Prabhat Kumar Singh, J

Bench: Single Bench

Advocate: Prashant Sinha, Kumar Alok

Final Decision: Allowed

Judgement

1. Heard Mr. Prashant Sinha, learned counsel for the petitioner as well as Mr. Kumar Alok, learned Standing Counsel-7 for the State.

2. Petitioner is aggrieved by the order dated 20.3.2019 (annexure E to the supplementary counter affidavit filed on behalf of respondent no. 3 to 6) by

which show cause has been issued to the petitioner under Rule 139 of the Bihar Pension Rules, 1950 with a proposal to withholding 10% pension for

further five years. Petitioner is also aggrieved by order dated 2.6.2020, issued by the Additional Secretary, Rural Works Department, Government of

Bihar, Patna by which he has been awarded with punishment for withholding of 10% of his pension for a further period of five years in exercise of

power under Rule 139 of the Bihar Pension Rules.

3. Short facts giving rise to the writ petition is that the the petitioner was initially appointed as Assistant Engineer under the Road Construction

Department, Government of Bihar, Patna on 28.9.1981 and superannuated from the Rural Works Department, Government of Bihar, Patna with

effect from 31.5.2016. While in service, he was departmentally proceeded by the Road Construction Department against the charge of committing

irregularities in construction of Imamganj-Karpi-Shahar-Telpa road as work of SDBC/BM/BUSG/WMM in Km 2 to Km 24. After issuance of show

cause dated 20.3.2019 and on consideration of his reply, vide Memo no. 1011 dated 2.6.2020 he has been inflicted with the punishment of withholding

of 10% pension for the further period of five years in exercise of power conferred under Rule 139 of the Bihar Pension Rules, 1950.

4. The short issue raised by the learned counsel for the petitioner is that Rule 139 of the Bihar Pension Rules does not permit exercise of such power

on ground of alleged misconduct.

5. Learned counsel for the State submits that Rule 139 of the Bihar Pension Rules gives ample power to the respondent authorities to withhold either

wholly or in part pension of retired Government servant if requirements of the Rules were satisfied. In the present case, service records of the

petitioner was not satisfactory and he was also involved in grave misconduct in construction of Imamganj-Karpi-Shahar-Telpa road, as the work

SDBC/BM/BUSG/WMM in Km 2 to Km 24 was not found to be as per prescribed specification. The Rural Works Department having reviewed the

matter vide its Departmental letter dated 20.3.2019 issued show cause to the petitioner. Respondents, on duly consideration the petitioner's reply

and having not found the services of the petitioner to be satisfactory, vide Memo no. 1011 dated 2.6.2020 inflicted the punishment of withholding of

10% pension for the further period of five years in exercise of power conferred under Rule 139 of the Bihar Pension Rules, 1950.

6. Learned counsel for the petitioner submits that, in the case in hand, proceedings under Rule 139 of the Bihar Pension Rules is barred under Rule

43(b) of the Bihar Pension Rules. He submits that the show cause was sought from the petitioner on 1.12.2010 which was replied by him on

28.2.2011. Thereafter, nothing happened and the petitioner retired on 31.5.2016 and now after about three years of his retirement, the authorities

issued another show cause in 2019. He submits that the respondents cannot take recourse to Rule 139 of the Bihar Pension Rules and withhold

pensionary benefits as the purported show cause dated 20.3.2019 (Annexure E) had not been issued to the petitioner on the grounds that his service

record was not thoroughly satisfactory rather the same has been issued on the ground of petitioner's alleged past misconduct which took place

almost five years prior to his retirement. Learned counsel for the petitioner submits that the show cause notice dated 20.3.2019 is in respect of

occurrence of 2010. He submits that such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii) of the Bihar Pension Rules. In support of

the submission, learned counsel for the petitioner has relied upon the decision of this Court in the case of Chandra Nath Jha Vs. The State of Bihar

and others, reported in 2019(2) PLJR 142. The said judgment has relied upon the law laid down by the Apex court in the case of State of Bihar &

others Vs. Mohd. Idris Ansari, reported in AIR 1995 Supreme Court 1853. Petitioner has also relied upon the decision of a co-ordinate bench of this

Court pronounced in the case of Muneshwar Prasad Sinha Vs. State of Bihar and others, reported in 2004(2) BLJR 1551.

7. Having considered the rival submissions and on perusal of the materials available on the record, submission of Mr. Prashant Sinha, learned counsel

for the petitioner appears to be well founded.

8. Rule 43(b) of the Bihar Pension Rules reads as follows:-

(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 cause to Government if the

pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have cause 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;

9. From perusal of the provisions of the aforesaid Rules, it is clear that the State Government can reduce the pension payable to a retired Government

servant if (a) they are satisfied that the service of the petitioner was not thoroughly satisfactory or (b) there was proof of grave misconduct on his part

while in service. So far as the first condition is concerned, the same is not fulfilled, because it is not the case of the State that the record of service of

the petitioner was unsatisfactory. So far as the second condition is concerned, the same is also not fulfilled, because there is no proof of grave

misconduct on the part of the petitioner while in service. Neither in a court of law nor in a departmental proceeding had any charges been proved

against the petitioner.

10. In view of the settled legal position as well as in view of law laid down by the Honâ€™ble Apex Court in the case of Mohd. Idris Ansari (supra)

as well as other decisions discussed above, I am of the opinion that in the present case, respondent authorities cannot be permitted to take recourse to

Rule 139 of the Bihar Pension Rules, as admittedly the allegations of misconduct was prior to four years from the date of show cause notice dated

20.3.2019 which is based on grounds of alleged past misconduct. The show cause notice is not on the ground that service record of the petitioner was

not thoroughly satisfactory for any other reason.

11. Consequently, show cause notice dated 20.3.2019 (annexure E to the supplementary counter affidavit filed on behalf of respondent no. 3 to 6) as

well as order dated 2.6.2020, issued by the Additional Secretary, Rural Works Department, Government of Bihar, Patna, are quashed. Respondents

are directed to grant the benefits of full retiral benefits to the petitioner immediately.

12. The writ petition stands allowed with the aforesaid observations and directions.