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**(2014) 09 JH CK 0027**

**Jharkhand High Court**

**Case No:** WP(S) No. 5745 of 2008

Nayan Kant Pathak

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** Sept. 10, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 409

**Citation:** (2014) 4 JLR 233

**Hon'ble Judges:** Aparesh Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Vandana Singh, Advocate for the Appellant

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### **Judgement**

@JUDGMENTTAG-ORDER

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. Initially the writ petition was preferred by the petitioner, who had retired on 30.11.2007 from the post of Welfare Observer, Karown, District-Deoghar, for payment of entire post retirement benefits including GPF, Leave Salary, Gratuity, Pension, Insurance amount etc. and the benefits of pay revision alongwith balance amount of salary from 22.8.1998 till 30.11.2007 @ 50% for the period of his suspension. During the pendency of the writ petition, the petitioner has been imposed with a punishment of recovery of Rs. 2,19,564/- on being found guilty in the departmental proceeding vide memo No. 610 dated 15.3.2010. The said order has been passed under Rule 43(b) of the Jharkhand Pension Rules and the same has also been challenged subsequently by the petitioner through I.A. No. 2042 of 2011.

2. The respondents have also filed their counter affidavits and reply to the said I.A. thereafter.

3. The petitioner was initially appointed on 14.10.1986 as Kalyan Grain Gola Sewak on temporary basis and thereafter nomenclature of the said post was changed as Welfare Supervisor. The petitioner continued on his re-designated post till 30.1.1996. Thereafter, the petitioner was directed to hold the post of Block Welfare Officer, Karown, District-Deoghar. However, vide memo No. 3797 dated 24.7.1999, he was placed under suspension w.e.f. 22.8.1998 under Rule 99 of the Bihar Service Code. Two criminal cases being Karown P.S. Case No. 42 of 1998 and Karown P.S. Case No. 45 of 1998 were registered under Section 409 of the Indian Penal Code against the petitioner. The petitioner had earlier challenged the order of suspension before this Court in W.P. (S) No. 4053 of 2005, which was, however, disposed of without interfering with the order of suspension directing the Judicial Magistrate, concerned to conclude the trial and deliver the judgment within a period of six months. On retirement of the petitioner on 30.11.2007, his suspension was revoked vide order dated 13.12.2007, Annexure-4 issued by the Special Secretary, Welfare Department, Government of Jharkhand. Thereafter, the petitioner represented before the respondent authorities and came before this Court for the instant reliefs.

4. The petitioner, in the meantime, has been convicted in the said criminal case and the criminal appeal arising therefrom is pending before the learned Sessions Judge, Deoghar. In the present writ petition, while assailing the impugned order of punishment of recovery, learned counsel for the petitioner has tried to make out a case that the said punishment has been passed without initiation of any departmental proceeding under Rule 43(b) of the Jharkhand Pension Rules after his retirement. It is further submitted that even if the said proceedings have been drawn, it has been initiated for an event beyond four years from the date of superannuation and/or the initiation of the said proceeding. Therefore, the conditions prescribed for invoking Rule 43(b) having not satisfied, the said proceeding is bad in law. In this respect, significant facts as are evident from the records are to be noticed. At para-26 of the writ petition, the petitioner himself has said that the departmental proceeding was initiated against the petitioner in respect of the alleged charges and in spite of submissions of the enquiry report, no final order of punishment has been passed by the department, as such, the departmental proceeding did not conclude during service period of the petitioner.

5. Learned counsel for the petitioner on this score submits that no opportunity has been given to the petitioner in the said proceeding before the impugned order of punishment leading to recovery has been passed. However, from the said statements, it is also evident that the petitioner was aware of the pending departmental proceeding. The next question, which is to be enquired into as to whether the proceeding was initiated in respect of an event which was beyond the period of four years from the date of retirement of the petitioner and/or the initiation of the proceedings. In this context, Annexure-B letter dated 13.2.2009 issued by the Additional Secretary, Welfare Department, Government of Jharkhand addressed to the District Welfare Officer-cum-Enquiry Officer, Deoghar is worth

noticing. Perusal of the said letter indicates that earlier due to the fact that the petitioner was in judicial custody during the relevant period of 2001, the departmental proceeding initiated against him could not be continued as it would have been in violation of the principles of natural justice. Reference has been made to the memo No. 514 dated 29.12.2001 issued by the District Welfare Officer-cum-Enquiry Officer, Deoghar where such state of facts were noticed in the letter dated 13.2.2009. The Enquiry Officer was directed to conclude the pending departmental proceeding after observance of principle of natural justice within stipulated time. If the petitioner failed to appear after notice, the same should be concluded even ex-parte. From the documents Annexures-A, B and C annexed to reply of I.A. No. 2042 of 2011, filed by the respondent Nos. 2 and 3, it is apparent that the petitioner was issued notice on 8.6.2009 to participate on 26.6.2007 in the departmental proceeding. Notice dated 8.6.2009 indicates that there is endorsement of receipt by the petitioner which is dated 9.6.2009. Annexure-B is petitioner letter to the Conducting Officer dated 26.6.2007 and Annexure-C is also a notice dated 6.7.2009. The contention of the petitioner that the impugned order has been passed without giving opportunity to the petitioner or without hearing him, therefore, is not sustainable. Therefore, on both counts it appears that the proceeding was not initiated after his retirement and there are evidences of opportunity or notice to the petitioner to participate. The 3rd ground has been raised by the learned counsel for the petitioner that if the departmental proceeding was pending before his retirement, the same must have been initiated afresh by issuance of an order under Rule 43(b) of the Jharkhand Pension Rules. In this regard, the judgment rendered by the Full Bench of the Patna High Court in the case of [Shambhu Saran Vs. The State of Bihar and Others](#), is answer to the same. It has been categorically held therein that departmental proceeding pending at the time the Government Servant retires may continue after his retirement and no specific or express order of Government to this effect is necessary.

6. In the aforesaid state of facts and the legal position discussed hereinabove, there is no infirmity in the order of punishment imposed under Rule 43(b) of the Jharkhand Pension Rules after his retirement. In such circumstances, the respondents would pay other admissible post retirement dues to the petitioner after recovering the said amount from the admissible post retirement dues.

7. Let the balance retirement dues be paid within a period of 12 weeks from the date of receipt of a copy of this order along with statutory interest, if any. The writ petition is, accordingly, disposed of.