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**(2008) 01 PAT CK 0170**

**Patna High Court**

**Case No:** CWJC No. 915 of 2005

Shiva Dutta Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Jan. 15, 2008

**Acts Referred:**

- Bihar Pension Rules, 1950 - Rule 39, 43B

**Citation:** (2008) 3 PLJR 40

**Hon'ble Judges:** Navin Sinha, J

**Bench:** Single Bench

**Advocate:** Ashutosh Ranjan Pandey, for the Appellant; Rajesh Kr. Singh for the State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Navin Sinha, J.

Heard learned counsel for the petitioner and learned counsel for the State. The petitioner is aggrieved by the order of punishment dated 15.7.2004 in pursuance of proceedings u/s 43B of the Bihar Pension Rules (hereinafter referred to as "the Rules" for short), visiting him with the punishment of complete forfeiture of his pension under Rule 39 of the Rules.

2. The petitioner was posted as the In-charge Treasury Officer at the relevant time. The allegations relate to attempted passing of salary bills contrary to the request of the Headmaster without intimation to him. Two more persons of the Treasury Department, one Mahadeo Ram and the other Vijay Kumar Srivastava, were alleged to have acted in tandem with the petitioner. On 16.1.1997 memo of charges were issued to the latter two. Mahadeo Ram came to this Court in C.W.J.C. No. 2438/97. While directing expeditious conclusion of the proceedings this Court directed that if the proceedings were not concluded by 30.5.1998, then the chargesheet and the

suspension order shall stand quashed from 5th of June, 1998. The proceedings remained inconclusive. Departmental orders dated 26.9.2001, at annexure-9 followed. The proceedings were deemed to be quashed by a formal order by the respondents not only against the applicant Mahadeo Ram but also against the aforesaid Vijay Kumar Srivastava who was not a writ petitioner, as noticed above.

3. The petitioner, in the meantime, superannuated on 31.1.1997. a show cause dated 14.10.1998 was issued to the petitioner initiating proceedings under Rule 43B of the Rules.

4. Learned counsel for the petitioner submitted that no regular departmental proceeding or enquiry was held as contemplated by law. Except for the memo of charges and the documents enclosed thereto, the enquiry officer had only the show cause of the petitioner. No evidence was laid before the enquiry officer by the prosecution and no opportunity to cross-examine was given to the petitioner. On this basis the enquiry officer on surmises and conjectures arrived at a finding of the petitioner having acted in conspiracy when the impugned order of punishment followed.

5. Learned counsel for the State urged that the evidence by way of affidavit of some of the witnesses for the prosecution was placed before the authority who conducted the preliminary enquiry on which the memo of charge was based and which have been considered by the enquiry officer when there has been no objection by the petitioner.

6. Withholding of pension, more particularly forfeiture of the entire pension is a very serious matter for a Government servant in the evening of his life when he has no other source of income. In the case of [Ram Dayal Rai Vs. Jharkhand State Electricity Board and Others](#), the Supreme Court viewed with seriousness a 5 per cent reduction in pension as a grave and irreparable injury. The present is a case of forfeiture of the entire pension. Quite naturally the action of the respondents shall stand to greater scrutiny.

7. The finding of the department against the petitioner is one of conspiracy. The respondents found it convenient taking shelter of the order of this Court in C.W.J.C. No. 2438/97 to allow the proceedings to lapse against one of the coconspirators. No justifiable reason, whatsoever, has been placed before this Court as to why it was so permitted and what steps, if any, were taken by the respondents to prevent the same. Nothing has been urged before this Court as to why when the petitioner in C.W.J.C. No. 2438/ 97 was Mahadeo Ram only, suo motu the respondents chose to extend the benefit of the order of the writ court to the coconspirator Vijay Kumar Srivastava who had not even sought shelter of the Court. Once Mahadeo Ram and Vijay Kumar Srivastava have been exonerated, no coconspirators are left. The finding against the petitioner of having acted in conspiracy automatically falls to the ground.

8. Additionally, this Court has had the benefit of specific pleadings on behalf of respondent Nos. 6 and 7 in their counter affidavit. It confirms the recitals in the enquiry report that there has been no regular departmental proceeding, inasmuch as, no one appeared on behalf the presenting authority, no witnesses were examined and that there had been no cross-examination of witnesses. The findings, as recited in the enquiry report itself, on basis of the memo of charges and the show cause filed are based on surmises and conjectures. If prosecution-witnesses had deposed, and the petitioner had not demanded their cross-examination, or even if some of the witnesses had deposed and the petitioner had made no request for cross-examination of certain others, the matter would have been entirely different. When there has been no regular departmental proceeding, whatsoever, in law, the question of any objections not having been raised on behalf of the petitioner to suggest that he has not been prejudiced is of no avail to the respondents. The question of prejudice to the petitioner arises only when there has otherwise been a regular departmental proceeding in accordance with procedures.

9. Normally, in a case like the present, of irregular departmental proceedings, the matter should have been remanded back to the authorities to proceed afresh from the stage of irregularity.

10. In the facts and circumstances of the present case, vis a vis, the action of the respondents with regard to the coconspirators Mahadeo Ram and Vijay Kumar Srivastava, this Court called upon the respondents as to why orders for remand should not be passed presently. Learned Counsel for the respondents, finding himself defenseless, only urged that it was official delay which prevailed to the advantage of the co-conspirators Mahadeo Ram and Vijay Kumar Srivastava. The explanation leaves this Court far from satisfied.

11. In the result, the impugned order dated 15.7.2004, communicated to the petitioner on 2.8.2004, at Annexure-13, is hereby quashed. The writ application stands allowed.