
Ashok Kumar Mishra Vs State of Bihar and Others

C.W.J.C. No. 9833 of 2001

Court: Patna High Court

Date of Decision: Sept. 19, 2002

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Chandramauli Kr. Prasad, J.

This application has been filed for quashing the Resolution dated 24th March, 1999 whereby a proceeding

has been initiated against the Petitioner under Rule 43(b) of the Bihar Pension Rules.

2. Shorn of unnecessary details facts giving rise to the present application are that the Petitioner worked in the Building Construction Department of

the State Government till 24th of September, 1994 and thereafter transferred to another department. By order dated 24.5.1997 (Annexure-1) he

was put under suspension under Rule 49A of the Civil Services (Classification, Control and Appeal) Rules in contemplation of a departmental

enquiry. Ultimately, the Petitioner retired from service on attaining the age of superannuation on 31.5.98. After his retirement, by the impugned

resolution dated 24.3.99 (Annexure-2) a proceeding has been initiated under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as the

Rules) on the purported ground that while the Petitioner was posted in the Building Construction Department of the State Government, in the

financial year 1994-95 in collusion with the suppliers, he fabricated various documents and manipulated the account. It is the stand of the Petitioner

that he remained in the Building Construction Department till 24.9.94 and hence initiation of departmental proceeding under Rule 43(b) of the

Rules is beyond four years from the date the event had taken place and as such proceeding is fit to be quashed.

3. Counter affidavit has been filed on behalf of Respondents 2 to 4 and in paragraph 5 thereof it has been stated that the forgery committed by the

Petitioner and others came into light vide letter of the Accountant General bearing No. 392 dated 22.11.96 and as such proceeding initiated under

Rule 43(b) of the Rules is within the period prescribed.

4. Mr. Pushkar Narain Shahi appearing on behalf of the Petitioner submits that Rule 43(b) of the Rules gives discretion to the State Government to

initiate proceeding for withholding or withdrawing the whole or any part of the pension but such a proceeding cannot be in respect of an event

which took place more than four years before the institution of the proceeding. He points out that the proceeding has been initiated on 24.3.99

where as the misconduct alleged against the Petitioner had taken place prior to 24.9.94 and as such the proceeding initiated against him is beyond

the time prescribed under provision (a)(ii) of Rule 43(b) of the Rules. He submits that notwithstanding the date on which misconduct alleged comes

to the notice of the authority, the period of four years has to be counted with reference to the date of event. In support of his submission learned

Counsel has placed reliance on a decision of the Supreme Court in the case of State of Bihar and others Vs. Mohd. Idris Ansari, and my attention

has been drawn to paragraph 6 of the judgment, relevant portion of which reads as follows:

A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a

retired Government servant, it must be shown that in departmental proceedings or judicial proceedings the concerned government servant is found

guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of Misconduct which

took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could

have been initiated in 1993 against the Respondent under Rules 43(a) and (b), in connection with the alleged misconduct, as it is alleged to have

taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years old, Rule 43(b) was out of picture.

5. Mr. Rajesh Kumar Singh, J.C. to AAG-II, however, appearing on behalf of the State submits that the period would commence only when the

act of misconduct comes to the notice of the authority and not from the date on which the misconduct was committed. He points out that any other

view would lead to disastrous consequence.

6. Neither on principle nor on precedent I am inclined to accept the submission of Sri Shahi. This requires consideration of Rule 43 (b) of the Rules

and it is apt to reproduce the same:

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 proceeding 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 re-employment, shall have

been instituted in accordance with Sub-clause (ii) of Clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

7. It is common ground that in case the period of four years is counted from the date on which the misconduct was committed, initiation of

proceeding under Rule 43(b) of the Rules by the impugned resolution shall be illegal. Petitioner, as stated earlier, worked in the Building

Construction Department till 24th of September, 1994 and the impugned resolution has been issued on 24.3.99 and as the misconduct pertains to

the Petitioner's act in the Building Construction Department, same is surely beyond the period of four years. In the counter affidavit it has been

clearly stated that the forgery committed by the Petitioner and others came into light by letter of the Accountant General dated 22.11.96 and in

case this date is considered for reckoning the period of four years, the impugned resolution is well within time.

8. In my opinion, when the rule uses the expression that the departmental proceeding shall be in respect of an event, which took place not more

than four years before the institution of the proceeding, one has to necessarily hold that the period of four years would be from the date of the

knowledge of the event. When time limit is prescribed in respect of an event in a statute it has to reckon from the date of its knowledge unless

contrary intent is pointed in the statute or by necessary implication. Any other view would lead to disastrous consequences and one may imagine a

situation where an unscrupulous public servant holding a particular public post for ten years indulges in all kinds of misdemeanour for first six years

of posting, which is unlikely to come to surface during his presence and after the lapse of four years thereafter shall contend that no proceedings

can be initiated as the event had taken place four years earlier. In my considered opinion the period prescribed under proviso (a)(ii) of Rule 43(b)

of the Rules has to be read to mean that four years time would be reckoned from the date of the knowledge of the event by the competent

authority.

9. As regards the authority of the Supreme Court in the case of Md. Idris Ansari (supra) I am of the opinion that the same is clearly distinguishable.

In the said case the Supreme Court was not faced with the situation in which the misconduct came to the notice of the authority later. The Supreme

Court had not addressed itself on the issue involved in the present case.

10. Mr. Shahi then contends that by the impugned resolution, proceeding was Initiated not only against the Petitioner but one Jagdish Singh also

and a learned single Judge of this Court by order dated 22.6.99 passed in C.W.J.C. No. 7155 of 1998 (Jagdish Singh v. State of Bihar and Ors.)

had quashed the impugned resolution and the case of the Petitioner being on similar footing, same also deserves to be quashed. I do not find any

substance in the submission of Sri Shahi.

11. From the order of this Court dated 22.6.99 passed in C.W.J.C. No. 7155 of 1998 (Jagdish Singh v. State of Bihar and Ors.) It is evident that

this Court did not quash the impugned resolution. In fact the Petitioner in the said case filed the writ application for payment of retiral benefits and

in the said case it was contended that ten per cent of the pension amount including leave salary and gratuity have been withheld on account of

pendency of the departmental proceeding initiated on 23.3.99. In the background of the said fact this Court directed to take final decision in

respect of the departmental proceeding within six weeks from the date of receipt/production of a copy of the said order and it was further

observed that in case final decision is not taken within the time aforesaid, same shall stand quashed. Thus this Court did not quash the resolution

but gave liberty to the Respondents to proceed with the departmental proceeding against said Jagdish Singh and in case on account of failure on

part of the Respondents, the proceeding stood quashed, it cannot be said that the proceeding was quashed by this Court. It is relevant here to

state that the proceeding against the Petitioner in fact had been stayed by the interim order passed by this Court on 3.8.2001.

12. Mr. Shahi lastly contends that as was directed by this Court in the case of Jagdish Singh (supra), Respondents in this case be also directed to

conclude the proceeding within six weeks and on their failure to quash the proceeding. I am not inclined to give direction for conclusion of the

departmental proceeding within the time suggested by the learned Counsel. While giving such direction, Court has to be pragmatic. Allegation

against the Petitioner is of forgery in the financial year 1994-95 and the same came to the notice of the Respondents on the basis of the

communication of the Accountant General dated 22.11.96. In my opinion, it shall be highly impracticable to direct for concluding the proceeding

within six weeks and on its failure to quash the proceeding. When public money is involved and its mis-utilisation or mis-appropriation is alleged,

the Court would be loathe to fix such short time. In such a situation balance has to be struck.

13. In the facts and circumstances of the case, I deem it expedient that the proceeding initiated against the Petitioner be concluded within a period

of six months from the date of receipt/production of a copy of this order. This shall be, however, subject to the Petitioner co-operating in the said

proceeding. One has to bear in mind that where the facts of an earlier case appear to be identical the case before the Court, the Judge is not bound

to give the same direction as it is well settled that direction on the facts of a given case is not a binding precedent.

14. In the result, I do not find any merit in this application as it is dismissed accordingly with the aforesaid direction.