

IN THE HIGH COURT OF JUDICATURE AT PATNA

Yodhan Choudhary

Versus

The State of Bihar & Ors.

Letters Patent Appeal No.669 of 2023

In

Civil Writ Jurisdiction Case No.9311 of 2017

29 July, 2024

(Hon'ble the Chief Justice and Hon'ble Mr. Justice Partha Sarthy)

Headnotes

Acts/Sections/Rules:

- 43(b) of the Bihar Pension Rules, 1950

Cases referred:

- Shambhu Saran Versus State of Bihar [2000 (1) PLJR 665]

Application - filed against order whereby writ application preferred by the appellant was dismissed. Appellant had not been paid his post retiral dues which led to the appellant filing the writ in spite of taking all the steps for obtaining no-dues certificate.

Held - The relationship of master and servant between the respondent and the appellant having come to an end on his retirement, and so the pension payable to the appellant could only be withheld in accordance with law. (Para 7)

Rule 43(b) categorically provides that in case the departmental proceeding was not instituted while the Government servant was on duty, the same shall be instituted only on the sanction of the State Government and shall be in respect of an event which took place not more than 4 years before the institution of such proceeding. So far as the facts of the instant case are concerned, admittedly, the appellant superannuated from the service of the respondents more than 8 years ago and no departmental proceeding has been initiated till now. (Para 9)

Respondents no longer being in a position to start a proceeding against the appellant, in view of the bar as provided under Rule 43(b), in the opinion of the Court the prayer made by the appellant in the writ application for payment of the full pension as also arrears of gratuity and unutilised leave encashment etc has to be granted. There can be no withholding of pension or other retirement dues, unless the procedure under Rule 43(b) is followed. (Para 11)

Appeal is allowed. (Para 13)

Appearances for Parties

For the Appellant/s : Mr. Ashok Kumar Singh, Advocate

For the Respondent/s : Mr. Ajay, GA5

Headnote prepared by Reporter: Amit Mallik, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.669 of 2023

In

Civil Writ Jurisdiction Case No.9311 of 2017

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Yodhan Choudhary Son of Late Beyadar Choudhary Resident of Village-
Dhelwa, P.S- Ramkrishna Nagar, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Rural Works Department, Bihar, Patna.
2. The Joint Director, Planning and Development Department, Bihar, Patna.
3. The Chief Engineer, Local Area Engineering Organization, Bailey Road, Patna.
4. The Superintending Engineer, Local Area Engineering Organization, Work Circle, Munger.
5. The Executive Engineer, Building Construction Department, Building Division, Munger.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh, Advocate

For the Respondent/s : Mr. Ajay, GA5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 29-07-2024

1. Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The appellant has filed this application against the



order dated 5.4.2023 whereby the writ application (CWJC no.9311 of 2017) preferred by the appellant was dismissed.

3. The case of the appellant in brief is that inspite of appellant having taken steps from the year 2015 itself for obtaining no dues certificate, on the appellant having retired on 31.1.2016 on the post of Superintending Engineer, Rural Works Department, Government of Bihar and his representations before the respondent authorities, the appellant has still not been paid his post retiral dues including full pension, gratuity, unutilised leave encashment etc. which led to the appellant filing C.W.J.C. no.9311 of 2017 for the following reliefs:

“(a) Issuance of writ in the nature of mandamus commanding and directing the respondents to pay the full pension, arrear, Gratuity and unutilized leave in cashment to the petitioner who has superannuated as S.E. on 31.01.2016 from R.W.D., Bihar, Patna.

(b) The respondents further be directed to pay the entire arrears of retiral dues which is due with the department concerned calculation chart head wise. With calculation chart head wise.

(c) The respondents further be directed to compensate the entire arrears of retial dues till the actual payment be made by way of interest @ 12.05. compound as well as penal interest @ 8.5%, and litigation cost of Rs.25,000/-from the pocket of the erring officers.”

3. The case of the respondents is that subsequent to the appellant having superannuated on 31.1.2016, the



Superintending Engineer, LAEO, Work Circle, Munger wrote a letter on 31.8.2017 to the Under Secretary, of the Rural Works Department, Bihar stating therein that the accounts ledger book which contains statements regarding bills for the period during which the appellant was posted was missing. The same was produced before the learned Single Judge. As the contents thereof was not counter signed by the appellant nor any action was taken against the then staff ie one Manoj Kumar, the learned Single Judge held that the reason for the respondents not releasing the full pension, gratuity as well as leave encasement was solely on account of inaction on the part of the appellant and as such dismissed the writ application.

4. It is submitted by learned counsel for the appellant that on the superannuation of the appellant on 31.1.2016, the relationship of master and servant between the respondents and the appellant came to an end and the appellant cannot be asked to sign any documents with respect to his service period. It was submitted that the respondents admittedly have not initiated any departmental proceeding and have no reason whatsoever for not paying the post retiral dues. Not having received the same, the appellant filed the writ application for the relief as stated hereinabove, which was incorrectly dismissed by the learned



Single Judge. Hence the instant appeal.

5. Learned counsel for the respondents in reference to the counter affidavit filed in the writ application submitted that the appellant has already been sanctioned 90% of the provisional pension and 90% of the amount of gratuity vide orders contained in letters dated 17.11.2016 and 24.7.2018. The balance 10% amount has not been sanctioned for the reason of non-production of the no dues certificate which is to be issued by the office of the Superintending Engineer, Local Area Engineering Organization, Work Circle, Munger.

6. It is submitted that as the appellant, inspite of repeated reminders did not make available the ledger book of his posting after making necessary entries therein and the same has not been signed by the appellant as a result of which Rs.24,10,837/ remains unaccounted, no dues certificate could not be issued. It is the appellant solely who is responsible for the balance amount not having been paid to him.

7. Having heard learned counsel for the parties and having perused the material on record, the facts not in dispute are that the appellant superannuated on 31.1.2016 while posted as the Superintending Engineer in the Rural Works Department, Bihar and till date no departmental proceeding has been initiated



against him. The relationship of master and servant between the respondent and the appellant having come to an end on his retirement more than 8 years ago, the pension payable to the appellant could only be withheld in accordance with law.

8. Rule 43(b) of the Bihar Pension Rules, 1950 is quoted hereinbelow for ready reference:-

“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.

Explanation.- *For the purposes of the rule-*

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted: -

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.”

9. Rule 43(b) categorically provides that in case the departmental proceeding was not instituted while the Government servant was on duty, the same shall be instituted only on the sanction of the State Government and shall be in respect of an event which took place not more than 4 years before the institution of such proceeding. So far as the facts of the instant case are concerned, admittedly, the appellant superannuated from the service of the respondents more than 8



years ago on 31.1.2016 and no departmental proceeding has been initiated till now.

10. A Full Bench of this Court in the case of **Shambhu Saran Versus State of Bihar** [2000 (1) PLJR 665] held that where no proceeding had been initiated before retirement, Rule 43(b) contained certain limitations on the powers of the authority concerned to initiate a fresh proceeding which was to prevent any misuse of such power. Relevant part of Paragraph 8 of the judgment reads as follows:-

“8. The other point to be noticed is that a distinction is made in Rule 43(b) between a case where a disciplinary enquiry is already pending at the time of such superannuation and where no such disciplinary enquiry is pending at the time of retirement. Certain safeguards have been provided so that there may be no undue harassment after retirement when no proceeding had been initiated before his retirement. Even though there is no pending disciplinary proceeding at the time of such retirement, certain conditions, as contemplated by clauses (i), (ii) and (iii) thereof, are imposed for safeguarding the interest of the Government Servant concerned. Certain limitations on the powers of the authority concerned to initiate a fresh proceeding after retirement, where no such proceeding was initiated before such retirement, have been provided for to prevent any misuse of such power. But the question of providing such safeguard does not arise if there is already a disciplinary proceeding pending at the time of the superannuation of the Government Servant



concerned.....”

11. Thus in the facts and circumstances of the case, the respondents no longer being in a position to start a proceeding against the appellant, in view of the bar as provided under Rule 43(b), in the opinion of the Court the prayer made by the appellant in the writ application for payment of the full pension as also arrears of gratuity and unutilised leave encashment etc has to be granted. There can be no withholding of pension or other retirement dues, unless the procedure under Rule 43(b) is followed.

12. In view of the facts and circumstances of the case as stated hereinabove, the learned Single Judge erred in dismissing the writ application and the order being unsustainable is hereby set aside.

13. The appeal is allowed.

14. The respondents ie the Principal Secretary, Rural Works Department, Bihar, Patna and the Chief Engineer, Local Area Engineering Organization, Bailey Road, Patna shall pay the entire arrears of post retiral dues which remain to be paid alongwith calculations to the appellant within a period of 4 months from the date of receipt/production of a copy of this order.

15. In case the amount is not paid within the aforesaid



period, the appellant will be entitled for interest on the payable amount at the rate of 5% per annum from the date of his superannuation till the date of payment along with cost of Rs.10,000/.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	
CAV DATE	NA
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