

IN THE HIGH COURT OF JUDICATURE AT PATNA

Md. Shamim

vs.

The State of Bihar & Others

Civil Writ Jurisdiction Case No. 8978 of 2021

10 August 2023

(Hon'ble Mr. Justice Madhuresh Prasad)

Issue for Consideration

- Whether dismissal order passed after superannuation is correct or not?

Headnotes

Service Law—Dismissal—from service—Order of dismissal of petitioner was passed after superannuation—petitioner was wrongly proceeded against under Rule 825A of the Bihar Police Manual, 1978—Manua, 1978 applies to uniformed personnel—petitioner was a ministerial staff member—penalty of dismissal or termination can be inflicted on an employee, till such time he is in service—on attaining superannuation, the employer losses disciplinary control, as the master-servant relationship superannuation of an employee.

Held: requirement of proceeding against ministerial officer under the provisions of the 1935 Rules—jurisdiction to proceed against ministerial officer is not only inherently lacking, but also contrary to explicit procedure contained in Rule 824A (c) of the 1978 Rules—order of punishment of dismissal, after the petitioner had already superannuated—at the time, the order of punishment was issued, petitioner had already seized to be a government servant as he had retired four (4) months prior thereto—Authority, therefore, had lost disciplinary control over the petitioner—impugned order has been issued after petitioner attained age of superannuation—order of dismissal was unsustainable in the eyes of law—impugned order quashed—petitioner entitled to all consequential benefits—petition allowed. **(Paras 7 to 11)**

Case Law Cited

NONE

List of Acts

Service Law; Bihar Police Manual, 1978; Bihar Subordinate Services (Discipline and Appeal) Rules 1935; Constitution of India, 1950.

List of Keywords

Superannuation, dismissal order, penalty, master-servant relationship, disciplinary control.

Case Arising From

From dismissal order passed by Authority after superannuation of petitioner.

Appearances for Parties

For the Petitioner: Mr. Dinu Kumar, Advocate.

For the State: Mr. Sheo Shankar Prasad, SC- 8.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8978 of 2021

Md. Shamim Son of Late Md. Yunus Resident of Mohalla- Islampur, P.S. and P.O. and District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar.
2. The Director General of Police cum Police Inspector of Bihar.
3. The Inspector General of Police, Tirhut.
4. The Senior Superintendent of Police, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate
For the State : Mr. Sheo Shankar Prasad, SC- 8

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 10-08-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner was ‘Clerk’ in the Police force. He has been visited with a punishment of dismissal from his service. The order of dismissal has been assailed, in view of the petitioner’s case that the order suffers as being without jurisdiction. It is not disputed that the petitioner was posted as a ‘Clerk’ in the Office of Senior Superintendent of Police, Muzaffarpur. While posted there, he was served with a Memo on 12-04-2014, bearing Memo No. 1356 (Annexure- 2) calling for his comments thereon, on the point of dismissal from service. Petitioner was required to give his response within



fifteen (15) days. The proceedings appear to have been conducted on the allegation that his role in investigation of a case was considered to be illegal and irregular. Petitioner has been proceeded against in terms of Rule 825 A of the Bihar Police Manual, 1978 (herein after referred to as the '1978 Rules').

3. It is submitted by learned counsel for the petitioner that the entire proceedings against the petitioner are by an incompetent Authority, and without jurisdiction. Since, petitioner is a member of the Ministerial Cadre, the proceedings against the petitioner in terms of Rule 824 A (c) could have been taken only under the Bihar Subordinate Services (Discipline and Appeal) Rules 1935 (hereinafter referred to as the '1935 Rules'). Petitioner, however, has been proceeded against by a procedure under Rule 825A of the 1978 Rules. The procedure is substantially different, and resort to Rule 825A of the 1978 Rules, apart from being contrary to the provisions contained in Rule 824A (c) of the 1978 Rules, is also to the petitioner's prejudice. In a duly constituted proceedings under the 1935 Rules, the procedural requirements are more in conformity with the procedure laid down in Article 311 of the Constitution of India. The Bihar Police Manual, on the other hand, deals with



the uniform service where expected conduct and discipline are higher and the procedural requirements are not up to the same level as contained in Rules of 1935.

4. The other aspect of the matter argued by learned counsel for the petitioner is that the proceedings, though initiated under a wrong procedure, has culminated in issuance of an order of punishment of dismissal, which is dated 24-04-2015 (Annexure- 7), being nearly four (4) months after the petitioner had already superannuated. It is submitted that the law is very clear that the penalty of dismissal or termination can be inflicted on an employee, till such time he is in service. On attaining superannuation, the employer loses disciplinary control, as the master-servant relationship comes to an end with superannuation of an employee.

5. Under such circumstances, if the Rule permits, it is open to the Authority to continue the petitioner's service, may be for the limited purposes of concluding the proceedings only. Such procedure, however, has not been resorted to and the impugned order is, therefore, unsustainable.

6. Learned counsel for the State, on the other hand, submits that the entire exercise was completed in terms of Rule 825A of the 1978 Rules, and the petitioner has raised no



objection with respect to the procedure adopted by the Authorities. After the finding was recorded, then only for the limited purposes of passing the order of punishment, the matter was referred to the competent authority in view of the requirement contained in Rule 825A of the 1978 Rules, which reads as follows :-

“If in the opinion of the officer competent to pass final orders in a departmental proceeding, the delinquent should be given such a punishment for which he is not competent to pass orders, all papers with the proceeding file shall be sent to the officer competent to give that punishment through proper channel. For example, if orders of Inspector-General are required in a proceeding concerning an Inspector all papers and the file concerned shall be sent to Inspector-General through Deputy Inspector-General.”

7. The conclusion was a *fait accompli*, prior to the petitioner's superannuation. It is only the consequential order which has been issued post retirement, and therefore for these reasons, the petitioner is not in a position to raise a grievance regarding the order of punishment.

8. On consideration of rival submissions, this Court, finds that the requirement of proceeding against ministerial



officer under the provisions of the 1935 Rules is clear from bare reading of the Rule 824 A (c) of the 1978 Rules. The law is very well settled that the parties cannot confer a jurisdiction which otherwise is not inherent in the authority. The jurisdiction to proceed against ministerial officer is not only inherently lacking, but also contrary to explicit procedure contained in Rule 824A (c) of the 1978 Rules. The petitioner could not have been proceeded against the under the Rule 825A of the Bihar Police Manual.

9. Another aspect of the matter is that the order of punishment of dismissal is dated 24-04-2015, nearly four (4) months after the petitioner had already superannuated. At the time, the order of punishment was issued, petitioner had already ceased to be a government servant as he had retired four (4) months prior thereto. The Authority, therefore, had lost disciplinary control over the petitioner. Respondents have not shown any rule/procedure under which the order of punishment of dismissal could have been awarded, post retirement. It is also not the case of the respondents that they have issued the order of punishment while the petitioner was in service. The impugned order has been issued after petitioner attained age of superannuation. The order, therefore is clearly unsustainable



insofar as the consequence of dismissal/termination is concerned. If at all, it was desirable to proceed against the petitioner, or to punish him, the same could have been done either by continuing him in service for the limited purposes of inquiry or if any Rule permitted for the purposes of withholding the pensionary benefits of the petitioner, which has not been done. The impugned order dated 24-04-2015 (Annexure- 7) is unsustainable and is hereby quashed.

10. As a consequence of quashing of the impugned order dated 24-04-2015 (Annexure- 7), the petitioner is entitled to all consequential benefits, which the Authority would be obliged to pay within three (3) months from the date of receipt/production of a copy of this order.

11. Accordingly, writ petition is allowed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	AFR
CAV DATE	N/A
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