

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7208 of 2014

Bipin Bihari Singh S/o Late Krishna Prasad Singh C/o Sri Pankaj Sinha,
resident of Mohalla - Subhash Nagar, Ashram Road, Purinia, P.S. K. Hat,
District - Purnia

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Special Secretary, Social Welfare Dept. Bihar, Patna
3. Deputy Secretary, Social Welfare Dept. Bihar, Patna
4. Joint Secretary, Social Welfare Dept. Bihar, Patna
5. The Collector, Gopalganj, District - Gopalganj
6. The Joint Secretary, Labour Employment and Training Dept. Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Punita Kumari Singh, Advocate
For the State : Mr. Sanjay Prasad (AC to AAG-4)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 14-07-2025

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

2. The present writ petition has been filed for quashing of the order dated 04.11.2013 contained in Memo No.5438 passed by the Respondent no.2 (annexed as Annexure-11), by which withholding of 50% pension and entire gratuity of the petitioner has been forfeited.

3. Learned counsel for the petitioner submits that the order impugned is absolutely illegal and in gross violation of



Rule 43(b) of the Bihar Pension Rules, 1950. Counsel submits that the Annexure-10 is the letter contained in Memo no.1486 dated 19.03.2012 about which the entry has been made in the final order also. Counsel submits that the said letter contained in Memo no.1486 dated 19.03.2012 is itself bad in law and not sustainable and since, Annexure-10 i.e. initiation of proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 is itself bad in law, therefore, the final order which is annexed as Annexure-11 contained in Memo No.5438 dated 04.11.2013 is also bad in law and petitioner is entitled for all his pension and retiral dues including the gratuity etc. Counsel submits that admittedly, the petitioner was retired from the service on 31.10.2010 and the order passed relating to continuation of departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 has been passed on 19.03.2012. Counsel further submits that the departmental proceeding has been initiated for the period 1998 to 2008. Counsel has raised the plea that according to the Bihar Pension Rules, 1950, no proceeding with respect of an event which took place not more than four years before the institution of the proceeding shall continue. Counsel submits that the petitioner has retired in the year 2010, the proceeding is of the year 1998 to 2008 and four years have already been lapsed.



Therefore, such proceeding cannot continue. And therefore, granting permission of continuation of the proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 is absolutely bad in law and not sustainable in the eye of law.

4. Learned counsel for the petitioner further submits that the petitioner is an unfortunate person and due to illness of his wife and marriage of his daughter, he could not attend the office for few months. Counsel submits that the petitioner is basically victim in this case as he was not permitted to the place of his posting and therefore, he continuously represented himself before the authority concerned. Counsel submits that during entire service period of the petitioner, there were two departmental proceedings initiated against him. In the second departmental proceeding, petitioner submitted his show-cause on 15.04.2010. Counsel submits that the petitioner has submitted his show-cause and in the show-cause, he has only stated that no pecuniary loss has been caused to the Government. It has also been submitted that in the different offices, the allegation that loss has been caused due to his inaction is not correct and he has denied the same.

5. Learned counsel for the State on the other hand submits that the orders which are annexed as Annexures-10 &



11, both have been passed completely in accordance with law. Counsel submits that the State has already filed counter affidavit and in the said counter affidavit, the stand has been taken that the departmental enquiry has been initiated against the petitioner by virtue of Memo no.3006 dated 12.08.2008 following *Prapatra-K* has been issued. The petitioner remained absent from his duty since 17.07.1998 to 28.08.2008 and he submitted his joining on 28.08.2008 and thereafter, he was suspended by notification No.90 dated 09.01.2009. The Enquiry Officer submitted his report on 20.06.2009 whereby it appears that the petitioner did not choose to appear and did not filed any reply. The paper publication has been made on 17.05.2008 but, in spite thereof, the petitioner did not co-operated and as such, the Enquiry Officer proceeded ex-parte and charges have been found proved against the petitioner. Counsel further submits that after considering the entire facts and circumstances, the second show-cause notice was issued to the petitioner by letter no.1400 dated 26.03.2010. Counsel further submits that in the present departmental proceeding, neither any procedural mistake has been taken nor violation of natural justice has been made nor any exorbitant punishment has been imposed and therefore, there is no need of any interference in this matter.



6. After hearing the parties, it transpires to this Court that the most fatal question raised by counsel for the petitioner in this case that the violation of Rule 43(b) of the Bihar Pension Rules, 1950 has been made at the time of passing the order contained in Memo no.1486 dated 19.03.2012. It transpires to this Court that the petitioner was retired from the service on 31.10.2010 and both the departmental proceedings have been initiated prior to his retirement.

7. In this background, Rule 43 of the Bihar Pension Rules, 1950 is very much relevant which states as follows:-

“43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this Rule, shall be final and conclusive.

(b) The Appointment authority of the post held at the time of retirement 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.

43(c). Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the



maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).

43(d). If any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be with held till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly:

Provided that where Departmental proceedings has been instituted under Rule 19 of Bihar Government Servant Classification, Control and Appeal Rules, 2005 (As amended from time to time) for imposing minor penalties under Rule 14(i) (ii) and (v) of the said rules, payment of gratuity may be made to the Government servant.”

8. Proviso of Rule 43 of the Bihar Pension Rules, 1950 categorically states that such departmental proceedings if not instituted while the government servant was on duty either before the retirement or during re-employment shall be in respect of an event which took place not more than four years before the institution of such proceeding.

9. It is made clear that from the respective dates mentioned above, one departmental proceeding was relating to



his alleged wrong done during 1998 to 2008 i.e. much earlier than four years from his retirement. But it is also true that both departmental proceedings were initiated during his service period while he was on duty and therefore, no benefit could be available to the petitioner of 43(b) proviso of the Bihar Pension Rules, 1950.

10. In this view of the matter, this Court finds that the contention of counsel for the petitioner is not correct and not acceptable in the eye of law. Hence, this Court holds that the letter contained in Memo no.1486 dated 19.03.2012 (annexed as Annexure-10) has been passed absolutely in accordance with law.

11. At the time of scrutiny of Annexure-11 which is order dated 04.11.2013 contained in Memo No.5438 which is relating to petitioner's punishment, this Court finds that there is no illegality in the said order due to the reason discussed in the said order that no loss has been caused to the petitioner but the situation is that the petitioner was absent for about 10 years i.e. since 1998 to 2008 and subsequently, no work has been done by him either on one pretext or other. But, on the other hand, this Court finds that the forfeiture of the entire money of gratuity is not legal. Therefore, it is hereby directed to the concerned



respondent authority that for the period petitioner has worked in the office shall be counted for the payment of his gratuity and his pension as directed that he is entitled for 50% pension is hereby directed to be paid within 90 days from the date of production/receipt of this order.

12. Accordingly, with the aforesaid observation and direction, this writ petition stands partly allowed.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	16/07/2025
Transmission Date	NA

