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STATE OF BIHAR AND ORS.

v.

MOHD. IDRIS ANSARI

APRIL 25, 1995

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[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

*Service Law :*

*Bihar Pension Rules : Rules 43 and 139*

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*Departmental Enquiry—Employee—Alleged misconduct—Retirement—State Government—Power to reduce pension—Necessary conditions for—Held while exercising power under rule 139, rule 43(b) should be complied with—Notice under rule 139 for reducing pension—Misconduct relied on was prior to four years from the date of notice—Proceedings under rule 139*

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*held incompetent.*

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The respondent, working in the Irrigation Department of the appellant State, was awarded punishment for certain financial irregularities committed by him during the period 1986-87. The High Court set aside the punishment order on the ground that it was passed in violation of the principles of natural justice with liberty to the State Government to proceed afresh against the respondent. In the meanwhile the respondent retired from service with effect from 31.1.1993 and the State Government issued him a notice on 17.7.1993 for initiating fresh departmental proceedings. However, as no action could have been taken against the respondent

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under rule 43(b) of the Bihar Pension Rules since the period of charges was prior to four years from the date of notice, the State Government issued another show cause notice dated 27.9.1993 under rule 139 proposing to deduct 70 per cent of his pension and passed final order on 13.12.1993 withholding 70 per cent of pension payable to the respondent. The respondent successfully challenged the notices dated 17.7.1993, 27.9.1993 and the

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order dated 13.12.1993 before the High Court.

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In appeal to this Court, it was contended on behalf of the appellant-State that the High Court was not justified in quashing the impugned notices and the final order withholding pension. Even if it be held that there was no proof of misconduct established on record, the proceedings

should have been sent back to the authorities for reconsideration of the question and for arriving at proper findings in accordance with law. A

On behalf of the respondent it was contended that (i) the proceedings under Rule 139 were not initiated on the ground that the service record of the respondent was unsatisfactory but were initiated on the basis of misconduct for which there was no proof and, therefore, the order withholding pension was not justified; (ii) there was no reason to remand the proceedings because the notice under Rule 139 relied on alleged misconduct committed during 1986-87 which was prior to four years from the date of notice and hence the notice was invalid and could not support any fresh proceedings. B C

Dismissing the appeal, this Court

HELD : 1. The decision of the High Court on the facts of the present case is unexceptionable. No case is made for interference in this appeal.

[759-H, 764-B] D

2. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:- [762-E]

I. A retired Government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory. [762-E] E

II. Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period. [762-F, G] F G

So far as the second type of cases is concerned the proof of grave misconduct on the part of the concerned Government servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which H

A may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired Government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct B which might have taken place within 4 years of the initiation of such departmental proceedings against him. [762-H, 763-A, B]

3. In the present case, the respondent retired on 31.1.1993 and the show cause notice was issued on the ground of grave misconduct on C 27.9.1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It has, therefore, to be read with Rule 43(b). such notice therefore, could cover any misconduct if committed within 4 years prior to 27.9.1993 meaning thereby it should have been committed during D the period from 26.9.1989 upto 31.1.1993 when respondent retired. On a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which show cause notice dated 27.9.1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, the proceedings under Rule 139 were wholly incompetent. [763-C, D, F, G] E

4. The notice dated 17.7.1993 by which fresh departmental proceedings were sought to be initiated was rightly quashed by the High Court as F it was based on the alleged misconduct of the respondent during 1986-87 which was more than four years prior to the issue of the said notice. Such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent, was clearly hit by the proviso to sub-rule (b) of Rule 43 of the Rules. [759-H, 760-A, B]

G 5. The High Court was equally justified in quashing the final order dated 13.12.1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after expiry of four years from 1986-87 as such proceedings H would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the

show cause notice dated 27.9.1993 will have to be treated as still born and ineffective from its inception. Such a notice cannot be resorted to for support by any fresh proceedings by way of remand. [763-H, 764-A] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4970 of 1995.

From the Judgment and Order dated 7.4.94 of the Patna High Court in C.W.J.C. No. 8535 of 1993. B

S.B. Sanyal and Anil Kumar Jha for the Appellants.

A.Sharna and Imtiaz Ahmad, E.C. Vidyasagar (NP) for the Respondent. C

The Judgment of the Court was delivered by

MAJMUDAR, J. Leave granted. D

By consent of learned Advocates of parties, the appeal was heard finally and is being decided by this judgment. The appellant, State of Bihar and its Officers, have brought in challenge the order passed by a Division Bench of the Patna High Court allowing writ petition filed by the respondent herein. In the said writ petition, the respondent had challenged initiation of fresh departmental proceedings against him by issuing a notice dated 17.07.1993 and also a show cause notice dated 27.09.1993 calling upon the respondent to show cause as to why action should not be taken against him under Rule 139 of the Bihar Pension Rules (hereinafter referred to as 'the Rules') for withholding of 70 per cent of pension. He also challenged the final order dated 13.12.1993 passed in exercise of power under Rule 139 (a) and (b) of the Rules to withhold 70 per cent of pension. All these challenges were upheld by the High Court. That is how these appellants are before us. E F

A few relevant facts leading to this appeal may be noticed. At the relevant time in 1986-1987 the respondent was working in the Irrigation Department of the appellant State. It was alleged that the respondent was involved in certain irregularities during his tenure under the Department. The Flying Squad of Irrigation Department made enquiries with regard to the allegation of irregularities committed by the respondent at Rewa Ghat, Maghau, Sarangpur and other places of Saran Embankment during the period 1986-87. The Flying Squad in its report found some financial and H

A other irregularities in the work done by the respondent at the aforesaid places. The Government of Bihar examined the report of the Flying Squad and it was found that the respondent was responsible for the irregularities as well as financial irregularities. The respondent's explanation was asked for. Ultimately it was found that the respondent was responsible for the irregularities and that excess payment was made by the respondent to the

B concerned parties. The Government awarded punishment to the respondent as per its order dated 6.6.1992. The respondent challenged the said order in the High Court in C.W.J.C. No. 6696 of 1992. On 16.11.1992, the said writ petition was allowed. The High Court held that the principles of natural justice were violated by the authorities when they passed the

C impugned order. The copy of the report of the Flying Squad was not made available to the respondent. On that ground the impugned order dated 6.6.1992 was quashed with liberty to the State Government to proceed afresh against the respondent. It was directed that the respondent was entitled to have copy of the papers upon which the authorities may rely and thereafter, pass the appropriate reasoned order in accordance with

D law. As a consequence of the said decision the order of punishment was set aside. Thereafter on 31.01.1993 the respondent reached the age of superannuation and retired from Government service. On 17.07.1993, the respondent was required to submit explanation regarding irregularities. For that purpose, he was served with a notice dated 17.07.1993. Before that

E notice could be processed further, a show cause notice was issued to the respondent on 27.09.1993 intimating to him that as he had already retired from service and the period of charges was prior to four years, no action could be taken against the respondent under Rule 43(b) of the Rules and that the Government had decided to issue show cause notice under Rule 139 of the Rules. He was called upon to show cause as to why deduction

F of 70 per cent of his pension should not be made. In the light of the said show cause notice, the appellant-State passed final order on 13.12.1993 in exercise of powers under Rule 139(a) and (b) withholding of 70 per cent of pension payable to the respondent. It may be mentioned at this stage that the respondent, in the meantime, had already filed Writ Petition No. 8535 of 1993 in the Patna High Court challenging the earlier notice dated

G 17.07.1993. In the said writ petition by way of amendment, the respondent also challenged the subsequent show cause notice dated 27.09.1993 issued by the State authority under Rule 139 of the Rules. He also challenged the final order passed on 13.12.1993. As noted earlier, after hearing the parties, the High Court allowed the writ petition quashing these proceedings

H pursuant to the impugned notices dated 17.07.1993 and 27.09.1993 and also

final order dated 13.12.1993.

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The learned Advocate appearing for the appellant contended that Rule 139 of the Rules gives ample power to the said authorities to withhold either wholly or in part pension of retired Government servant if requirements of the Rules were satisfied. In the present case, the service record of the respondent was not satisfactory at all and he was also involved in grave misconduct during the time he was working in the Irrigation Department. That is why his explanation was asked for pursuant to the show cause notice dated 27.09.1993 for withholding 70 per cent of the pension. The High Court was not justified in quashing the said notice and the final order. The said order, was properly passed on the facts of the present case. In any case, if it is held agreeing with the High Court that there was no proof of misconduct as established on record, then proceedings may be sent back to the authorities for reconsideration of the question and for arriving at proper findings in accordance with law. That earlier notice dated 17.10.1987 was issued within the time permissible under Rule 43(b), and hence if the order dated 06.06.1992 was set aside by the High Court on technical grounds, proceedings pursuant to earlier notice dated 17.10.1987 could be resumed from the stage at which they were found to be vitiated in the earlier writ proceedings.

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The counsel for the respondent combated these submissions and contended that the notice that initiated proceedings under Rule 139 did not allege that power was sought to be exercised by the authority under Rule 139 as service record was not thoroughly satisfactory. That power was sought to be invoked only on the basis of misconduct and there was no proof of misconduct against the respondent which can justify the impugned order of 13.12.1993. That there is no question of remanding of proceedings against the respondent for the simple reason that the notice of 27.09.1993 relied on alleged misconduct of the respondent during 1986-87 which was prior to four years from the date of the notice and hence, the notice was invalid and could not support any fresh proceedings. The earlier proceedings got terminated as per High Court's order. Hence even the earlier notice dated 17.10.1987 did not survive.

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Having given our anxious considerations to these rival contentions, we find that the decision of the High Court on the facts of the present case is unexceptionable. The earlier notice dated 17.07.1993 by which fresh

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A departmental proceedings were sought to be initiated was rightly quashed by the High Court as it was based on the alleged misconduct of the respondent during 1986-87 which was more than four years prior to the issue of the said notice. Such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent, was clearly hit by the proviso to sub-rule (b) of Rule 43 of the Rules. Rule 43(b) reads as under:

"(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 cause to Government if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have cause pecuniary loss to Government by misconduct or negligence during his service including service rendered on re-employment after retirement :

D Provided that -

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

E (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

F (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;"

G A mere look that 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  
 H departmental proceedings shall have to be in respect of misconduct which

took place not more than four year before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b) in connection with the alleged misconduct, as it 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. Even the respondent authorities accepted this legal position when they issued notice dated 27.09.1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17.10.1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice date 17.10.1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17.10.1987 but initiated fresh departmental inquiry by the impugned notice dated 27.09.1993. Consequently it is not open to the learned Advocate for the appellant to rely upon the said earlier notice dated 17.10.1987.

There remains the question whether any assistance can be derived by the appellant authorities from Rule 139 of the Rules. The said Rule 139 reads as under :

"139(a). The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the

A action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

B So far as that rule is concerned, it empowers the State authorities to decide the question whether full pension should be allowed to a retired Government servant or not in the circumstances contemplated by the Rule. The first circumstance is that if the service of the concerned Government servant is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second C circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of concerned Government servant while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under D the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principle of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture :

E I. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

F II. Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but G that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

H So far as the second type of cases is concerned the proof of grave misconduct on the part of the concerned Government servant during his

service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired Government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31.1.1993 and the show cause notice was issued on the ground of grave misconduct on 27.09.1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27.09.1993 meaning thereby it should have been committed during the period from 26.09.1989 upto 31.01.1993 when respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27.09.1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which show cause notice dated 27.09.1993 was issued, the appellat authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13.12.1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be

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- A established in any departmental proceedings after expiry of four years from 1986-87 as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show cause notice dated 27.09.1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.
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T.N.A.

Appeal dismissed.