

**Arjun Mishra Vs. the Bihar School Examination Board and ors.**

**Arjun Mishra Vs. the Bihar School Examination Board and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/136037](http://sooperkanoon.com/136037)

**Court :** Patna

**Decided On :** May-21-2007

**Judge :** A.K. Tripathi, J.

**Acts :** Bihar Pension Rules - Rule 43

**Appeal No. :** C.W.J.C. No. 8516 of 2004

**Appellant :** Arjun Mishra

**Respondent :** The Bihar School Examination Board and ors.

**Advocate for Def. :** J.P. Shukla, Sr. Adv.

**Advocate for Pet/Ap. :** Binod Kumar Kanth, Sr. Adv., Ram Kishore Singh-2 and R.K. Choubey, Adv.

**Disposition :** Application allowed

**Judgement :**

**A.K. Tripathi, J.**

1. Heard learned Counsel for the parties.

2. By virtue of the order contained in annexure-1 dated 13.7.2004 the then Chairman of Bihar School Examination Board dismissed the petitioner from service from a retrospective dated i.e. 26.9.2001. This is order of punishment

which has been passed against the petitioner while exercising power under Rule 43(b) of Bihar Pension Rules.

3. Petitioner challenges this order to be an illegal order on the face of it because Rule 43(b) does not envisage imposition of punishment of dismissal being passed against an employee in the given background that the petitioner had already superannuated in November, 2002. Under Rule 43(b) the pension of the petitioner could have been reduced or withheld but that too it could be done after following the ingredients of that rule. The order of punishment being alien to Rule 43(b) the order impugned is per say bad in law.

4. A short fact may be noted in the present case which has lead to passing of the present impugned order. Petitioner was suspended initially in the year 2001 for dereliction of duty and violation of his part to perform his official duty by going on leave when the duty was imposed on the concerned section to furnish detailed list of evaluators and examiners for the purpose of declaration of result of matriculation examination of that year. The list was to be furnished within 24 hours but it was delayed by another 24 hours, thereby causing certain annoyance and inconvenience to Examination Board, in evaluation of copies of that year.

5. A so called enquiry was held against him and based on the enquiry report an order of dismissal was passed. That order came to be challenged by filing of a writ application, namely, C.W.J.C.No. 12831 of 2001. From perusal of the order dated 5.5.2004 passed in that writ application it seems that the debate verred around one aspect that petitioner was not given a copy of the enquiry report and the order of punishment of dismissal came to be passed. The Court, therefore was of the opinion that there was violation of mandatory requirement of law. The order of dismissal was therefore set aside and opportunity was however granted to the respondents to proceed in the matter after giving copy of the enquiry report and a second show cause in accordance with law.

6. There is evidence on record therefore that since the petitioner had superannuated the master and servant relationship came to an end. In that background the rule does not envisage imposition of any punishment order which are there in the regulation either minor or major. This punishment can only be

passed during the subsistence of master and servant relationship. For the employee who have retired the Bihar Pension rules contemplates action under Rule 43(b) or 139. Nothing beyond that is permissible.

7. There is no dispute that after the High Court had set aside the order of dismissal the respondents issued notice as well as passed an order that proceeding against the petitioner shall continue under Rule 43(b) of Bihar Pension Rules. A question therefore has been raised by the petitioner that if the power under Rule 43(b) is exercised then how come the chairman of the Board decided to dismiss the petitioner from service that too from retrospective date? Petitioner also contends that once the order of dismissal was held to be bad by a declaration of this High Court can the respondents revive that order in the garb of exercise of power under Rule 43(b) of Bihar Pension Rules? On the face of it the answer is no because Rule 43(b) does not envisage passing of an order of dismissal against any retired employee. That maximum which the authority could have done was to either reduce or withhold the pension of a retired employee provided he is found to be guilty of grave misconduct or has caused pecuniary loss to the Government in a proven departmental enquiry held against him.

8. This contention of the petitioner is good enough for this Court to interfere but may be to fortify his submission petitioner has also drawn my attention to annexure-19 which form part of second show cause. On complete reading of the so called enquiry report it emerges that this is not a enquiry report in the eye of law because there was no enquiry as such held after production of evidence oral or documentary. Petitioner submits that the so called enquiry report is nothing beyond a note or fact finding. Based on this no punishment can or ought to be imposed much less dismissal which has been passed against the petitioner in annexure-17.

9. This Court does not want to go into this aspect of the matter because this is not the sum and substance on which the impugned order is going to be tested. This Court however does express its reservation on the so called report which has been brought on record whether it can be called an enquiry report in the eye of law?

10. This Court is of the firm belief and opinion that the impugned order dated 13.7.2004 contained in annexure-1 is an illegal and nonest order in the eye of law. The same is accordingly quashed. The writ application is allowed.

11. The respondents are hereby directed to take steps to work out the claims of the petitioner which he will be entitled to now as an employee having superannuated from service after reaching the age of superannuation. He shall be entitled to retiral dues or pension as if the order of termination was never passed against him.

12. Liberty is granted to the petitioner to lay his claim upon the respondents with regard to retiral dues/ arrears of salary to which he is entitled to. The respondent shall be duty bound to examine the same and take steps for payment of these dues within a period of six months from the date of communication or production of the copy of this order.

13. This writ application stands allowed with the above direction.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**