

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2754 of 2015

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Ram Nihora Thakur son of Late Nand Lal Thakur, Resident of Village- Ratanpur,
P.O.- Ratanpur, P.S. Kamtaul, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna
3. The Special Secretary, Home (Police) Department, Government of Bihar, Patna
4. The Deputy Secretary, Home (Police) Department, Government of Bihar, Patna
5. The Under Secretary, Home (Police) Department, Government of Bihar, Patna
6. The Director General of Police, Bihar, Patna
7. The Additional Director General of Police (H.Q.), Bihar, Patna
8. The Inspector General of Police (H.Q.), Bihar, Patna
9. The Deputy Inspector General of Police, Magadh Range, Gaya
10. The Bihar Public Service Commission through its Secretary, Bihar Public Service Commission, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.
Mrs. Shally Kumari, Adv.
For the BPSC : Mr. Ranjeet Sinha, Adv.
For the State : Mr. Awadhesh Kumar, AC to G.P. 3.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 06-07-2015

Heard learned counsel for the petitioner and the State.

Petitioner was Dy. S.P, who superannuated on 30.06.2013.

After his superannuation a punishment of withholding 10% pension came to be passed in exercise of power under Rule 43(b) of the Bihar Pension Rules. The impugned order is Annexure 21. The other punishment is non-payment of salary to the petitioner for the period of suspension except subsistence allowance.

So far as the second part of the punishment is concerned, the



Court has no hesitation in recording its opinion that in absence of any material to show that Rule 97(3) of the Bihar Service Code was followed it fails the test or the principle which have been laid down earlier in the cases of **Pramod Kumar v. Champaran Kshetriya Gramin Bank** reported in **2003 (4) PLJR 68** as well as **Mahavir Prasad v. State of Bihar** reported in **1988 PLJR 82**. That part of the punishment therefore, is quashed.

Coming to the first part of the punishment which is withholding of 10 % of the pension, the stand of the counsel for the petitioner is that the charges which have been brought against the petitioner primarily relates to what emerges from Annexure 5 dated 25.04.2011. The essence of the allegation is that the petitioner was irresponsible and did not carry out the direction of the superiors in letter and spirit affecting proper preparation to ensure that no mischief occurred on the day of Holika Dahan in a land which was used for burial purpose by the minority community. The above enquiry report is part of the second show cause which is Annexure 16 to the writ application.

Learned counsel representing the petitioner has taken this Court through the finding on the charges recorded by the Enquiry Officer who happened to be very senior police officer of the State. He exonerated the petitioner on all charges. None of those charges with

regard to dereliction etc had been established. However, the superior authorities who do have right to disagree did disagree and vide Annexure 16, a second show cause was issued to the petitioner.

So far so good but the stand of the petitioner is that reading of the second show cause dated 06.02.2013 does not meet the judicial yardsticks laid down in this regard starting from Kunj Bihari Mishra's case etc. The second show cause of disagreement does not include the evidence and materials which formed the basis for disagreement by the disciplinary authority, contrary to the findings of the Enquiry Officer. It is more disagreement for disagreement sake which is further established by the fact that on opinion of the proposed punishment, the Bihar Public Service Commission did not concur or agree with the suggestions. Those orders and opinions are also on record. The opinion of Bihar Public Service Commission may not be binding on the State. It is advisory no doubt but since the opinion of a constitutional body was taken then certain amount of weightage is required to be given unless there is something illegal. But that does not seem to be true. Even otherwise since the disciplinary authority is in disagreement and notice of disagreement does not fulfill the standard and requirement of notice of disagreement coupled with the fact that the Enquiry Officer has exonerated the petitioner of all the charges brought against him.

Another legal question of significance is that in absence of the petitioner having been found guilty by any forum, invocation of power under Rule 43B of the Bihar Pension Rules for withholding pension to the extent of 10 % seems to be vulnerable and is required to be quashed.

The writ petition is allowed and Annexure 21 dated 06.08.2014 is set aside. The petitioner will derive the benefit of his pension in toto.

(Ajay Kumar Tripathi, J)

Prakash/-

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