IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13670 of 2007

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Sheo Narain Prasad, son of Late Rup Chand Prasad of Mohalla 7 H.F .H.I.G 7/14, Bahadur Housing Colony, P.O. and P.S.- Agamkuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Commissioner-cum-Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
3. Additional Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
4. Accountant General (A & E), Bihar, Patna.
5. Assistant Accountant General/Senior Accounts Officer, Bihar, Patna.
6. The Commissioner Departmental Enquiry, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. NIRMAL KUMAR SINHA 3
Mr. Arun Kumar
Mr. Nawal Kioshor Prasad
Mr. Subodh Kumar

For the Respondent/s : A.C. to G.P. 6
Mr. J.P.Karn
Mr. Binod Kumar Labh (Cgc)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 08-05-2015

Heard Mr. Ram Subhash Singh for the petitioner, A.C. to G.P.-6 for the State and Counsel for the Accountant General. Pleadings have been exchanged between the parties.

The writ application assails the order dated 20.03.2007 (Annexure-7) passed by the Government in the Department of Personnel and Administrative Reforms (now renamed as General Administration Department) whereby punishment in the shape of withholding 10 % of pension on permanent basis has been inflicted on the petitioner. He is also aggrieved by the consequential action taken by the respondent Accountant General vide Annexure-8 whereby the pension was accordingly reduced.

Brief facts leading to the case may first be noticed. The petitioner belonged to the cadre of Bihar Administrative Service. During the relevant time, he was posted as the Incharge Survey Settlement Officer, Dumka. During his functioning as such, he committed certain acts which constituted dereliction of duty. Be it noted that the petitioner superannuated from service w.e.f. 30th November, 1996. In such circumstance, the Government, after finding the allegations made against him serious, resolved to initiate a departmental proceeding vide order dated 24.2.1997 (Annexure-1). The writ petition asserts that he participated in the departmental proceeding. By a communication dated 3.10.2001 (Annexure-2), the petitioner requested the Enquiry Officer to furnish certain documents. Those documents were not furnished to him. However, the petitioner filed his show cause in the said proceeding and participated therein. On conclusion of the proceeding, the Enquiry Officer found Charge nos. 1, 3 and 4 fully proved whereas Charge nos. 2 and 6 were found partly proved. The enquiry report was submitted on 26.2.2004. The respondents issued a notice to the delinquent-petitioner on 16.5.2005 (Annexure-5) enclosing therewith the enquiry report soliciting his reply/response. The petitioner submitted his reply. On a consideration of the materials appearing against him and after examining the show cause, the disciplinary authority passed the final order dated 20.3.2007 (Annexure-7) inflicting on him punishment of withholding 10 % of pension on permanent basis. The consequential order authorizing pension was issued by the respondent Accountant General (Annexure-8). These two orders have been challenged by the petitioner.

Counsel for the petitioner submits that after the retirement of the petitioner from service, a departmental proceeding was initiated against him. Such proceeding was not initiated under Section 43(b) of the Bihar Pension Rules (for short " the Rules"). Initiation of the proceeding itself is, therefore, bad in law. It is next submitted that while the enquiry proceeding was going on, the petitioner requested for supply of certain papers enabling him to file an effective show cause. The same was denied. This should be considered gross breach of the procedure prescribed by law for inflicting punishment like the one in the case. The order (Annexure-7), therefore, is bad in law.

In the counter affidavit filed on behalf of respondent nos. 1 to 3, it has been stated that the Director, Land Records, Revenue Department vide communication dated 3.6.1996 informed the

Government about the gross irregularities/illegalities committed by the petitioner while in office in disposal of revenue cases inasmuch as he disobeyed the order of the higher authority. Taking the allegation levelled against him serious, the Government resolved to initiate a departmental proceeding, of course, after his retirement i.e. 30.11.1996. The resolution of the government dated 24.2.1997 (Annexure-1) was issued under Rule 43(b) of the Rules. In the departmental proceeding, adequate opportunity was given to the delinquent officer to place his defence. In course of hearing, the relevant/required records were shown to him. The petitioner did file show cause and participated in the said proceeding. There is no legal flaw in the procedure and the final order.

This Court would first deal with the first contention of the petitioner. As noticed above, it has been stated that the proceeding was not initiated under Section 43(b) of the Rules. From bare perusal of Annexure-1, it appears the government resolved to initiate the proceeding against the petitioner under Section 43(b) of the Rules. The allegations pertain to the period(s) which falls within four years of his retirement. There was absolutely no illegality in initiating the departmental proceeding against the petitioner.

The second contention of the petitioner is that no opportunity was granted to him for filing an effective show cause inasmuch as the required documents were not furnished even on request made by him. I have perused the request letter which has been enclosed as Annexure-2. Prima facie it appears the delinquent tried to protract the proceeding and requested for certain documents some of which were absolutely meaningless. For example, he requested for supply of copy of Rule 3 of the Bihar Government Servant Rules, 1996. Similarly, he also requested for supply of copy of Santhal Pargana Bataidari Act. This at the first blush appears to be an attempt deliberately made to protract the proceeding. In the counter affidavit, it has been specifically asserted that all relevant papers which the petitioner required were shown from the records to him whereafter he continued to participate in the proceeding and on conclusion thereof, the Enquiry Officer found major of the charges proved against the delinquent. The petitioner is unable to show the relevancy of the papers requested for non-supply whereof caused any serious prejudice to him. The said contention of the petitioner is, therefore, also misplaced.

In the result, this Court finds no merit in the writ application. It is, accordingly, dismissed. No cost(s).

(Kishore Kumar Mandal, J)

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