IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14067 of 2008

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Nagendra Prasad Sharma, son of late Raghunandan Hazari, resident of Village – Tetari, P S – Balia, P O – Tetari, District – Begusarai, at present residing at Mohalla – Chanakyanagar, P.S. Begusarai, P O – Begusarai, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief cum Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Deputy Secretary cum Chief Vigilance Officer, Road Construction Department, Government of Bihar, Patna.
5. The Chief Engineer (C), South Bihar Wing, Road Construction Department, Vishwaswaraiya Bhawan, Patna.
6. The Superintending Engineer-cum- Conducting Officer, Design and Quality Control, Circle No.2, Road Construction Department, Vishwaswaraiya Bhawan, Patna.
7. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marg, Patna.
8. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Prasad Sharma (In Person)
For the Respondent/s: Mr. P K Verma, AAG 5
Mr. Mankeshwar Tiwari, AC to AAG 5
For the B P S C : Mr. Ranjit Sinha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 07-05-2015

Petitioner is a retired Executive Engineer from Road Construction Department, who was last posted at Road Division No.1, Gaya. He is aggrieved because after his superannuation, in a proceeding initiated under Rule 43(b) of the Bihar Pension Rules, the respondent authorities have decided to withhold 10% of his pension for 5 years and then 5% pension for additional 5 years. This order is dated 20th March, 2008 and annexed as Annexure-1. Corresponding to the said order the Accountant General issued a letter contained in Annexure-2 dated

22/5/2008 reducing or withholding the pension of the petitioner in terms of the order of punishment.

2. Petitioner has appeared in person. His first thrust of the argument in relation to the order of punishment is that the basic requirement before withholding of pension under Rule 43(b) is that either the person should be convicted of a criminal charge by a court of law or held guilty of 'grave misconduct'.

3. The word 'grave misconduct' has been used in the said rule and the sub-rule across the board. This rule has been interpreted N-number of times by many a decisions of this Court as to what amounts to 'grave misconduct'. One of the examples is when there is a major financial loss to the exchequer caused due to the conduct or misconduct of an employee.

4. Annexure-6 is the charge drawn up against the petitioner. There were two charges. Charge No.1 basically relates to an allotment of a sum of Rs.32 Lacs under the Budget Head No. 123 in the year 2000-2001 for the construction and repair of Mau Kurkut Bigha Kaiya Tar Devra Path. Petitioner surrendered 15 lacs of the said allotment meaning thereby that a balance of 17 Lacs was only retained for completion of the work. However, the total expense is said to have overshot by 5.99 Lacs. It is alleged that there is financial indiscipline on the part of the petitioner.

5. The other charge is again related to the year 2000-2001. This is with regard to allotment of 59 Lacs as a Budget Allocation for Dadreji Aanti Rafiganj Path. Here also a surrender of 24 Lacs was made. Out of 35 Lacs a sum of Rs. 0.281 Lac further came to be surrendered.

6. On the set of charge mentioned above, enquiry was held. Annexure-8 is supposed to be the enquiry report. A reading of Anneuxre-8 does

not indicate that it is actually an enquiry report. It is a report given to the Secretary of the Road Construction Department by the Chief Engineer assigned with the responsibility of looking into the matter. It is doubtful therefore that a proper enquiry in terms of the previous CCA Rules at all was held.

7. Based on the finding that the petitioner committed financial indiscipline because he did not inform the authorities of the expenses or the amount left which could not be utilized properly in the financial year, the punishment was imposed.

8. What is of significance is that Anneuxre-8 or the order of punishment does not find the petitioner guilty of any financial irregularity. A reading of the order of punishment, contained in Annexure-1, also does not indicate as to what conduct of the petitioner comes within the definition of 'grave misconduct'. The petitioner may not be an efficient officer but he was surely not a dishonest officer, otherwise, he would not have scaled down the allotted budget for the completion of the two works and tried to complete it within the scaled down budget. In case the expense overshot by a couple of lacs, it was still many-many lacs less than the original allotment. In the second case, out of the retained amount still less than a lac remained with him after competition of work. There is nothing emerging from the record that the work was not done or the quality of work was compromised.

9. Learned AAG 5, Mr. Verma, justifies the order of punishment on the ground that the petitioner was punished because financial discipline was required to be maintained. Since he talks in terms of the discipline, the court wanted to know as to why that standard of discipline was sought to be maintained only with regard to the petitioner whose conduct in fact led to saving of money. If the authorities could not utilize that money, that is another issue. But there is

nothing to indicate that conduct of the petitioner falls within the definition or realm of ‘grave misconduct’ or financial misappropriation of any kind.

10. It is significant to note from the records that when the department referred the matter to BPSC, the BPSC categorically opined that it is not a case falling within the definition of Rule 43(b) of the Bihar Pension Rules. Therefore, they were not in favour of inflicting punishment upon the petitioner especially of withholding pension even though it was to the extent of 10% for 5 years and 5% for additional 5 years.

11. The Court is of the opinion that the reason for punishment of the petitioner is for reasons which are not evident from the records. What is behind the scene is not for the Court to investigate. If the punishment does not fall within the parameters or the yardstick of Rule 43(b), then the Court will surely interfere with the same.

12. The Court is satisfied that there was no occasion for issuance of the punishment order, contained in Annexure-1, and thereafter issuance of an order by the Accountant General withholding pension by 10% and then 5%.

13. Both Anneuxre-1 dated 20.3.2008 as well as Anneuxre-2 dated 22.5.2008 are quashed. Writ application is allowed.

14. Respondent authorities especially Accountant General as well as Road Construction Department will ensure that the deducted amount of pension of the petitioner is refunded to him and petitioner is granted full pension from the date of his superannuation.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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