IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9578 of 2012

==

Ramanuj Prasad S/o Late Prabhu Narain Singh R/o Village - Bhuapur, P.S.- Bakhtiyarpur, District - Patna, Presently Resides At Mohalla- Gauragarh, at Bihar Sharif, P.S.- Bihar, District – Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Agriculture Government of Bihar, New Secretariat, Patna.
2. The Agriculture Director, Bihar, Patna.
3. The Deputy Director, Agriculture (Administration), Bihar, Patna.
4. The Accountant General, Bihar, Patna.
5. The District Treasury Officer, Nalanda at Bihar Sharif.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Binit Kumar, Adv.
: Mrs. Sandhya Kumari, Adv.
For the State : Mr. Yogendra Pd. Sinha, AAg-7
: Mr. R.G. Singh, Adv.
For the Accountant General: Mr. Raj Nandan Prasad, Adv.

==

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 09-08-2016

Heard learned counsels for the parties.

This application has been filed under Article 226 of the Constitution of India seeking quashing of letter issued vide Memo No. 1491 dated 04.08.2011 by the Agriculture Director, Government of Bihar, Patna whereby he has ordered for withholding of full pension, which the petitioner would have been entitled to upon his superannuation as Project Executive Officer, Bikramganj, w.e.f. 31.12.2003.

Facts for adjudication of the present case are not much in dispute. On the allegation of misappropriation of public money to the tune of Rs. 14,72,246/-, an FIR was instituted against the petitioner in the year 2000. With the same allegation a departmental proceeding was also initiated against him, for illegal withdrawal of the said amount.

The Inquiry Officer in his report held the charges leveled against the petitioner to have been proved. The Disciplinary authority accepted the report of the Inquiry Officer and imposed upon the petitioner, major punishment of stoppage of three increments with cumulative effect. The order also stipulated that the petitioner would not entitle to salary for the period he remained, other than subsistence allowance. The order imposing punishment dated 15.03.2002 came to be challenged by the petitioner by filling writ application which gave rise to C.W.J.C. No. 8139 of 2002 and came to be disposed of by an order dated 10.02.2009. This Court held that the punishment imposed upon the petitioner being major, second show-cause notice ought to have been served upon him before imposing such punishment. The order of punishment dated 20.03.2002 accordingly came to be quashed by the said order dated 10.02.2009 and the matter was remanded back to the disciplinary authority to proceed afresh, from the stage of submission of the inquiry report.

It is noteworthy that in the meanwhile, the petitioner had attained the age of superannuation w.e.f 31.12.2003. In the light of the order dated 10.02.2009, the respondents were obliged to recall the order of punishment imposed upon the petitioner which was accordingly done. It also transpires that in the light of the order of this Court dated 10.02.2009, the petitioner was given a second show-cause notice whereafter the petitioner had demanded certain documents. Thereafter, the impugned order dated 04.08.2011 has been passed withholding full pension of the petitioner.

Mr. Rajendra Narayan, learned senior counsel appearing on behalf of the petitioner assailing the impugned order has submitted that it is in breach of the order of this Court dated 10.02.2009 as also the principles of natural justice, inasmuch as the disciplinary authority was required to proceed on the basis of report of the Inquiry Officer. He has submitted that without considering the report of the Inquiry Officer and holding the petitioner guilty of the charge leveled against him in the departmental proceeding; merely based on non-availability of information relating to stage of criminal case pending against him, the Agriculture Director has wrongly, whimsically and arbitrarily passed the impugned order. He has submitted that the said order can not be said to have been issued in exercise of power under Rule 43 (b) of the Bihar Pension Rules in the absence of finding of guilt against the petition in a disciplinary or judicial proceeding.

I find force in submission advanced by learned senior counsel appearing on behalf of the petitioner that there is no consideration of inquiry report nor there is any finding of guilt recorded against the petitioner in the disciplinary proceeding, which sine qua non for exercise of power under rule 43(b) of the Pension Rules. By order dated 15.03.2002, certain punishments were imposed on the petitioner when he was in service. The punishments which were imposed could not have been imposed after he retired w.e.f. 31.12.2003. It appears from records that as a matter of fact, disciplinary proceeding initiated against the petitioner in the year 2000 was allowed to be converted to a proceeding under Rule 43(B) of Bihar Pension Rules, 1950.

In my view, the competent authority thereafter in the light of this court's order dated 10.02.2009 ought to have considered the inquiry report and response of the petitioner on the said inquiry report, if any, for the purpose of arriving at a conclusion of guilt or otherwise of the petitioner, with respect to the charges framed against him. The Agriculture Director has taken into account certain facts which are apparently irrelevant and not material for passing an order under Rule 43(b) of the Bihar Pension Rules.

Considering the above, impugned order dated 04.08.2011 (Annexure-9) passed by the Agriculture Director, Bihar, Patna is set aside. The Agriculture Director is, hereby, directed to conclude the proceeding under Section 43(b) of the Bihar Pension Rules by passing an appropriate order taking into account the findings of the Inquiry Officer and the petitioner's response on the said report, if any, within a period of two months from the date of receipt/production of a copy of this order. If no order is passed by the competent authority in the light of the present order under Rule 43(b) of the Bihar Pension Rules, the consequent communication made by the Accountant General, Bihar, Patna vide Memo Pen-01-2649 dated 16.03.2012 shall have no effect.

This application is allowed, accordingly, with the directions and observations as above. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.08.2016
Transmission Date	N.A.