

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.622 of 2015

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Nageshwar Prasad Sah Son of Late Baldeo Sah, Resident of village-Jamuniya, P.S-
Naugachiya, Distt-Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home(Special) Department,
Govt. of Bihar, Patna-15
2. The Inspector General of Prisons and Correctional services, Bihar, Patna-15
3. The Superintendent, District Jail, Distt-Sasaram

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Braj Nandan Kumar Tiwary, Advocate

For the Respondent/s : Mr. Rakesh Kumar Ranjan, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-11-2016

In the present writ petition, the petitioner, a retired warden, District Jail, Sasaram, has prayed for quashing of the order as contained in Memo No.4110 dated 23.07.2014 by which his hundred percent pension has been forfeited.

2. It is contended by the learned counsel for the petitioner that the impugned order has been passed in exercise of power conferred under Rule 43(a) of the Bihar Pension Rules, 1950 (For short 'Rules') is not tenable in law as the petitioner was not

found guilty of the charges under the Prevention of Corruption Act while he was in service. He has contended that Rule 43(a) does not enable the State to forfeit pension of a retired employee.

3. It has been contended that since appeal of the petitioner against the conviction recorded by the Special Judge, Vigilance is pending, the respondents cannot forfeit his hundred percent pension. It is also contended that the punishment imposed upon the petitioner is highly disproportionate to the offence alleged and the respondents have not considered the defence taken by the petitioner against the show cause notice issued upon him while passing the order for withholding of pension.

4. *Per contra*, learned counsel for the State has submitted that the petitioner had a chequered service record. He was proceeded against departmentally several times for different charges and in all the proceedings initiated against him, he was found guilty and punishments were imposed against him. He has contended that ultimately he was trapped by the vigilance police while accepting Rs. 5,000/- as illegal gratification. For the said misconduct, charges were framed against him and the trial Judge found him guilty of the charges and sentenced him to undergo imprisonment for two years. He has contended that on such conviction of the petitioner, a show cause notice was issued against him and after perusing the

explanation submitted by the petitioner, the disciplinary authority, i.e., the Inspector General, Prisons and Jail Reforms, Bihar, Patna passed the impugned order whereby hundred percent pension of the petitioner has been withheld.

5. I have heard respective counsel for the parties and perused the materials available on record.

6. Let it be noted first that surprisingly neither the petitioner in his writ petition nor the State in its counter affidavit has revealed whether or not after retirement of the petitioner pension was sanctioned to him. On query made by the Court, they failed to answer the same.

7. Be that as it may, the allegation against the petitioner in the criminal case was that while he was posted as Assistant Jailor of Sub-jail, Barh on 22.11.1994 a sum of Rs.5,000/- was recovered by the raiding vigilance team, which the petitioner had received as bribe for payment of a forged arrear of bill of Rs. 3,58,518/-. An FIR, in this regard, was immediately instituted under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act (For short 'P.C. Act').

8. On completion of investigation, charge-sheet was submitted under the aforesaid sections against the petitioner. On perusal of the materials collected during investigation the trial

Judge found a *prima facie* case to be made out against the petitioner and, subsequently, charges under Section 7 and 13(2) read with 13(1)(d) of the P.C. Act were framed against him to which he pleaded not guilty.

9. In course of trial, the prosecution produced as many as 20 witnesses and, on behalf of the defence also, some witnesses were examined. The trial court dealt with the evidence in detail and came to a conclusion that the prosecution had been able to prove its charges against the petitioner. It sentenced the petitioner to rigorous imprisonment for a period of two years under Section 7 of the P.C. Act and to pay a fine of Rs. 5,000/- under the aforesaid section and in case of default, to suffer simple imprisonment for six months. He was further sentenced to suffer rigorous imprisonment for two years under Section 13(2) read with 13(1)(d) of the P.C. Act and to pay a fine of Rs. 10,000/- and in case of default in payment of fine amount, to suffer simple imprisonment for one year. However, both the sentences were directed to run concurrently.

10. In the counter affidavit filed on behalf of the State, it has been stated that apart from the conviction in the aforesaid criminal case while being in service, the petitioner had faced several disciplinary proceedings and all the proceedings were decided against him. The averments made in the counter affidavit

have not been controverted by the petitioner.

11. It would be evident from perusal of the counter affidavit that after the petitioner was transferred from Barh Sub Jail, he had not submitted charges of different official documents and for the said misconduct, a departmental proceeding vide Memo No. 4465 dated 22.09.1997 was initiated against him. In the said disciplinary proceeding, the petitioner was held guilty and was awarded punishment by the Inspector General, Prison, Bihar, Patna vide Memo No. 4679 dated 24.10.1998 as under:-

- (i) Stoppage of three increments with cumulative effect;
- (ii) Nothing other than subsistence allowance during suspension period is payable;
- (iii) An FIR under the relevant sections be instituted against him for destroying the official documents.

12. It would further appear that while the petitioner was posted at Barh Sub Jail, a prisoner had escaped from the jail on 18th March, 2000. For the said incident, charge of negligence was levelled against the petitioner and a proceeding was initiated against him vide Memo No.1350 dated 31st March, 2000 issued under the signature of Inspector General, Prison, Bihar, Patna. In the said proceeding also, the petitioner was found guilty of the charge and

was awarded punishment by the Inspector General, Prison, Bihar, Patna vide Memo No. 1016 dated 28th February, 2001 as under:-

- (i) Stoppage of three increments with cumulative effect;
- (ii) Punishment of Censor;
- (iii) Mentioning of punishment in the Annual Confidential Report of the year 2000;
- (iv) Nothing other than subsistence allowance should be payable during suspension period.

13. Further, while the petitioner was posted at District Jail, Gopalganj as Assistant Jailor, he sent a prisoner for treatment outside the jail without permission of the competent authority. For this act of negligence and dereliction of duty, a disciplinary proceeding was initiated against him in which he was found guilty and was awarded with the punishments by the Inspector General, Prison, Bihar, Patna vide Memo No.3482 dated 12.07.2002 as under:-

- (i) The petitioner should be demoted to the post of Jail Clerk from the Assistant Jailor;
- (ii) In future, he will not be considered for promotion and for any higher responsibility;
- (iii) Nothing other than subsistence allowance will be payable during suspension period.

14. It would also be evident that service appeal

preferred by the petitioner against the said punishment was rejected by the Principal Secretary, Home, vide order as contained in Memo No. 3010 dated 17.05.2004.

15. Once again, while the petitioner was posted at Sub Jail, Jamui as Jail Clerk, a charge was levelled against him that he had interpolated forged and fabricated document of the court and for this act of omission and commission, an FIR vide Jamui P.S. Case No. 54 of 2005 was registered against him under Sections 467, 468, 471, 420 and 342 of the Indian Penal Code at the instance of the Chief Judicial Magistrate, Jamui. A disciplinary proceeding was also initiated against him on account of said charge. The charge was found proved in the disciplinary proceeding. Hence, the petitioner was again awarded punishment by the Inspector General, Prison vide Memo No. 1395 dated 22nd February, 2007 as under:-

- (i) Reversion to the post of warden from the post of Jail clerk;
- (ii) Nothing other than subsistence allowance will be payable but the suspension period will be counted for the purpose of pension.

16. Thus, the aforesaid facts clearly demonstrate that the service of the petitioner was thoroughly unsatisfactory. However, for the reasons best known to the respondents, he was allowed to continue in service retire on attaining the age of



superannuation from District Jail, Sasaram, on 30th April, 2013. Immediately thereafter, the judgment in the criminal case being faced by him vide Special Case No. 91 of 1994 was delivered on 29th May, 2013 and, thereafter, a show cause notice was issued to him and on perusal of the reply submitted by the petitioner, the disciplinary authority passed the impugned order whereby hundred percent pension of the petitioner has been ordered to be forfeited.

17. The contention of the petitioner that once the petitioner was allowed to retire from service on attaining the age of superannuation, the respondents could not have exercised the jurisdiction to withhold or forfeit the pension of the petitioner cannot be accepted for the simple reason that future good conduct is an implied condition of every grant of pension.

18. In this regard, it would be relevant to extract the Rule 43(a) and (b) of the Rules. They read as under:-

“43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and

conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

- (a) such departmental proceeding, if not instituted while the Government servant was on duty either before retirement or during re-employment;
 - (i) shall not be instituted save with the sanction of the State Government;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;
- (b) judicial proceedings, if not instituted while the Government servant was on duty either before

retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

(underlining mine)

19. The aforesaid Rules separately enable the State to withhold entire pension or any part of it, if the pensioner is convicted of serious crime or held guilty of grave misconduct.

20. Rule 43(a) prescribes that the Government reserves the right of withholding or withdrawing of pension or any part of it, if the pensioner is convicted of a serious crime or held guilty of grave misconduct whereas, Rule 43(b) though insists upon a proper opportunity to an employee in disciplinary proceeding before arriving at a finding of misconduct upon which the order of withholding of pension may be made, with respect to judicial proceedings, no such proceeding is required, as during trial the maximum opportunity of hearing is provided to a person and finding of guilt is recorded only if the charges in a criminal case are proved beyond reasonable doubts.

21. However, in the present case, it would be evident that after the judgment of conviction was passed against the petitioner, the respondents called for an explanation from the

petitioner and on perusal of the explanation so submitted and after appreciating the entire facts and circumstances of the case, the Inspector General, Prison, Bihar, Patna has passed the impugned order whereby full pension of the petitioner has been forfeited.

22. Considering the facts and circumstances of the case, I am of the opinion that neither the respondents lacked jurisdiction nor the order impugned has been passed in an arbitrary manner nor the punishment awarded is excessive. The petitioner has been held guilty of the charge of accepting illegal gratification, which charge would certainly come within the definition of moral turpitude.

23. Besides the aforesaid facts, I must say that this Court is not only a court of law, but is also a court of justice equity and good conscience. In **Shangrila Food Products Ltd. vs. Life Insurance Corporation of India and another [1996 (5) SCC 54]**, it has been observed that in exercise of jurisdiction under Article 226 of the Constitution, the High Court can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give parties complete and substantial justice. It has also observed that the writ jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of equity is to promote honesty

and fair play.

24. Keeping those principles in mind, the prayer of the petitioner can not be allowed.

25. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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