

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.508 of 2015

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Bipra Raj Mahto S/o Late Chunni Lal Mahto Resident of Village P.O. Waini, P.S. Pusa, District Samastipur, retired as Revenue Clerk, Circle Office, Sakra, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur, District Muzaffarpur.
5. The Circle Officer, Sakra, District Muzaffarpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr. P.N. Shahi, AAG-6
Mr. Manish Kumar, A.C. to AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-10-2016

Heard Mr. Shashi Bhushan Singh, learned counsel appearing for the petitioner and Mr. Manish Kumar, Assisting Counsel to AAG-6 for the State.

The petitioner is aggrieved by the order bearing Memo No. 1079 dated 27.11.2014 whereby he has been visited with the punishment of deduction of 50 per cent of his pension under the orders of the District Magistrate, Muzaffarpur vide Memo No. 1079 dated 27.11.2014 in exercise of powers vested under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules').

The allegation against the petitioner is of shouting slogans, abusing the superior officers and of burning effigy during the period



of strike. A proceeding was thus initiated during the service period of the petitioner and since it was being delayed that the petitioner came before this Court through CWJC No. 21947 of 2011 and vide order passed on 13.12.2011, the writ petition was disposed of with the direction to the disciplinary authority to conclude the proceedings preferably within two months from the date of the order. The proceedings did not conclude and which resulted in filing of the contempt application giving rise to MJC No. 1124 of 2012. It is at this stage that a peculiar situation arose for there were two enquiry reports before the Court both dated 05.7.2012 and while one of the enquiry report exonerated the petitioner, the second one upheld the petitioner guilty. The Bench without expressing any opinion kept the field open for the petitioner to question the same in an appropriate proceeding. The matter yet did not conclude forcing the petitioner to again come before this Court in CWJC No. 22460 of 2012 and the Bench taking note of the developments in the matter disposed of the writ petition on 20.9.2013 in the following terms:

“In the circumstances, the writ petition is disposed of with a direction to conclude the departmental proceedings in ten weeks from today. If the departmental proceeding is not concluded by the said time, the order initiating proceeding would be deemed to be quashed.”

Let a copy of this order be communicated

through FAX to the District Magistrate, Muzaffarpur (respondent no. 4).”

(Emphasis is supplied by me)

The 10 week period so granted by the Bench expired on 29.11.2013 yet neither the disciplinary authority took steps to ensure the conclusion of the proceedings nor any steps were taken for extension of the period granted by this Court in the order passed in CWJC No. 22460 of 2012. The effect of the order passed is that the proceeding initiated against the petitioner stood quashed on expiry of 10 weeks of the passing of the order by this Court in CWJC No. 22460 of 2012. The petitioner under the said impression did not even bother to approach this Court because having superannuated with effect from 30.4.2012 he was drawing normal pension to which he was entitled. Though the proceeding having initiated during the service time, got converted under Rule 43(b) but even this proceeding had to conclude in terms of the order passed in CWJC No. 22460 of 2012 but it was not done and ultimately the punishment order was passed on 27.1.2014, more than 14 months of the passing of the order by this Court in CWJC No. 22460 of 2012 and whereby 50 per cent of the pension of the petitioner has been directed to be deducted.

Mr. Singh, learned counsel appearing for the petitioner while questioning the punishment order on merits has referred to the order present at Annexure-9 passed in CWJC No. 22460 of 2012 to

submit that in view of the clear stipulation present, the respondents did not have jurisdiction to pass a punishment order for there was no proceeding subsisting on that date and the proceeding was quashed on the expiry of the stipulated period.

Although counter affidavit has been filed and Mr. Manish Kumar endeavoured to contest the claim of the petitioner on merits but then the platform is not available for him because the order of penalty is not being tested on its merit rather it is the jurisdiction of the District Magistrate, Muzaffarpur to pass the order which is put to test for the present. Undisputedly the disciplinary authority was duty bound to pass the order of punishment until the expiry of 10 weeks of the passing of the order by the Bench in CWJC No. 22460 of 2012 and which has not been passed.

In that view of the matter and without entering into the merits of the contest, the order of punishment has to be held illegal and without jurisdiction for in view of the judgment and order present at Annexure-9, upon expiry of 10 weeks of the order, the disciplinary authority had no authority to pass an order of penalty because the disciplinary proceeding itself stood quashed by operation of the order of this Court.

For the reasons discussed, the order of penalty bearing Memo No. 1079 dated 27.11.2014 impugned at Annexure-11 passed

by the District Magistrate, Muzaffarpur cannot be upheld and is accordingly set aside.

The writ petition is allowed.

The pension of the petitioner stands restored. The amount of pension recovered from the petitioner, should be refunded within a period of three months from the date of receipt / production of a copy of this order.

(Jyoti Saran, J)

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