IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.226 of 2015

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Nawal Kishore Singh, Son of Late Saryug Singh, resident of Village- Fatehpur, P.O.- Rajla, P.S.- Kurhani, Town and District- Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Land Reforms Department, Government of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Land Reforms Department, Government of Bihar, Old Secretariat, Patna
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, Muzaffarpur
5. The Additional Collector, Muzaffarpur
6. The Deputy Collector (Establishment), Muzaffarpur
7. The Deputy Collector Land Reforms, West Muzaffarpur
8. The Enquiry Officer-cum-District Planning Officer, Muzaffarpur
9. The Sub Divisional Officer, West Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Dhruba Mukherjee, Senior Advocate
Mr. Ganesh Singh, Advocate
Md. Nazir Ansari , Advocate

For the State : Mr. Prabhu Narayan Sharma, A.C. to A.G.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-08-2016

Heard Mr. Dhruba Mukherjee, learned Senior Counsel appearing for the petitioner and Mr. Prabhu Narayan Sharma, learned A.C. to A.G.

The petitioner has questioned the order imposing penalty passed by the District Magistrate, Muzaffarpur bearing Memo No.784 dated 8.9.2014 impugned at Annexure-1.

A rather short submission has been made by Mr.

Mukherjee, learned Senior Counsel appearing for the petitioner to question the impugned order. He submits that while the petitioner superannuated on 31.8.2014, the punishment order has been passed on 8.9.2014, i.e., after the retirement of the petitioner and which is not sustainable on grounds that : (a) the proceedings were never converted under Rule 43(b) of the Bihar Pension Rules; (b) the punishment of stoppage of annual increment with cumulative effect cannot be passed against the superannuated employee; and (c) no proceedings under the provisions of the Bihar Government Servant (Classification, Control and Appeal) Rules 2005 (hereinafter referred to as "the 2005 Rules') as amended in 2007 can continue after retirement of a government servant except if it is converted in a proceeding in accordance with Rule 43(b) of the Bihar Pension Rules.

Mr. Mukherjee submits that the illegality is further perpetuated in the implementation of the order. It is submitted that since the petitioner has already superannuated, the respondents have chosen to withdraw the increment with retrospective effect for the year 2011-14.

Mr. Mukherjee, learned Senior Counsel appearing for the petitioner has with reference to the relief prayed at paragraph-1(iv) of the writ petition submitted that the petitioner superannuated as a suspended employee on 31.8.2014 but his salary for the suspension period i.e. 15.1.2011 to 31.8.2014 has been with held by the respondents even in absence of any order restricting the pay and allowances for the period, to the subsistence allowance received by him. He submits that the punishment order imposes no such punishment.

Although a counter affidavit is filed and learned counsel appearing for the State has referred thereto but what I find is that though the respondents have taken note of such issue raised by the petitioner in paragraph-3 of the counter affidavit and have also attempted to respond thereto in paragraph-11 of the counter affidavit but the response is evasive and does not answer the issue raised. In fact, the arguments advanced by Mr. Mukherjee is unassailable and cannot be contested because neither a proceeding initiated against the petitioner under 'the 2005 Rules' can continue after his retirement except if converted in a proceedings under Rule 43(b) of the Bihar Pension Rules nor the punishment of stoppage of increment can be imposed on a superannuated employee and considering the circumstances, I am also not persuaded for remand of the matter. The illegality is even more surprising for it happens under the signature of the District Magistrate, Muzaffarpur.

It is rather unfortunate that even when the law as to continuation of disciplinary proceedings post retirement as well as on the retrospectivity of a punishment order, stands settled under the various judgments of this Court and the Supreme Court yet the Disciplinary Authority has shown such utter ignorance or has turned a blind eye to the settled legal position. Law is well settled and no punishment order can be imposed with retrospective effect nor any punishment as envisaged under the '2005 Rules', can be imposed on a retired employee. Reference in this regard is made to the Full Bench judgment of this Court in **Shambhu Saran Vs. The State of Bihar and others** reported in **2000(1) PLJR 665**. The Full Bench has held that even though a proceeding initiated in service period can be continued post retirement but the nature of punishment is different and no penalties as envisaged under the Classification Control and Appeal rules, can be imposed.

In view of the settled legal position on the issue, the punishment imposed, cannot be upheld and consequently the order dated 8.9.2014 impugned at Annexure-1 is quashed and set aside. The increments with held by the respondents is directed to be released forthwith and not later within six weeks from the date of receipt/production of a copy of this order.

In so far as payment of the pay and allowances for the suspension period is concerned, in view of the quashing of the punishment order, the appointing authority is directed to consider the prayer of the petitioner and pass appropriate order within three months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.08.2016
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