

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2886 of 2015

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Ram Krishna Prasad Singh, son of Late Jamedar Singh, Resident of Mohalla -
Bijay Bihar Colony on Dhalai Road, West of R.P.S. Law College, P.S. - Danapur,
District - Patna.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary Department of Education Government of Bihar, New Secretariat, Patna.
3. The Director Secondary Education Department of Education, Government of Bihar Secondary Education Office Budh Marg, Patna.
4. The Deputy Director, Secondary Education, Department of Education Government of Bihar Secondary Education Officer, Budh Marg, Patna.
5. The District Education Officer, Patna.
6. The Regional Deputy Director of Education Patna Division, Patna.
7. The District Programme Officer Establishment, Patna.
8. The District Collector, Patna.
9. The Additional Collector cum Senior Officer District - Certificate Case Branch, Patna.
10. The Sub- Divisional Officer, the Certificate Officer, Patna City.
11. The Head Master Marwari High School, Patna City P.S. City Chouk, District Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Yugal Kishore, Sr. Advocate
Mr. Sanjay Kumar, Advocate
For the State : Mr. Sanjay Pandey, GP-21
Mr. Vivek Anand Amritesh, AC to GP-21.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL JUDGMENT

Date: 18-07-2016

Heard learned Senior Counsel for the petitioner and
learned counsel for the State.

The petitioner seeks quashing of the proceedings of
Certificate Case being Case No. 203/2013-14 which has been
instituted for recovery of Rs. 13,85,335/- from him.

The short facts of the case are that while the



petitioner was functioning as Assistant Teacher in Nationalized Marwari High School, Patna City, a departmental proceeding was initiated against him by order dated 27.7.2007. The petitioner thereafter retired on 31.7.2007. The charge memo was issued on five charges by order dated 27.7.2007. After his retirement, the proceedings were converted into one under Rule 43(b) of the Bihar Pension Rules. The charges were proved against the petitioner, one of which charges was of having prepared bills of arrears of salary of himself and of another Assistant Teacher, Manoj Kumar for the period 18.08.2002 to 22.09.2005 and in league with the Drawing and Disbursing Officer illegally withdrawing the amount of Rs. 13,85,335/-. All the charges were proved against the petitioner and pursuant to the same the order of punishment dated 4.12.2012 was passed by the Director (Secondary Education), Bihar and the petitioner was awarded the punishment of withholding of 25% of the pension. The appeal against the said order has also been rejected by order dated 27.1.2015 of the Principal Secretary, Education Department, Government of Bihar. The said appellate order is under challenge in another writ petition.

Subsequently, a certificate case being Case No. 203/2013-14 was initiated against the petitioner for recovery of Rs. 13,85,335/- on the basis of requisition sent by the Headmaster of the Nationalized Marwari High School, Patna City. Aggrieved by

the said action of the respondents, the petitioner has filed the present writ application.

Learned counsel for the petitioner submits that the departmental proceedings had been initiated under Rule 43(b) of the Bihar Pension Rules against the petitioner and upon the charges being proved, withholding of 25% pension having been awarded as punishment in the said proceeding without any further order of recovery and thus the initiation of certificate proceedings is illegal and without any authority of law.

Learned counsel for the State, on the basis of the counter affidavit filed, submits that the certificate case has been filed on account of the petitioner having filed a complaint before the Lokayukt, Bihar against non-payment of pension and gratuity, in which while fixing the next date of hearing 22.7.2013, the department was directed to submit a complete report in respect of the action taken for filing of the certificate case for the recovery of the amount from the petitioner and on account of the said order of the Lokayukt, the District Education Officer by letter dated 24.5.2013 was directed to do the needful. Accordingly, the certificate case was instituted against the petitioner for the recovery of the amount illegally withdrawn by the petitioner.

On a consideration of the aforesaid arguments of the parties and the pleadings on the record, it is evident that there was



no such direction by the Lokayukt, Bihar for initiation of any recovery proceedings rather information in that regard had been sought while fixing the date of hearing for appearance of the State-respondents and it cannot be said that anything has been done in accordance with the order of the Lokayukt. In any view of the matter, no such direction could have been issued contrary to law. In this regard, it would be relevant to quote the provision of Rule 43(b) of the Bihar Pension Rules which is in the following terms:-

“43(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:”

It is evident from a consideration of the aforesaid Rule that it is very much within the power of the Government to withhold the entire or any part of the pension whether permanently or for a specified period and it also has the right to recover from a pension the whole or part of any pecuniary loss caused to the Government if the pensioner is found in the 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. Thus, it was open to the departmental authorities while passing the order of punishment to have passed an order for withholding whole or part of the pension and also an order for recovery from the pension the whole or part of the pecuniary loss caused to the Government.

The final order having been passed deducting 25% of the pension, it is not open thereafter to the respondents to proceed further to make recovery on the same charges for which a valid order of recovery could have been passed under Rule 43(b) which has not been passed and the departmental authorities were satisfied that recovery of 25% of pension would meet the ends of justice. The recovery proceedings are thus without any authority of law.

In the above circumstances, the writ application is allowed and the proceedings of the Certificate Case No. 203/2013-14 are quashed.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.9.2016
Transmission Date	