

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13156 of 2014

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Awadh Sharan Singh, Son of Late Ram Janam Singh, Resident of Mohalla - Tilak
Nagar, P.S. Kankarbagh, District - Patna

.... Petitioner

Versus

1. The State of Bihar
 2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
 3. The Engineer- in-Chief, Road Construction Department, Govt. of Bihar, Patna
 4. The Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Mukesh Kumar Singh, Advocate

For the Respondents : Mr. Prakash Chandra Jha, A.C. to G.A.-XI

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 30-09-2016

The petitioner is aggrieved by the notification of the State Government in the Department of Road Construction being Notification No. 4560(s), dated 03.06.2014, by which his entire pension has been withheld merely because he has been convicted in a criminal case by the Vigilance Court even though his appeal is pending before this Court and the sentence has been suspended. There is a counter affidavit by the State.

Heard the parties and with their consent this writ petition is being disposed of at this stage itself.

Mr. Rajendra Prasad Singh, learned Senior Counsel appearing in support of the writ petition submits that Rule 43(a) of the Bihar Pension Rules under which the impugned order has been



passed, provides for withholding or withdrawing of pension or any part of it. Thus, a discretion is conferred upon the authority in the matter of withholding or withdrawing pension. The discretion presupposes application of mind and it is not mere subjective satisfaction or to be acted mechanically. Even it does not say that upon conviction pensionary benefits would be forfeited. I have considered the matter and for better appreciation Rule 43(a) of the Bihar Pension Rules is quoted hereunder:-

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.*

A bare reference to the said Rules clearly shows that a discretion has been given to the Government in the matter. It may withhold 5%, 10%, 15% or odd of the provision but while doing so it must apply its mind. There has to be nexus between the fact found and the ultimate decision else it is a non-speaking order. All that this order states is that after narrating the history or sequence of events that as the petitioner has been convicted by Vigilance Court, appeal, against which, is pending, his pension has to be forfeited. The petitioner had



pointed out that he had superannuated as far back as in the year 2000 as Chief Engineer. He was neither the Sanctioning Authority nor the Drawing and Disbursing Authority for payment. He had merely approved the works having been done on the request of the District Magistrate. He had neither scrutinized the bills nor approved its payment nor released the funds for payment to the Contractor. It was more than 6 to 7 years after his superannuation that the criminal case was filed and he was convicted. These are the circumstances to be taken into account while ordering withholding or withdrawing pension or part thereof.

Once in my view, the discretion is conferred thoroughly, then such discretion is to be exercised in a manner appropriate to the case. It cannot be inflexible or mechanical in its application. First there has to be a notice and the very purpose of notice is to decide what is to be done and how it is to be done. If Rule 43(a) amounts that upon conviction the whole of the pension is forfeited then apart from it, notice ought to have been issued to the petitioner and had it been so, then there is little or more application of mind but none is apparent from the facts disclosed in the impugned order. Thus, I have no option but to set aside the impugned order and remand the matter to the authority for fresh consideration and passing a fresh order in accordance with law.

This writ application is thus allowed. The authorities would be well-advised to pass a fresh order after due notice to the petitioner within a period of six months thereafter.

(Navaniti Prasad Singh, J.)

Kundan

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Uploading Date	
Transmission Date	