IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8942 of 2014

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1. Dularchand Mochi son of late Nathun Mochi resident of village - Thanabigha, P.O. Jaitipur Kurua, Police Sation - Ghosi, District - Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, General Administration Department, Government of Bihar, Patna
2. The Principal Secretary, Revenue & Land Reforms Department, Government of Bihar, Patna
3. The Collector, Arwal, District - Arwal
4. Senior Deputy Collector, Arwal, District - Arwal
5. Disciplinary Authority - cum - Director, Accounts & Administration (D.R.D.A.) Arwal, District - Arwal
6. The District Treasury Officer, Arwal null null
7. The District Treasury Officer, Jehanabad
8. The Circle Officer, Arwal, District - Arwal
9. The Circle Officer, Kaler, District - Arwal
10. The Accountant General, Bihar, Birchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Siya Ram Sahi, Sr. Advocate.
Mr. Ghanshyam Sharma, Advocate.

For the Respondents : Mr. A. Kumar, SC11

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 25-08-2017

Heard Shri Siya Ram Sahi, learned senior counsel for the petitioner, Shri Aditya Nath Jha, learned AC to SC 18 and learned counsel for the Accountant General.

2. The petitioner has filed this writ petition for quashing the order of the District Magistrate, Arwal as contained in Memo No. 184 dated 08.04.2014 by which the Collector, Arwal withheld 100% pension of the petitioner under Rule 139 of the Bihar Pension Rules, 1950.

3. Shri Siya Ram Sahi, learned senior counsel for the petitioner submits that initially a proceeding under Rule 43 (b) of the Bihar Pension Rules was initiated as the petitioner was made accused in Vigilance P.S. Case No. 42 of 2010 dated 19.05.2010 for accepting bribe of Rs. 3000/-. The disciplinary authority did not act upon the enquiry report and the disciplinary authority vide order dated 10.02.2014 (Annexure-5) called upon the petitioner to show cause as to why his 100% pension be not withheld under Rule 139 of the Bihar Pension Rules, 1950. The petitioner filed his show cause on 11.02.2014. Thereafter, the Collector, Arwal issued letter withholding the entire pension of the petitioner on 08.04.2014 as contained in Memo No. 184 (Annexure-8). It is further submitted that the Collector cannot withhold the entire pension of the petitioner under Rule 139 of the Bihar Pension Rules, 1950. The power is vested with the government.

4. On the contrary, Shri Aditya Nath Jha, learned counsel for the State has submitted that vide Memo No. 71 dated 10.02.2014 the order as contained in 33/स्था0 dated 25.01.2014 was modified vide order dated 06.03.2014 as contained in Memo No. 14 (Annexure-D to the counter affidavit). It is further submitted that order appears to have been passed under Rule 139 of the Bihar Pension Rules, 1950. The petitioner was caught red handed while accepting the bribe therefore, the order does not require any interference.

5. Firstly, in order to appreciate the submissions of both the sides, I reproduce Rule 139 of the Bihar Pension Rules, 1950 which reads as follows:

> *"139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.*
>
> *(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.*
>
> *(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their*

control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.

State Government decision : -

***Subject** :- Reduction in the amount of pension.*

It is to invite a reference to Rule 139 (a) & (b) of the Bihar Pension Rules which is extracted as below:-

"(a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

A question had been under consideration of the State Government as to whether a notice should be served upon the person concerned before reducing pension or gratuity.

2. After careful consideration, the Government has been pleased to decide that the pension sanctioning authority, before passing any final order regarding reduction in the amount of pension or gratuity or both shall serve upon the person concerned a notice specifying the reduction proposed to be made in such amount and the grounds therefor, and call upon such person to submit within fifteen days of the receipt of the *notice or such further time as may be allowed by that authority such representation as such person may wish to make against the proposed reduction and take into consideration the representation, if any, submitted by such person before passing the final order.*

3. Necessary steps to amend the Bihar Pension Rules on the above basis will be taken in due course.

6. From bare perusal of Rule 139 of the Bihar Pension Rules, 1950, it appears that the government servant is not, as a matter of right, entitled to get full pension unless, the service rendered by him is found to be satisfactory. If the service is not found satisfactory, the authority sanctioning the pension make such reduction in the amount as it thinks proper. Clause C of Rule 139 of the Bihar Pension Rules, 1950 gives power to the State Government for revising the order relating to pension by subordinate authority under their control. If the government is satisfied that the service of the petitioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service, the government can withhold any part of the pension but, no order to this effect shall be passed without giving the pensioner a reasonable opportunity against the action proposes to be taken in regard to the pension. No such power shall be exercised after expiry of three years of sanctioning the pension.

7. It is admitted fact that the petitioner retired from his service on 31.07.2010. The petitioner was granted pension in the year 2010, itself, but the authority sanctioning the pension of the petitioner did not pass any order with regard to withholding of any part of the pension of the petitioner. Even the proceeding under Rule 43(b) of the Bihar Pension Rules was initiated after more than four years from the date of institution of Vigilance P.S. Case No. 42 of 2010 dated 19.05.2010. From perusal of Annexure-6, itself, it appears that although a proceeding was initiated under Section 43(b) of the Bihar Pension Rules but, the Collector did not act upon the report of the enquiry officer. The Director Accounts Administration, Arwal was the enquiry officer and Shiv Shankar Prasad Singh, the Circle Officer, Arwal was the presenting officer. The last paragraph of the aforesaid order as contained in Memo No. 71 dated 10.02.2014, specifically says that the order as contained in Memo No. 33/स्था० dated 25.01.2014 a proceeding was initiated under Rule 43(b) of the Bihar Pension Rules was superseded. From perusal of the counter affidavit and the Annexure-8, it appears that the order as contained in Memo No. 71 dated 10.02.2014 by which the order as contained in Memo No. 33/स्था० dated 25.01.2014 was superseded or partially modified but no enquiry was held nor any enquiry report was given to the petitioner.

8. Thus, I find that the submission of learned counsel for the State is not at all acceptable that the order withholding all the pension of the petitioner was passed under Rule 43(b) of the Bihar Pension Rules. The Collector, himself, sanctioned the grant of pension of the petitioner in the year 2010 but, he did not pass any order with regard to withholding of any part of the pension of the petitioner at the time of sanctioning of the pension by the sanctioning authority. The service of the petitioner was found thoroughly satisfactory. Sub rule (C) of the Rule 139 of the Bihar Pension Rules, 1950 says that once the sanctioning authority sanctions the pension of a government servant then the sanctioning authority has got no power to refuse the pension of the government servant. The power is vested in the State Government to reduce or withhold pension granted to the government servant that too within three years from the date of sanction of the pension. According to Clause C of Rule 139 of the Bihar Pension Rules, 1950 the

State Government did not pass any order refusing the pension of the petitioner. The Collector has got no jurisdiction to pass any order withholding pension merely on the ground that a vigilance case registered under Section 7 read with Section 13(ii), 13(i) of the Prevention of Corruption Act, 1988 is pending against the petitioner.

9. Having considered the facts and discussions made above, I find that the order of the Collector is bad and without jurisdiction. In the result the order dated 08.04.2014 as contained in Memo No. 184 (Annexure-8) is set aside and accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2017
Transmission Date	NA