

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9649 of 2014

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1. Ragho Lal Das Son of Mukund Lal Das resident of Village Palasi, P.O-
Palasi, Chakardaha, P.S- Narpatganj, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Registration, Excise and Prohibition Department,
Government of Bihar, Patna.
3. The Inspector General, Registration, Bihar, Patna.
4. The Assistant Inspector General, Bihar, Patna
5. The Inspector of Registration, Purnea Division, Purnea.
6. The District Sub- Registrar, Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jibendra Mishra

For the Respondent/s : Mr. Lalit Kishore(P.AAG)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 17-11-2017 Heard both sides.

The writ petition is being disposed of at the admission stage itself with the consent of the parties as the pleadings are completed.

The petitioner seeks quashing of the order dated 09.03.2014(Annexure-15), as contained in Memo No.1078 by which the entire pension of the petitioner has been withheld under Rule 43(b) read with Section 139 of the Bihar Pension Rules. The petitioner further seeks quashing of the appellate order dated 30.06.2014 passed by the Secretary-cum-appellate authority, as contained in Memo No.2746(Annexure-18) and for consequential



relief that the respondents be directed to pay the entire pension to the petitioner.

The number of facts relevant for disposal of this case is that the petitioner was working as Head Clerk in the district Registration Office, Purnea. One Brajnandan Mahto complained before the Superintendent of Police(Vigilance Bureau), Patna that the petitioner demanded money for issuance of non-encumbrance certificate and he had already deposited Rs.650/- through challan for the non-encumbrance certificate. A raid was conducted on 22.11.2008. One Sri Balram Singh was caught taking Rs.2,000/- from Sri Brajnandan Mahto, the complainant but other unauthorized persons namely Arun Kumar Sinha and Krishna Kumar Sinha, who were working in the registration office, Purnea were also unauthorizedly arrested. The petitioner is alleged to have fled away. Vigilance P.S. Case No.97 of 2008 was instituted against the petitioner and others. The petitioner was put under suspension vide order dated 01.01.2009, as contained in Memo No.4(Annexure-2). A departmental proceeding was also initiated vide order dated 01.01.2009, as contained in Memo No.5 and Sub-Registrar, Purnea was made Inquiry Officer. The petitioner was served with memo of charge on 01.01.2009 itself(Annexure-3 and 3/1). The Inquiry Officer asked the petitioner, as contained vide



letter No.1 dated 30.01.2009, to explain and submit his show cause within two weeks(Annexure-4). The petitioner in pursuance of the aforesaid letter submitted his show cause primarily stating therein that for show cause of non-encumbrance certificate, the Head Clerk of the Sub-Registrar office, Purnea had no role to play. The Inquiry Officer sought certain clarification from the Sub-Registrar, Purnea with regard to the charge levelled against the petitioner on 02.03.2009. The District Sub-Registrar, Purnea informed the Inquiry Officer that no work was being taken from Sri Balram Singh after his retirement and the Head Clerk, the petitioner has no role in preparation of non-encumbrance certificate. Information was sought from the Bank and the Bank authority informed that no application for grant of K.C.C. loan by Brajnandan Mahto was pending in the Bank.

During the pendency of the departmental proceeding, the disciplinary authority vide order dated 24.03.2009, as contained in Memo No.566(Annexure-8) revoked the suspension of the petitioner and ordered that the decision for payment of salary for the suspension period shall be taken after disposal of Vigilance Case/departmental inquiry. Consequent thereupon, the petitioner submitted his joining on 26.03.2009 and the petitioner retired from service on 31.08.2011. After retirement, entire retiral



benefits were paid to the petitioner and pension was also ordered to be paid vide P.P.O. No.201111143691. The Inquiry Officer submitted his inquiry report on 27.01.2010 exonerating the petitioner from the charges. The disciplinary authority did not pass any order on the inquiry report but the petitioner received a second show cause notice, as contained in letter No.736 dated 14.02.2014(Annexure-11). The petitioner submitted his second show cause notice stating therein that the petitioner was exonerated from all the charges and there is no material on record to prove any charge against the petitioner but in the meantime, the disciplinary authority issued order dated 14.02.2014 as contained in Memo No.727 converting the departmental proceeding initiated against the petitioner under Rule 43(b) of the Bihar Pension Rules(Annexure-13) and vide order dated 08.03.2014, as contained in Memo No.1066, the earlier order as contained in Memo No.566 dated 25.03.2009(Annexure-8) was partly superseded as so far it relates with regard to payment of salary during suspension period after decision of criminal case. Thereafter, the disciplinary authority vide order dated 09.03.2014, as contained in Memo No.1078 withheld the entire pension of the petitioner under Rule 43(b) read with Rule 139 of the Bihar Pension Rules(Annexure 15). The petitioner preferred appeal but



the appellate authority dismissed the appeal of the petitioner.

The learned counsel for the petitioner submitted that Inquiry Officer did not find the petitioner guilty on any of the charge made against the petitioner but the disciplinary authority upon receipt of the inquiry report sat over the matter over four years and only thereafter issued second show cause on 14.02.2014 but as per the requirement of Rule 18(2) of the Bihar Government Servants(Classification, Control & Appeal) Rules, 2005, disciplinary authority did not give the findings of point of difference from the finding of the Inquiry Officer. Nevertheless the petitioner submitted his show cause stating therein that there is absolutely no material in the entire inquiry and consequently the Inquiry Officer did not find the petitioner guilty of any charge but the disciplinary authority without assigning any reason withheld the entire pension of the petitioner on mere allegation that the petitioner took works from two retired employees and the retired employees took illegal gratification from the complainant. Even the appellate authority did not look into the grounds of the petitioner and summarily dismissed the appeal. It is further submitted that order of punishment withholding entire pension of the petitioner suffers from illegality as the same has been passed in violation of Rule 18(2) of the C.C.A. Rules, 2005.



On the contrary, the learned A.C. to A.A.G. made valiant attempt to submit that under Rule 139 of the Bihar Pension Rules, if the conduct of the Government employee is not found satisfactory during his service period, any part of the pension of such Government employee can be withheld by the Government as the Government reserves its rights.

On consideration of submissions of both sides, I do not find the submission of the learned counsel for the State at all acceptable as the same is of no substance. Even a proceeding under Section 43(b) of the Pension Rules for withholding any part or whole part of pension of a Government employee should be required to be conducted under Rule 17 of the C.C.A. Rules, 2005. The departmental proceeding against the petitioner was initiated. On 01.01.2009 itself, the District Sub-Registrar, Purnea was appointed the Inquiry Officer. Inquiry Officer held inquiry and submitted his report on 27.01.2010 to the disciplinary authority. Inquiry Officer very categorically stated in his report that no charge against the petitioner was proved. Disciplinary authority upon receipt of the inquiry report is competent to pass order under Rule 18 of the C.C.A. Rules, 2005. Rule 18(1) gives power to the disciplinary authority after having receipt of the inquiry report to remit the matter to the Inquiry Officer for further inquiry, if the



Inquiry Officer did not hold inquiry on any point of charge. Rule 18(2) bestows power upon the disciplinary authority to differ with the findings of the Inquiry Officer and record his own finding with regard to guilt of the proceedee of any charge on the basis of the materials, evidence available on record. Rule 18(3) enjoins the disciplinary authority to serve a copy of the point of difference with the inquiry report to the proceedee and asked him to show cause on the finding recorded by the Inquiry Officer but it is evident from the second show cause itself(Annexure-11), dated 14.02.2014, as contained in Letter No.736, that the disciplinary authority did not give his own point of difference from the finding of the Inquiry Officer who exonerated the petitioner from all the charges and asked the petitioner to give his show cause. The petitioner upon receipt of the show cause notice gave detailed show cause that no charge is proved against him by the Inquiry Officer. Nonetheless the disciplinary authority inflicted major punishment withholding the entire pension of the petitioner and the appellate authority also without looking into the illegality committed by the disciplinary authority confirmed the order of the disciplinary authority by dismissing the appeal.

In view of the facts as aforesaid, it is evident that the disciplinary authority as well as the appellate authority have



committed procedural illegality and, therefore, both the orders of the disciplinary authority as well as appellate authority dated 09.03.2014 and 30.06.2014 are liable to be set aside.

In the result, the writ petition is allowed.

(Prabhat Kumar Jha, J)

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