

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17393 of 2016

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Mohammad Daud, S/O Mohammad Moosa, Resident of Farhan Enclave, C-1, 201, Samanpura, Police Station - Shashtri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Under Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
5. The Chief Director, Health Services, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
Mr. Satya Prakash, Advocate
For the Respondent/s : Mr. Ajay Behari Sinha, GA-8
Mr. Neeraj Raj, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-07-2017

Heard Mr. Bindhyachal Singh, learned counsel appearing for the petitioner and Mr. Ajay Behari Sinha, learned Government Advocate No.8 for the State.

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order bearing Memo No.10685 dated 4.8.2016 issued under the signature of the Under Secretary to the Government in the General Administration Department, whereby the petitioner has been visited with the



punishment of deduction of 10% of his pension for a period of 10 years in exercise of powers vested under rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules').

The case in hand is a classic example of a mechanical discharge of statutory responsibility by the Disciplinary Authority/State Government completely lacking in application of mind.

The facts leading to the contest in hand, briefly stated is, that the petitioner was proceeded against for alleged act of misconduct under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') by service of charge-sheet in Form 'क'. A disciplinary proceeding was held and resulted in an order of penalty bearing Memo No.1229 dated 25.1.2016, whereby the petitioner was visited with two punishments, namely, (a) censure; and (b) stoppage of two annual increments with non-cumulative effect. The punishment order was passed on 25.1.2016 and the petitioner superannuated with effect from 31.1.2016, within 6 days thereafter. It is thereafter that wisdom donned on the Disciplinary Authority to realize that the punishment imposed, had only a partial effect because even before the annual increments of the petitioner could be withheld, he had superannuated. It was thus thought desirable to



proceed again against the petitioner and in their wisdom, the respondents proceeded against him, this time under 'the Pension Rules' by issuance of a show cause notice bearing Memo No.5506 dated 18.4.2016, a copy of which is impugned at Annexure 15 to the writ petition. The show cause notice specifically provides that since the punishment order passed under 'the Disciplinary Rules' had become ineffective because of superannuation of the petitioner on 31.1.2016 hence it was decided to recall the said order and to proceed against the petitioner under rule 139 of 'the Pension Rules'.

This is unheard of. An order of punishment has been passed against the petitioner while in service on 25.1.2016 and which has exhausted itself on the superannuation of the petitioner on 31.1.2016. Now since according to the respondents, the punishment order did not have the desired result, it was thought proper to recall the same and to proceed again under 'the Pension Rules' for the same alleged act of misconduct.

The petitioner responded to the show cause notice vide Annexure-16 series and has been visited with the order of punishment at Annexure-17 bearing Memo No.10685 dated 4.8.2016 issued under the signature of Under Secretary to the Government in its General Administration Department, whereby 10% of his pension has been withheld for a period of 10 years under



rule 139 of 'the Pension Rules'.

I have heard learned counsel for the parties and I have perused the records.

In my opinion, the order impugned at Annexure-17 is a blot on the State respondents lack of understanding not only of the principles underlying service jurisprudence but also the principles underlying the exercise under rule 139 of 'the Pension Rules'. It is not in dispute rather the position is admitted that the punishment order for the alleged misconduct in question was passed under 'the Disciplinary Rules' while the petitioner was in service on 25.1.2016 and has taken its effect before the petitioner superannuated on 31.1.2016, even if, partially. Now merely because the order of penalty of withholding of annual increments with non-cumulative effect could not be implemented because of the superannuation of the petitioner soon after the order of punishment on 31.1.2016, this could neither be a reason to reopen the proceedings nor the punishment order passed under 'the Disciplinary Rules', could have been recalled. The order of punishment passed under 'the Disciplinary Rules' had exhausted itself on the superannuation of the petitioner. In fact even if the order of withholding of annual increments did not have its effect, the punishment order in so far as the 'censure' is concerned, had taken its effect, meaning thereby the



petitioner had suffered punishment.

In such admitted view of the matter where the punishment order had become effective while the petitioner was in service and exhausted upon his superannuation, neither it could have been recalled by the respondents after his superannuation nor the subject matter of the said disciplinary proceeding could be made a subject matter of a second round proceeding under rule 139 of 'the Pension Rules'.

Even otherwise rule 139 of 'the Pension Rules' could have been pressed into service because certain essential pre-requisites attached to such exercise of powers are missing in the present case. Rule 139 of 'the Pension Rules' enables the State Government to exercise powers in different circumstances discussed in the provision itself. The show cause issued nowhere discusses the provision(s) under which it has been exercised. In other words the exercise of power is vague and non-descriptive. While rule 139(b) enables the authority sanctioning pension to pass an order of reduction of pension as it thinks fit, if the service record of a Government servant is not satisfactory, Rule 139(c) reserves power of the State Government to revise the order granting pension where they are satisfied that the service of the pensioner was not thoroughly satisfactory or there was proof of grave misconduct. In



short while a power under this provision can only be exercised in a case of proven grave misconduct, the show cause is absolutely silent on the circumstances for the exercise of such powers.

Apart from the fact that once an order of punishment has taken its effect it could neither have been recalled nor could have been made a subject matter of second round proceeding. Even otherwise in view of the decision of the respondents to recall the punishment order passed under ‘the Disciplinary Rules’ there is no issue of proven misconduct available for such exercise. The order impugned is clothed with illegality and exercise of power is wholly without jurisdiction and also does not confirm whether it is an order passed by the State Government.

In result, the order bearing Memo No.10685 dated 4.8.2016 impugned at Annexure-17 is quashed and set aside.

The writ petition is allowed with consequential relief(s).

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12-07-2017
Transmission Date	NA

