

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5728 of 2014

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Md. Islam Son Of Late Md. Shafique Resident Of Village- Sakri Sarahiya, P.S.-
Kundandi, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Department Of Agriculture,
Govt. Of Bihar, Patna
2. The Principal Secretary, Department Of Agriculture, Govt. Of Bihar, Patna
3. The Director, Department Of Agriculture, Govt. Of Bihar, Patna
4. The Joint Director, Department Of Agriculture, Govt. Of Bihar, Patna
5. The Deputy Director, Department Of Agriculture, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner	: Mr. Chakrapani, Advocate. Mr. Dipak Kumar, Advocate. Mr. Sanjay Kumar Singh, Advocate.
For the Respondents	: Mr. Rishi Raj Sinha, SC-19 Mr. Birendra Pd. Singh, AC to SC-19.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 10-10-2017

Heard both sides.

2. The petitioner is aggrieved by the order of the
Director, Agriculture, Bihar, Patna as contained in Memo No. 1932
dated 29.11.2013 (Annexure-5) by which 25% pension of the
petitioner has been withheld.

3. The brief facts is that the petitioner was posted as
Block Agriculture Officer, Dulhin Bazar, Patna and he superannuated
on 30.06.2012 from the post of Block Agriculture Officer, Dulhin
Bazar, Patna. The petitioner joined on the post of Block Agriculture



Officer, Bihar, Patna on 18.01.2011, but after retirement of the petitioner the Director, Agriculture, Bihar, Patna decided to initiate a proceeding under Rule 43 (b) of the Bihar Pension Rules (hereinafter referred to as the 'Pension Rules') vide order dated 13.12.2012, as contained in Memo No. 2194 (Annexure-1). The Deputy Director, Administration was appointed as Presenting Officer on behalf of the disciplinary authority. The enquiry officer submitted his report. The Director, Agriculture, Bihar, Patna asked second show cause vide Letter No. 1293 dated 16.08.2013. The petitioner submitted his second show cause. Thereafter, the Director passed the order withholding 25% pension of the petitioner vide Letter No. 1932 dated 29.11.2013 (Annexure-5).

4. The respondents State filed the counter affidavit and stated that the departmental enquiry was held in accordance with law. The enquiry officer found the petitioner guilty of the charges and thereafter, the Director after perusing the show cause of the petitioner ordered to withhold 25% of the pension of the petitioner.

5. Learned counsel for the petitioner submits that according to the provisions of Rule 43(b) of the Bihar Pension Rules, the State Government has reserved its right to initiate a proceeding under rule 43(b) against the pensioners, if the pensioner is found guilty in a departmental proceeding or any judicial proceeding for



grave misconduct or to have caused pecuniary loss to Government by his misconduct or negligence during his service including the service rendered after retirement, but the Director is not the State Government. There is nothing on record to show that decision for initiation of proceeding under Rule 43(b) of the Pension Rules is taken by the State Government. Learned counsel for the petitioner further submits that the enquiry officer did not hold the enquiry in accordance with the rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). The enquiry officer simply asked the petitioner to submit his show cause and also direct the presenting officer to file his opinion with regard to the charges made against the petitioner. The enquiry officer thereafter submitted his report. Rule 17 of the CCA Rules, 2005, prescribes the procedures for inflicting major punishments. Withholding of 25% pension of the petitioner is admittedly a major punishment and therefore, the order is illegal and not sustainable.

6. On the contrary, learned counsel for the State contended that the enquiry officer held the enquiry in accordance with law and submitted reports finding the petitioner guilty of all the six charges.

7. Having heard both sides, I find that the State has not



given any reply on the point that whether the proceeding under rule 43(b) of the Pension Rules was ordered to be initiated by the State Government. Rule 43 (b) of the Pension Rules clearly says that only the State Government reserved its right to initiate proceeding for forfeiture of the entire or any part of the pension of the pensioner, on the ground that if the pensioner was found in departmental proceeding or in judicial proceeding guilty for grave misconduct or the pensioner has committed negligence and caused pecuniary loss to the department, but it appears from perusal of Annexure-1, the order by which proceeding under Rule 43(b) of the Bihar Pension Rules is initiated, is passed by the Director, Agriculture, Bihar, Patna that it has not been issued in pursuance of the order of the State Government.

8. From perusal of the enquiry report, it further transpires that the enquiry officer submitted the enquiry report after perusal of the explanation of the petitioner and the opinion of the presenting officer. Rule 17 of the CCA Rules, 2005 prescribes the procedures for holding the departmental enquiry for inflicting major punishment. According to different sub rules of Rule 17 of the CCA Rules, 2005 the enquiry officer is required firstly to ask the presenting officer to adduce oral as well as documentary evidence in order to prove the charges against the petitioner. Thereafter, the enquiry officer shall call



upon the proceedee to examine his witness or adduce evidence in his defence, but the enquiry report, itself, shows that the enquiry officer did not hold the enquiry in accordance with the procedure laid down in Rule 17 of the CCA Rules, 2005 and submitted the report on the basis of explanation and the opinion of the presenting officer. Therefore, the enquiry report is not a report in the eye of law under sub-rule 23 of the CCA Rules, 2005. On such enquiry report, I find that any punishment inflicted upon the petitioner cannot be sustainable.

9. Thus, the order dated 29.11.2013 as contained in Memo No. 1932 (Annexure-5) is set aside. The matter is remitted to the disciplinary authority to proceed in accordance with law and pass final order within a period of four months from the date of receipt/production of a copy of this order as the petitioner has retired five years ago. Accordingly, the writ petition is allowed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2017
Transmission Date	NA

