

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9519 of 2014

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1. Bishwanath Paswan S/o Late Mangal Paswan Resident of Village and P.O. Hariom Nagar Chhoti Bariar, Police Station Balia, District Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary Department of Food and Consumer Protection Department, Govt. of Bihar, Patna.
3. The Additional Secretary Department of Food and Consumer Protection Department, Govt. of Bihar, Patna.
4. Special Officer, Department of Food and Consumer Protection Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner	: Mr. Chittranjan Sinha, Sr. Advocate. Mr. Sarva Deo Singh, Advocate.
For the Respondents	: Mr. Rajiv Roy, GP 5.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 07-09-2017

Re. - I.A. No. 4044 of 2016

Heard both sides.

2. The petitioner has filed I.A. No. 4044 of 2016 for amending the prayer that during pendency of this writ petition, the final order was passed on 16.04.2016 as contained in Memo No. 254.

The petitioner also prayed to quash the aforesaid order.

3. The I.A. No. 4044 of 2016 shall form part of the main writ petition.

4. Accordingly, I.A. No. 4044 of 2016 is allowed.

Re. - C.W.J.C. No. 9519 of 2014

Heard both sides.



5. The petitioner has filed this petition for quashing the communication dated 28.04.2014 by which second show cause has been asked from the petitioner and also quashing the enquiry report dated 25.04.2014. The petitioner further prayed to quash the order dated 22.05.2014 as contained in Memo No. 2944 (Annexure-5) by which 100% pension of the petitioner has been stopped.

6. The petitioner was caught red handed and taken into custody on 26.06.2007, while he was posted as supply inspector, Bidhan Block, Samastipur. The petitioner was released from custody and he submitted his joining on 27.02.2008. A departmental proceeding was initiated. The enquiry officer submitted the enquiry report on 23.06.2008. The enquiry officer reported that the final order should be awaited till the disposal of the criminal case. The petitioner retired on 31.01.2012 and thereafter, the petitioner was allowed his full pension but to utter dismay of the petitioner order dated 14.02.2014 was issued converting the departmental proceeding into a proceeding under Rule 43 (b) of the Bihar Pension Rules. The enquiry was held ex-parte but second show cause was asked from the petitioner. Thereafter, the disciplinary authority inflicted the punishment of withholding 100% pension of the petitioner.

7. Shri Chitranjan Sinha, learned senior counsel for the petitioner submits that from perusal of the enquiry report, it would appear that the enquiry was not held in accordance with the procedure



as laid down under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). From the enquiry report Annexure-4/1, it would appear that the enquiry officer did not allow the presenting officer to examine any witness. At the time of initiation of departmental proceeding, the disciplinary authority should serve a copy of articles of charge with document and list of witnesses appended thereto to prove the charge. Thereafter enquiry officer shall call upon the government servant to file show cause. The enquiry officer shall thereafter fix a date asking the presenting officer to produce evidence. If the government servant did not appear, the enquiry officer shall fix the departmental enquiry ex-parte and ask the presenting officer to examine witnesses. The presenting officer only expressed his opinion on the charge. The presenting officer did not examine any witness nor produced any document to prove charge but enquiry officer submitted his report. On such enquiry report, which has got sanctity in the eye of law, the disciplinary authority has passed the order withholding 100% pension of the petitioner, therefore the enquiry report and order of punishment are illegal and not sustainable.

8. The State has filed counter affidavit but, did not controvert the statements made in paragraph 11 and 12 of the writ petition that the petitioner was not served with a copy of the articles of charge and the documents on which the department proposes to prove



the charges. The learned counsel for the State has also not been able to show that departmental proceeding was held in accordance with the Rule 17 of the CCA Rules, 2005.

9. Upon hearing of the submissions of both sides and on perusal of enquiry report I find substance that the enquiry officer did not hold the enquiry in accordance with the rules as laid down under Rule 17 of the CCA Rules, 2005 and on such report which has got no sanctity in the eye of law, the order of punishment withholding 100% pension of the petitioner is passed therefore the order is absolutely illegal and not sustainable.

10. Accordingly, the order dated 22.05.2014 as contained in Memo No. 2944 (Annexure-6) and consequential order dated 16.04.2016 as contained in Memo No. 254 (Annexure-5) are set aside and thus the writ petition is allowed. The matter is remitted to the authority, if the authority, so advised, may proceed further in accordance with law.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2017
Transmission Date	NA

