

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9250 of 2015

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Muni Lal Mochi son of late Ram Awatar Ram, resident of village- Bamak, P.O.-
Basuhar, P.S.-Punpun, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretary, Patna, Bihar.
2. The Secretary, Personal and Administrative Department, Old Secretariat, Patna.
3. The Under Secretary, Personal and Administrative Department, Old Secretariat, Patna.
4. The Secretary, Finance Department, Old Secretariat, Patna.
5. The Treasury Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhilesh Kumar Sinha, Advocate
For the State : Mr. Arbind UJJAWAL, SC-4
: Mr. Maruty Nath Roy, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner and learned counsel
for the State.

2. In the present writ petition, the petitioner has prayed for
quashing the order dated 10.06.2014 passed by the respondents- State
whereby full pension of the petitioner has been withheld.

3. The facts of the case, in brief, are that the petitioner was
made accused in Vigilance P.S. Case No.18 of 1983 registered under
Sections 420, 467, 468, 471 and 120B of the Indian Penal Code (for
short 'the IPC') as well as Section 5(2) read with 5(1)(c)(d) of the
Prevention of Corruption Act.

4. During the pendency of the trial, he superannuated on



30.09.2003 while he was posted as Deputy Collector at Biharsharif, Nalanda. In the said vigilance case, the learned Special Judge, Vigilance convicted him vide order dated 19.07.2004. He was sentenced to undergo rigorous imprisonment for two and a half years and to pay a fine of rupees fifteen thousand under Section 209 of the IPC, rigorous imprisonment for one year and to pay a fine of rupees one thousand under Section 420 of the IPC, rigorous imprisonment for two and a half years under Section 120B of the IPC, rigorous imprisonment for two years and to pay a fine of rupees one thousand under Section 467 of the IPC, rigorous imprisonment for two years and to pay a fine of rupees one thousand under Section 468 of the IPC, rigorous imprisonment for two years under Section 477A of the IPC and rigorous imprisonment for two years and to pay a fine of rupees two thousand under Section 5(2) read with 5(1)(c)(d) of the Prevention of Corruption Act, 1947. All the sentences were ordered to run concurrently.

5. After retirement, he was paid ninety per cent provisional pension. He was also paid his other retrial dues like group insurance and gratuity, but in view of his conviction, the respondent no.2 vide order dated 13.05.2009 inflicted punishment of forfeiture of full pension and consequently an order dated 28.10.2009 was issued by the respondent stopping his pension.



6. The petitioner challenged the said order dated 28.10.2009 by filing a writ petition vide CWJC No.13804 of 2012 before this Court. The main ground for challenge to the order was that before passing the order for forfeiture of full pension, the petitioner was not given any opportunity to be heard. This Court vide order dated 11.07.2013 passed in CWJC No.13804 of 2012 set aside the order inflicting punishment and remanded the matter to the respondent no.2 for passing a fresh order in respect of punishment after providing an opportunity of hearing to the petitioner.

7. In compliance of the order dated 11.07.2013 passed by this Court in C.W.J.C. No.13804 of 2012, the petitioner was afforded opportunity of hearing. He also filed a representation on 29.01.2014, which was examined in the light of the order passed by this Court whereafter the whole pension of the petitioner has been ordered to be withheld. Against the order of punishment dated 10.06.2014, the petitioner filed a review application, which was also examined by the disciplinary authority and the review petition has also been rejected vide order dated 09.09.2014.

8. Learned counsel for the petitioner submitted that the impugned order dated 10.06.2014 passed by the disciplinary authority is bad in law in view of the fact that the respondents were debarred from withholding pension of the petitioner which was being paid



provisionally since 2004 in exercise of power conferred under Section 139 of the Bihar Pension Rules, 1950 (for short 'Pension Rules). He submitted that no such order could have been passed after expiry of three years from the date of the order of sanctioning order in view of the express provisions prescribed under Section 139 of the Pension Rules.

9. On the other hand, learned counsel for the State submitted that the petitioner has not only been convicted by the trial court, but his appeal has also been dismissed by this Court with certain modifications in sentence. He submitted that in view of the Rule 43(a) of the Pension Rules, which is a substantive provision and independent of Rules 43(b) and 139 of the Pension Rules, the State was empowered to take action in terms thereof if the petitioner was convicted of serious crime or was found guilty of grave misconduct. He submitted that though the respondents have referred to Rule 139(b) of the Pension Rules in the impugned order, as a matter of fact, the order has been passed in terms of Rule 43(a) and Rule 43(b) of the Pension Rules

10. I have heard learned counsel for the parties and perused the record.

11. As noted above, the petitioner was convicted and sentenced to undergo imprisonment and fine under Sections 409, 420,



120B, 467, 468 and 477A of the IPC as also under Section 5(2) read with 5(1)(c)(d) of the Prevention of Corruption Act, 1947. With certain modifications in the sentence, the appellate court has also upheld the judgment of the trial court.

12. At this stage, it would be apt to refer to Rule 43(a) and 43(b) of the Pension Rules which read as under:-

“Rule 43(a). *Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.*

Rule 43(b). *The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service*



rendered on re-employment after retirement:

Provided that –

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation.- For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been



placed under suspension from an earlier date, on such date; and,

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and,

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil court.”

13. Further, Rule 139(a) and (b) of the Pension Rules, which is extracted 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.”

enables the authority sanctioning the pension to make such reduction in the amount as it thinks proper.

14. From a reading of the above Rules, it would be evident that both Rule 43(a) and (b) of the Pension Rules enable the State to



withhold entire pension or any part of it, if the pensioner is convicted of serious crime or held guilty of grave misconduct. Rule 43(b) of the Pension Rules, however, stipulates conditions in which such proceeding departmental or judicial can be levied. Proviso (b) to Rule 43(b) of the Pension Rules stipulates that the judicial proceedings, if not instituted while the government servant was on duty before retirement shall be in respect of an event which took place not more than four years before the institution of such proceeding in accordance with sub- clause (ii) of clause (a).

15. As far as the criminal proceeding against the petitioner is concerned, the same was instituted while he was in service and hence, there would be no fetter in withholding pension under Rule 43(b) of the Pension Rules as he was held guilty in a judicial proceeding of grave misconduct.

16. So far as Rule 139(b) of the Pension Rules is concerned, the same enables the authority sanctioning the pension to make such reduction in the amount of pension as it thinks proper if the service has not been thoroughly satisfactory. In the present case, as the petitioner has been convicted in a criminal case not only under the penal provisions of the IPC but also under the Prevention of Corruption Act, the order withholding pension ought to have been passed under Rule 43(a) and 43(b) of the Pension Rules.



17. In that view of the matter, merely because the respondent State has referred to the provisions prescribed under Rule 139(b) of the Pension Rules in the impugned order, the same cannot be held to be bad as the State was empowered to pass such order withholding full pension of the petitioner under the provisions of Rule 43(a) and 43(b) of the Pension Rules.

18. In that view of the matter, I do not see any merit in this application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Md.S./-

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