

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12155 of 2016

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Dr. Dilip Kumar Jha S/o Sri Ram Ratan Jha a resident of Village- Panshov, P.S.-
Bisanpur, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Bihar.
2. Secretary, Animal and Fisheries Resources Department, Govt. of Bihar.
3. Deputy Secretary, Animal and Fisheries Resources Department, Govt. of Bihar.
4. Under Secretary, Animal and Fisheries Resources Department, Govt. of Bihar.
5. Accountant General, Bihar, Virchand Patel Road, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Adv.
For the Respondent/s : Mr. Anujit Sinha, AC to PAAG-2
For the A.G., Bihar : Mr. Satyendra Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-12-2017

Heard Mr. Rajni Kant Jha, learned counsel appearing for the
petitioner, Mr. Anujit Sinha, learned AC to PAAG-2, for the State and
Mr. S.K.Jha, learned counsel for the Accountant General.

The petitioner is aggrieved by the resolution of the State
Government in its Animal and Fisheries Resources Department
bearing Memo No. 142 dated 7.6.2016, whereby in purported exercise
of power vested under Rule 139 of the Bihar Pension Rules
(hereinafter referred to as 'the Pension Rules') the entire pension of
the petitioner has been forfeited. A copy of the order is impugned at
Annexure 2 to the writ petition and which has been challenged
together with charge memo dated 11.9.2014 impugned at Annexure 1
to the writ petition.



The facts of the case lie in a very narrow compass. The petitioner superannuated from the post of Veterinary Surgeon, Madhubani with effect from 31.7.2012 and in his entire service career he never faced any disciplinary proceeding as claimed by him and not contested. It is two years after his superannuation that he was put on notice under 'the Pension Rules' vide Annexure 1 in a proceeding purportedly initiated under Rule 139(c) thereof and which has resulted in punishment of forfeiture of entire pension vide resolution dated 7.6.2016 impugned at Annexure 2. Feeling aggrieved he is before this Court.

Mr. Rajni Kant Jha, learned counsel for the petitioner, has invited the attention of this Court to the F.I.R. at Annexure 5 to submit that on a complaint filed by a public spirited person, namely, Sudhir Kumar Ojha alleging irregularities in purchase of medicines between 2003-2007 that the matter was investigated by the Vigilance and the final form was submitted finding the case not true and not resting on evidence. The complainant filed a protest petition and it is on the basis of the order passed by the criminal court on the protest petition filed by the said complainant which has resulted in institution of Vigilance Case no. 49/2011 at Annexure 5 and even before the matter can reach its conclusion that in a hurried manner the proceedings in question have been initiated under Rule 139(c) because



the State could not proceed against the petitioner under Rule 43(b) of 'the Pension Rules', to impose penalty.

Having heard learned counsel for the parties, in my opinion, the entire proceeding is without jurisdiction and without sanction of law because of two reasons, namely,

(a) Rule 139(c) of 'the Pension Rules' enables the State Government to exercise powers against a pensioner where the service of the pensioner is not found thoroughly satisfactory or there is proof of grave misconduct. None of the two pre-requisites are existing in the present case because the petitioner claims that he was never subjected to any disciplinary proceeding in his service career and which contention is not denied. Thus neither his service can be held to be not satisfactory nor there can be an evidence of proven misconduct.

(b) Even before the criminal case instituted on the protest by the complainant has reached the conclusion that the respondents have prejudged the issue.

The exercise of jurisdiction by the State in the circumstances discussed, is de hors the statutory provisions underlying Rule 139(c) of 'the Pension Rules' and rests on no evidence.

For the reasons discussed, the entire proceedings culminating in the resolution dated 7.6.2016 impugned at Annexure 2 cannot be upheld and is accordingly quashed and set aside. The



pension of the petitioner is restored. Let the current pension together with the arrears thereof be released within six weeks of the receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.12.2017
Transmission Date	NA

