

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1454 of 2015

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1. Dr. Sant Chaudhary S/o Late Ganesh Chaudhary resident of 4M/152, Bahadurpur Housing Colony, Kankarbagh, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Principal Secretary, Health Department, Medical Education and Family Welfare, Govt. of Bihar, New Secretariat Building , Patna.
2. Sri Shankar Jha, Addl. Secretary cum Enquiry Officer, Health Department, Govt. of Bihar, Patna.
3. Sri Rajendra Prasad Ojha, Addl . Secretary, Health Department, Govt. of Bihar, Patna.
4. Sri Devendra Chaudhary, Sub Addl. Secretary, Health Department, Govt. of Bihar , Patna.
5. The Accountant General, Bihar Patna, Birchand Patel Path , Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Adv.

For the Respondent/s : Mr. Ramadhar Singh, G.P.25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-02-2017

Heard learned counsel for the parties.

Heard Mr. Dhananjay Kumar Tiwary, learned counsel for the petitioner, Mr. Ramadhar Singh learned G.P.25 for the State and learned counsel for the Accountant General.

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

The petitioner is aggrieved by the order of punishment dated 8.12.2014 bearing memo No.1136(9) dated 10.12.2014 whereby the State Government in its Health Department in exercise of power



vested under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as 'the Pension Rules'), has imposed a penalty of forfeiture of 75% of pension and gratuity of the petitioner permanently. A copy of the order of punishment is impugned at Annexure-2 to the writ petition.

This case has its own peculiarities and briefly stating, a punishment order was passed against the petitioner for alleged charge of misconduct in causing disobedience of the order of District Magistrate in not taking appropriate steps for termination of employees who were charged with securing illegal appointment. The punishment order dated 18.9.1997 was questioned by the petitioner before this Court in C.W.J.C.No.9400 of 1997 and vide judgment and order dated 3.8.2010 present at Annexure-3, the punishment order was quashed taking note of the fact that punishment order had been passed in violation of principle of natural justice. Learned Single Judge taking note of the fact that the petitioner had since retired in the meanwhile in the year 1998, afforded liberty to the respondents to proceed under Rule 43(b) of 'the Pension Rules' if they would so like. The order further limits such exercise to a decision to be taken in this regard within six months from the date of receipt/production of a copy of the order with the further stipulation that the final order be passed within six months next. Paragraph 23 of the judgment further



stipulates that if no such decision is taken within the period mentioned, then the liberty so granted would stand withdrawn.

Vide departmental resolution No. 204(9) dated 3.3.2011 fresh departmental proceeding was initiated and by another departmental resolution No. 993(9) dated 21.10.2011, the order of punishment passed on 18.9.1997 was recalled. Since the period stipulated in the order of this Court cast an obligation on the respondents to take a decision within six months of the judgment and to conclude the same within six months next, the respondents having failed to meet the target, came before this Court for extension of time by filing an extension application giving rise to M.J.C.No.5994 of 2011. On the other hand, petitioner also filed a writ petition questioning the initiation of proceedings giving rise to C.W.J.C.No.937 of 2012. Both the matters were heard analogous and the Bench vide order passed on 6.2.2013 present at Annexure-5 extended the period for conclusion of the enquiry by further six months. The petitioner was directed to appear before the Enquiry Officer on 8.2.2013. As per the petitioner he appeared on 18.2.2013 in compliance of the direction, but nothing happened thereafter.

In between, the exercise noted above the respondents- State passed a punishment order on 30.1.2013 in exercise of power vested under Section 43(b) of 'the Pension Rules' forfeiting 75% of the



pension, however, in view of the order passed by this Court on the extension application present at Annexure-5, the State Government issued a notification bearing No. 878 (9) dated 26.7.2013 whereby the punishment notification dated 30.1.2013 was recalled and it was resolved to continue the departmental proceedings on the basis of the charge already served. A copy of this notification bearing No. 878 dated 26.7.2013 is on record at Annexure-10 to the writ petition.

Preceding this notification, that another notification was issued bearing No.877 (9) dated 26.7.2013, a copy of which though not present in the pleadings, but is present at running page 334 of the departmental proceeding produced by Mr. Singh, learned State counsel and whereby the departmental proceedings were continued against the petitioner on the basis of the charge already framed and which was communicated to the petitioner vide letter No. 64 dated 26.7.2013 which again is present at running page 344 of the concerned file. While by notification bearing No.877 (9) dated 26.7.2013 a decision was taken to continue the proceedings under 'the Pension Rules' in view of the liberty granted by this Court vide Annexure-3, by letter No.64 dated 26.7.2013 charge memo was communicated to the petitioner and which was received by him on 31.7.2013 as also admitted by him at Annexure-12. No reply was filed by the petitioner and thus enquiry report was submitted, a copy of



which is enclosed to Annexure-1 which is the second show cause served on the petitioner on 3.10.2013 and which also takes note of the refusal by the petitioner to file his reply. The petitioner again did not file any reply and the exercise has resulted in the order of punishment dated 10.12.2014 which is impugned at Annexure-3 to the writ petition.

After hearing the parties this Court framed two issues for consideration which stands noted in the order of this court passed on 6.2.2017 and which are as follows:

- (1) Whether in absence of any contest to the allegation, there can be any interference with the order of punishment; and
- (2) Whether the previously issued charge memo would be a valid foundation for the proceedings put to question herein.

In so far as the issue at Serial No.1 is concerned, the allegation goes uncontested. The petitioner has failed to respond to the allegation of disobedience of having defaulted in compliance of the order of his superior. The issue thus goes against the petitioner for in absence of any contest to the allegation, it would be deemed to be admitted. There is nothing on record that since after the initiation of the proceedings under the orders of this Court, the petitioner filed any reply to contest the allegation set up against him and although a reply is present at Annexure-12 but it merely raises objections on



technicality. Going by the first issue the writ petition is bound to fail.

It is to be seen whether the proceeding can be upheld on the second issue as well.

The sequence of events has already been illustrated by me hereinabove and there is no dispute that a departmental proceeding was initiated against the petitioner while in service and even punishment was imposed on 18.9.1997 i.e. prior to his retirement in 1998. This punishment order was quashed by this Court on 3.8.2010 vide Annexure-3 and liberty was granted to the authorities to proceed if so advised under 'the Pension Rules', meaning thereby the respondents were at liberty to proceed in the disciplinary proceedings already initiated against the petitioner which culminated in the order dated 18.9.1997 but under 'the Pension Rules'. Unfortunately, the respondents have abandoned this proceeding and the reasons are not explained. The proceedings initiated against the petitioner during his service period, has been abandoned and in view of the order passed by this Court on the writ petition preferred by the petitioner at Annexure-3, the respondent-State has chosen to draw fresh proceedings under the Bihar State Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the disciplinary rules') and which is manifest from the resolution bearing No.204 (9) dated 3.3.2011 which stands noted not



only in the notification bearing No. 878 (9) dated 26.7.2013 whereby earlier punishment order was recalled but also in the notification whereunder the proceedings were continued bearing No.877(9) dated 26.7.2013. Now this resolution No. 204 (9) dated 3.3.2011 of the State Government is very relevant and although a copy thereof is not placed on the records of the proceedings but the file of the departmental proceeding produced by Mr. Ramadhar Singh learned G.P.25, contains a notification at running page 171. This resolution dated 3.3.2011 of the State Government is issued under 'the disciplinary rules' of the State Government and not under 'the Pension Rules' and encloses a memo of charge as its enclosure, which is dated 10.7.2010. Obviously, this was a void notification because the petitioner had already retired in the year 1998 and thus no proceedings could have been instituted by the State under 'the disciplinary rules'.

This glaring omission on the part of the respondents, has not been corrected rather the illegality committed, has been perpetuated because it is following the notification No.877(9) dated 26.7.2013 that a memo of charge was served on the petitioner under letter no. 64 dated 26.7.2013 enclosing the same very memo of charge dated 10.7.2010 which was earlier enclosed to the resolution dated 3.3.2011 issued under 'the disciplinary rules', which has again been relied upon by the respondents- State to continue the proceeding against the



petitioner under 'the Pension Rules' and which is manifest from the enclosure to letter No.64 dated 26.7.2013 issued by the Additional Secretary-cum-Conducting Enquiry Officer, Health Department to the petitioner informing him about the initiation of proceedings under the departmental resolution No.877 (9) dated 26.7.2013.

A charge which was a part of a resolution notified under 'the disciplinary rules' was a void document and could not have been relied upon by the respondents to continue the proceedings under 'the Pension Rules'. The respondent State apparently was confused because even when this Court had granted liberty to them, in its order dated 3.8.2010, to continue the proceedings under 'the Pension Rules' and even if the respondent State could have continued the same on the basis of the charge already framed against the petitioner which had been not quashed, the action of the State to have abandoned the earlier proceedings and to initiate a fresh proceeding vide resolution dated 3.3.2011 under 'the disciplinary rules' was an action void ab initio and a void action being the foundation for drawing the present proceedings, it is illegality perpetuated.

In view of the position discussed above, it is manifest that the initiation of the proceedings by the State is resting on a charge which was a part of a resolution issued under 'the disciplinary rules' and which resolution was void ab inito having been issued after the



retirement of the petitioner. The respondents while issuing notification No.877(9) dated 26.7.2013 could not have relied upon the charge dated 10.07.2010 which was a part of void notification issued under the disciplinary rules post retirement of the petitioner. Since the disciplinary proceeding is resting on a resolution initiating a disciplinary proceedings on a void charge, the entire proceedings culminating in the order of punishment dated 10.12.2014 is rendered illegal and is accordingly quashed and set aside. The writ petition is allowed. The consequences shall follow.

Let the records of the disciplinary proceedings produced by Mr. Ramadhar Singh learned G.P. 25, be returned to his custody.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.02.2017
Transmission Date	NA

