IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10584 of 2001

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Satyadeo Singh, son of Late Gopalji Singh, resident of Mohalla- Latterdah, Kachhi Pakki Road, Gupta Colony, PO- Ramna, District- Muzaffarpur.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, through its Chairman, Bailey Road, Patna.
2. Chairman, Bihar State Electricity Board, Patna.
3. The Member (Revenue) Board, Patna, Bihar State Electricity Board, Bailey Road, Patna.
4. Joint Secretary, Bihar State Electricity Board, Bailey Road, Patna.
5. Additional Secretary, Bihar State Electricity Board, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Adv. with
Mr. Syed Firoz Reza

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Vijay Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-12-2017

The petitioner by filing this writ petition under Article 226 of the Constitution of India has questioned the resolution bearing Memo No.2279 dated 24.8.1999 of the Bihar State Electricity Board (hereinafter referred to as 'the Board'), whereby a punishment has been imposed under the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Pension Rules') withholding 25% of pension and gratuity of the petitioner. The petitioner alongside, has been denied the salary for the suspension period and which has been limited to the subsistence allowance drawn during the said period. The petitioner has also questioned the appellate order passed by the Joint Secretary of 'the Board' dated 1.7.2000, whereby the appeal of the petitioner has been dismissed and the order of 'the Board' has been affirmed. Copies of the orders of penalty are impugned at Annexures 1 and 6 respectively to the writ petition.

The facts of the case briefly stated is that the petitioner was appointed as an Engineer Assistant in the year 1962 with the erstwhile Bihar State Electricity Board which has since been dissolved and reorganized to form the Bihar State Power Holding Company, the North Bihar Power Distribution Company Limited and the South Bihar Power Distribution Company Limited. The matter would relate to the North Bihar Power Distribution Company Limited. The petitioner was promoted to the post of Assistant Engineer in 1963 and to the post of Electrical Executive Engineer in January, 1977. Vide notification No.557 dated 24.2.1995 the petitioner was directed to look after the work of the Electrical Superintending Engineer in addition to his own duties. The petitioner vide resolution no.1666 dated 19.7.1995 was posted as Superintending Engineer at Hazaribagh where he joined on 1.8.1995 after being relieved from the post of Electrical Executive Engineer (Technical), Electrical Circle, Muzaffarpur. The matter relates to period 28.2.1995 to 1.8.1995 while the petitioner was looking after the additional work of the Electrical Superintending Engineer.

Vide order bearing No.4518 dated 22.8.1995 on the allegation of sanctioning additional load of 1000 KVA to M/s Ganesh Foundry and Casting Private Limited, the petitioner was suspended and which was followed by service of a charge memo bearing resolution No.286 dated 30.1.1996. A copy of the suspension order is enclosed at Annexure 4 and the charge memo is at Annexure 3 to the writ petition. The petitioner filed his reply on 16.2.1996 contesting each of the charges, a copy of which is at Annexure 7. The Enquiry Officer submitted his report, a copy of which is enclosed at Annexure 5 and while exonerating the petitioner of Charge nos.1 to 4, 6 and 7, it is accepting the failure of the petitioner to follow the Board's instruction that charge no.5 was upheld. The enquiry report was submitted on 29.10.1996 but no action was taken thereon by 'the Board' until the superannuation of the petitioner on 31.1.1997.

It is after more than a year and half that vide resolution no.980 dated 16.7.1998, the petitioner was served with a show cause on the enquiry report under the orders of 'the Board' who while accepting the findings of the Enquiry Officer on charge nos.4, 5, 6 and 7, put the petitioner on notice under the Bihar Pension Rules on charge nos.1, 2, 3 and 5. The Board while disagreeing with the opinion of the Enquiry Officer on charge nos.1, 2 and 3 agreed with the opinion of the Enquiry Officer on charge no.5.

The petitioner filed his reply to the show cause under the 'Pension Rules', a copy of which is placed at Annexure 8 to the writ petition but has been visited with the penalty in question vide order bearing Memo No.2279 dated 24.8.1999 as affirmed by the appellate order dated 1.7.2000 whereby 25% of the pension and gratuity of the petitioner has been withheld and his pay and allowances for the suspension period has been restricted to the subsistence allowance. It is feeling aggrieved by the order of penalty that the petitioner is before this Court.

This writ petition was heard by a coordinate Bench of this Court on 22.8.2001 and by the order passed on the said date the writ petition was admitted for hearing.

I have heard Mr. Tej Bahadur Singh, learned senior counsel appearing for the petitioner along with Mr. Syed Firoz Reza and Mr. Vinay Kirti Singh, learned senior counsel appearing for the respondents assisted by Mr. Vijay Kumar Verma.

While it is argued by Mr. Singh, learned senior counsel appearing for the petitioner that the continuation of the proceeding after the superannuation of the petitioner is without sanction of law inasmuch as there is no notice to the petitioner for continuation of the proceeding under the Bihar Pension Rules, it is also argued that even on merits the orders put to challenge cannot be upheld because they are not resting on any evidence. It is further the argument of

Mr. Singh that this petitioner has contested the charges at each stage and while the Enquiry Officer has accepted the explanation to exonerate him of all the charges except charge no.5 which merely alleges the petitioner of not following the circular of 'the Board', the Disciplinary Authority even though has chosen to disagree with the findings of the Enquiry Officer on charge nos.1, 2 and 3 and while accepting his report on other charges, has not given any tentative reasons for such disagreement. It is further the argument of Mr. Singh that the order of penalty is unreasoned for it does not take into consideration the explanation to the charges given by the petitioner.

The arguments have been contested by Mr. Vinay Kirti Singh, learned senior counsel appearing for the respondents who in reference to the Full Bench Judgment of this Court rendered in the case of **Shambhu Saran Vs. The State of Bihar** reported in **2000(1) PLJR 665** has submitted that there is no requirement of any formal order to be passed by the department concerned in case, they intend to continue with the proceeding initiated prior to superannuation of a delinquent even after his retirement. In reference to the enquiry report he submits that even though the petitioner was exonerated of all the charges by the Enquiry Officer except charge no.5 but 'the Board' while disagreeing on the report in so far as charge nos.1, 2 and 3 are concerned, has decided to proceed against the petitioner under the 'Pension Rules' and which is manifest from the show cause bearing Memo No.981 dated 16.7.1998 at Annexure 2 which is substantively a show cause under the 'Pension Rules'. According to Mr. Singh, in the nature of the charges facing the petitioner and the default noticed, the order of penalty does not call for interference inasmuch as the same has been imposed after giving due opportunity of hearing to the petitioner and on taking note of the allegations accompanying the charges. He submits that in absence of any procedural default in the proceeding and considering that the petitioner has been given fullest opportunity to defend himself the orders under challenge would require no interference.

I have heard learned counsel for the parties and I have perused the records.

The facts noted above require no reiteration. The issue which requires consideration is, whether the proceeding is capable of being upheld as a proceeding under the Bihar Pension Rules and whether the order of penalty is supported by the evidence on record as well as the statutory provisions of the Bihar Pension Rules.

This Court after hearing the parties had noticed 3 issues for consideration and while the issue relating to the validity of notice dated 16.7.1998 at Annexure 2 as well as the jurisdiction of the authority to issue the same, has statutory support, it is to be seen whether there are materials on record to support the impugned penalty under rule 43(b) of the Bihar Pension Rules. For the sake of convenience rule 43(b) is reproduced hereunder:

> "43(a) …. ….. …. ….. …..
> (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 specified period, and the right of ordering recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in detrimental 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.
> Provided that …. …… ……. ……"

There is no dispute on the jurisdiction exercised or the validity of the proceedings on its continuation after the retirement of the petitioner on 31.1.1997. There is thus no jurisdictional error in issuance of the notice bearing Memo No.981 dated 16.7.1998 at Annexure 2 whereby 'the Board' through its Joint Secretary while disagreeing with the finding of the Enquiry Officer on charge nos.1, 2 and 3 and going with the finding of the Enquiry Officer on charge no.5, has show caused the petitioner for forfeiture of 25% of pension and gratuity. However, whether 'the Board' while imposing the penalty under the 'Pension Rules', could have reduced the pay and allowances of the petitioner to the subsistence allowance drawn during the suspension period, after his superannuation, is a matter for consideration.

Rule 43(b) of the Bihar Pension Rules is self eloquent and where a superannuated government servant is found guilty of grave misconduct or to have caused pecuniary loss to the Government, by an act of negligence or otherwise, that the State Government has been vested with the power to forfeit his pension and gratuity either in full or partially and either temporarily or permanently.

It is a matter of record that of the 7 charges listed at Annexure 3, the Enquiry Officer exonerated the petitioner of all the charges except charge no.5 which, inter alia, charges the petitioner of not following the circular of 'the Board' which provides that the transformer capacity of a HT consumer should not be more than 150% of his contract demand and in the case in hand the consumer was enjoying 500% transformer capacity of the contract demand.

Since the disagreement is only on charge nos.1, 2 and 3 and 'the Board' and has accepted the opinion of the Enquiry Officer on charge no.5, I would be discussing these four charges to record my opinion as to whether the materials do support the opinion of 'the Board' to impose the penalty in question.

Charge No.1: This charge mentions that raids were conducted by the Anti Power Theft Squad of 'the Board' in the premises of M/s Ganesh Foundry & Casting Private Limited, Muzaffarpur and M/s Deepak Electro Casting India Private Limited, Muzaffarpur on 4.8.1995 and 5.8.1995 when massive theft of energy was detected. The petitioner holding the additional charge of Superintending Engineer was charged with not taking sufficient steps to restrict such huge theft of power. The reply of the petitioner to the charge is at Annexure 7 in which he has exhaustively dealt with the steps taken by him for keeping these two consumers in check and has specifically stated that he was in additional charge only until 1.8.1995 while the raids were conducted on the two consumers on 4.8.1995 and 5.8.1995 which was after the petitioner handed over the charge and thus the allegation that the petitioner has failed in discharge of duty to prevent theft was unsupported by the material on record. It was also denied that there was any evidence of wrongful gain.

Charge No.2: This charge while accepting that the sanction of additional load of 1500 KVA to M/s Ganesh Foundry & Casting Private Limited given by the General Manager -cum- Chief Engineer, Muzaffarpur vide letter no.2848 dated 28.7.1994, alleges that the request by the consumer to reduce the load to 1000 KVA, was recommended by the petitioner without actually verifying the capacity of the transformers, in tune with the direction issued by the General Manager cum Chief Engineer vide letter dated 21.7.1995 and without obtaining feasibility report from the Assistant Electrical Engineer and the Electrical Executive Engineer. The petitioner responded to the charge by submitting that he has submitted his report after obtaining report from the Assistant Electrical Engineer.

Charge No.3: This charge charged the petitioner of sanctioning additional load of 1000 KVA to M/s Ganesh Foundry without completion of formalities as directed by the General Manager, Muzaffarpur vide letter no.3306 dated 29.7.1995. In reply the delinquent petitioner contested the same to submit that no evidence was led either to demonstrate that he had not taken steps to complete the formalities nor it was established by evidence that the transformers were connected during his period.

Charge No.5: According to charge no.5, the petitioner failed to follow the Board's tariff issued in the year 1991 and 1993 of restricting transformers capacity to 150% of contract demand which in the case of the consumer was found more than 500% of the contract demand. Regarding charge no.5 the petitioner has given the same answer as given in response to charge no.3.

It is accepting the statement given by the petitioner that the Enquiry Officer has exonerated him of the charge nos.1, 2 and 3 but has held that he should have taken steps to follow the circular while upholding the charge no.5.

The disagreement note is at Annexure 2 and though 'the Board' has chosen not to agree with the finding of the Enquiry Officer on charge nos.1, 2 and 3 but while doing so 'the Board' has neither considered the materials relied upon by the Enquiry Officer to exonerate the petitioner of the charge nor bothered to take into consideration the explanation given by the petitioner to these charges vide response placed at Annexure 8 to the show cause notice. In absence of tentative reasons not accompanying the disagreement note as well as the failure of 'the Board' to consider the explanation of the petitioner, not only the show cause notice is mechanical but it even fails on the statutory prescriptions because the 'Board' has failed to record whether such lapse on the part of the petitioner would constitute a grave misconduct inviting a penalty under the Bihar Pension Rules and/or that such act of the petitioner has caused serious pecuniary loss to the 'Board'.

It is undisputed that until such time there is specific finding to such effect either in the notice purportedly issued by 'the Board' under the 'Pension Rules' at Annexure 2 or in the order of penalty, the order would fail on the statutory requirement of the Bihar Pension Rules. While it is well settled that every default in official discharge *ipso facto* would not constitute misconduct to invite a penalty under the Disciplinary Rules, it is equally well settled that not every misconduct would be termed a grave one until it is accompanied with attending circumstances which supports such finding.

As I have already noted above that it is only where an act of a superannuated Government servant is termed grave misconduct or has resulted serious pecuniary loss that he can be subjected to a penalty under the ‘Pension Rules’ and not in each and every case of default. The case in hand is at even worse position for there is no such finding either in the show cause notice or in the order of penalty that the act complained of against the petitioner in reference to charge nos.1, 2, 3 and 5 either constitute grave misconduct or has resulted in pecuniary loss to ‘the Board’. A finding to such effect is an essential prerequisite for imposition of penalty under the ‘Pension Rules’ and ‘the Board’ cannot escape from such obligation.

The order of penalty is again not sustainable on account of the fact that ‘the Board’ while imposing the penalty of forfeiture of pension and gratuity of the petitioner to the extent of 25% under the ‘Pension Rules’ has also proceeded to impose a penalty of forfeiture of pay and allowances for the suspension period of the petitioner which is a penalty under ‘the Disciplinary Rules’ and cannot be imposed in purported exercise of power under ‘the Pension Rules’.

The findings of the Enquiry Officer are exhaustive on each of the allegations, after taking note of the evidence and even though ‘the Board’ has chosen to express disagreement on charge nos.1, 2 and 3 but in absence of any discussion on the materials that has persuaded 'the Board' to arrive at such conclusion, the expression on the disagreement as well as the conclusion arrived thereon, are mechanical and bereft of reasons

For the reasons and discussions aforementioned the show cause notice issued to the petitioner in purported exercise of power under the Bihar Pension Rules by 'the Board' bearing Memo no.981 dated 16.7.1998, the order of penalty passed by 'the Board' bearing Memo No.2279 dated 24.8.1999 together with its affirmation by the Appellate Authority communicated vide letter dated 1.7.2000 at Annexure 6 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed. The pension and gratuity of the petitioner stands restored and let arrears thereof together with current pension be paid to the petitioner within a period of 3 months from the date of receipt/production of a copy of this judgment.

There shall be no order as to costs.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.12.2017
Transmission Date	NA