

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5575 of 2014**

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1. Narayan Chowdhary Son Of Late Laxmi Narayan Chowdhary Resident Of  
Village Sugauna, P.S. Raj Nagar, District Madhubani

.... .... Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary Department Of Revenue And  
Land Reforms, Government Of Bihar, Patna
2. The District Magistrate, Buxar
3. The Deputy Collector, Land Reforms, Buxar
4. The Senior Deput Collector Establishment, Buxar

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. AKHILESH DUTTA VERMA

For the Respondent/s : Mr. P.K. VERMA

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 26-07-2017**

Heard Shri Akhilesh Dutta Verma, learned counsel for the  
petitioner and Shri P.K. Verma, learned AAG-3, senior counsel  
appearing on behalf of the State.

2. The petitioner seeks relief for quashing the order dated  
18.01.2014 (Annexure-4) as contained in Memo No. 231/2013-14 by  
which the District Magistrate, Buxar withheld the entire pension of  
the petitioner under Rule 139 of the Bihar Pension Rules and sent a  
letter to the General Administration Department for approval of the  
order and consequently issued Memo No. 243/2013-14 dated  
10.02.2014 (Annexure-5) withholding the entire pension of the  
petitioner under Rule 139 of the Bihar Pension Rules.



3. Learned counsel for the petitioner assailed the order on the ground that both the orders are absolutely illegal. It is further submitted that the departmental enquiry was held vide order No. 113/2010-11 contained in Memo No. 011334 dated 06.12.2010 (Annexure-K to the counter affidavit). The Deputy Collector, Land Reforms, Buxar was made enquiry officer and the Circle Officer, Buxar was the presenting officer. The enquiry officer submitted his report on 29.04.2010 that no charge against the petitioner was made and recommended for exoneration of the petitioner but, the District Magistrate, Buxar again ordered for fresh departmental enquiry against the provisions of Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 hereinafter referred to as the 'Rules' and the Senior Deputy Collector was made enquiry officer. The Circle Officer, Buxar was made presenting officer. The enquiry officer submitted his report that the presenting officer did not adduce any evidence either oral or documentary in order to prove the charge against the petitioner. The enquiry officer reported that departmental proceeding be awaited, as criminal case on the same charge is pending before the Vigilance Court but, the Collector without calling for explanation from the petitioner, on the point of difference, passed the order impugned withholding the entire pension of the petitioner under Rule 139 of the Bihar Pension Rules and firstly



send the order for approval to the Principal Secretary, General Administration Department but, thereafter the order was issued withholding the entire pension of the petitioner that no approval is required from the Principal Secretary, General Administration, Government of Bihar. Any part of the pension under Rule 139 of the Bihar Pension Rules cannot be withheld without holding any enquiry and finding the employee guilty of any charge.

4. Shri P.K. Verma, learned senior counsel appearing on behalf of the State has very fairly contended that without holding any departmental enquiry no part of pension of the petitioner can be withheld. It is submitted that from the report of the enquiry officer on the basis of which the impugned order is passed shows that there was no enquiry and on such no punishment can be inflicted.

5. The provisions of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 enumerates the procedure for imposing major penalties and sub rule XV, XVI and XVII prescribed as to how the enquiry officer allow the presenting officer to adduce oral and documentary evidence but, from perusal of the enquiry report, itself, it appears that no procedure was followed. The presenting officer did not adduce any oral or documentary evidence. The enquiry officer submitted its report stating therein that there is no material to prove the charge against the petitioner.



However, the enquiry officer recommended for awaiting the departmental enquiry till the disposal of the case but, the Collector without following the provisions as contained in Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 ordered for withdrawal of entire pension of the petitioner without finding the petitioner guilty on any article of charge.

6. I find that the order is palpably illegal and not in accordance with law. The order dated 18.01.2014 (Annexure-4) as contained in Memo No. 231/2013-14 and order dated 10.02.2014 (Annexure-5) as contained in Memo No. 243/2013-14 are not sustainable. Accordingly both the orders are set aside and the writ petition is allowed.

**(Prabhat Kumar Jha, J)**

KKSINHA/-

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