

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3838 of 2011

=====

1. Umesh Prasad Singh Son Of Late Jamadar Singh Resident Of Village - Narhat,
P.O - Kharauna, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Finance Department, Government Of Bihar, Patna
3. The Director, Provident Fund Department, Govt. Of Bihar, Patna
4. The Deputy Director, Provident Fund Department, Govt. Of Bihar, Patna
5. The Accountant General , Bihar , Birchand Patel Path, R-Block, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Sinha, Advocate
For the Respondent/s : Mr. Ravi Verma, AC to GP-4
For Acctt. General Mr. Raghwanand, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 25-08-2017

After retirement of the petitioner from service, the impugned order, Annexure 3, dated 8.1.2010 was issued directing for recovery of the amount in question as indicated therein from the petitioner. However, it is the grievance of the petitioner that recovery of Rs.50,588/- from the petitioner under Rule 43B of the Bihar Pension Rules is without hearing the petitioner, without conducting any departmental proceedings as are envisaged therein



and without following the principles of natural justice.

Accordingly, challenging the order, the petition in question has been filed. On notice being issued, respondents have filed a reply and in para 9 they only say that a notice, Annexure A, was issued to the petitioner and thereafter the impugned action taken based on the enquiry report received and after deduction of the said amount, his pensionary claims have been settled.

Rule 43(b) of the Bihar Pension Rules reads as under:

“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.”

A perusal of the aforesaid goes to show that the State Government is entitled to withhold or withdraw pension, in full or in part, either permanently or for specified period, and also have the right to recover from pension whole or part of the pecuniary loss caused to the Government if the pensioner is found in the departmental or judicial proceeding guilty of gross misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service period including such service rendered on re-employment. The proviso further restricts the Government from taking action under such eventuality. Except for contending that in the order, Annexure 3, the impugned action is taken for the loss caused to the Government, nothing is indicated as to in which



judicial or departmental proceeding the loss is caused, what is the misconduct or negligence of the petitioner and under what contingency the loss was caused to the Government. No enquiry has been conducted, no show cause notice is available on record and no report of the enquiry conducted in the matter is available.

Learned counsel appearing for the respondent argues that the petitioner in para 5 himself admitted that due to health problem and the regular treatment he was undertaking, he could not do certain work assigned to him.

Merely on the basis of this admission of the petitioner he cannot be declared guilty of any omission and commission or misconduct or negligence and causing pecuniary loss to the Government, until and unless after following the process of law i.e. granting opportunity of hearing, considering his defence or explanation and recording a finding that the petitioner has caused pecuniary loss to the Government on such and such count is not recorded. In this case, nothing of that sort is there and by simply contending that the petitioner himself admits his inability to perform certain duties assigned to him, the impugned action is taken. I am of the considered view that once the Statutory Rule, as reproduced hereinabove, contemplates that loss caused to the Government,



established in a judicial or departmental proceeding due to misconduct or negligence of the delinquent can be recovered, but for that there has to be material to show based on findings recorded on enquiry that the petitioner is responsible for any misconduct or negligence which consequently resulted in loss to the Government and in the absence of such an enquiry or finding in the enquiry, such action cannot be sustained.

Even though in the order, Annexure 3, dated 8.1.2010, learned counsel appearing for the petitioner submits that an enquiry was conducted and the petitioner's statement was recorded, but neither the records of the enquiry nor the findings of the Enquiry Officer are available on record nor is there any rebuttal to the specific contention of the petitioner that he was never heard and everything was done behind his back.

Since 2011, more than six years have passed. The counter affidavit was filed by the State Government on 29.8.2011 and along with the counter affidavit all relevant documents and pleadings should have been filed. This having not been done, now the State Government cannot be permitted to bring on record a document which should have been filed along with the counter affidavit.

Accordingly, finding the Government to have failed in



complying with the statutory provisions required, the impugned order of punishment, Annexure 3, dated 8.1.2010, is quashed and the petition is allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	6.9.2017
Transmission Date	N/A

