IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11500 of 2016

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Dr. Prabodh Kumar Singh, son of late Sidheshwar Nath, Resident of Shekhpura, Bind Toli , Police Station- Shastri Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary of Animal and Fishery Resources Department, Bihar, Patna.
2. The Joint Secretary of Animal and Fishery Resources Department, State of Bihar.
3. The Under Secretary of Animal Fishery Resources Department, State of Bihar.
4. The Secretary of Animal and Fishery Resources Department, State of Bihar.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Prabhat Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-05-2018

Heard Mr. Dhananjay Kumar, learned counsel appearing for the petitioner and Mr. Prabhat Kumar, learned Assisting Counsel to Government Advocate No.11 for the State.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the resolution bearing Memo No.141 dated 7.6.2016 of the State Government in its Animal and Fishery Resources Department, whereby in purported exercise of power under rule 139 of the Bihar Pension Rues, 1950 (hereinafter referred to as the 'Pension Rules') the pension of the petitioner has been forfeited in its entirety. A copy of the order is impugned at Annexure 2 to the writ petition.

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

The facts lie in a very narrow compass. The petitioner superannuated from the post of Joint Director, Animal Husbandry and Fishery Resources Department with effect from 31.8.2010 and started drawing pension as per his entitlement. It is after a lapse of more than 4 years that the respondent State in its Animal Husbandry and Fishery Resources Department put the petitioner on notice under rule 139 (c) of the 'Pension Rules' through show cause dated 11.9.2014 impugned at Annexure 1. The show cause accompanied a charge memo in Form 'क' which charged the petitioner of causing financial irregularities by abuse of power in the matter of drugs purchase during the period 2003-07 and 1.1.2008 to 31.1.2008. The charge no.2 makes reference to a Vigilance Case No.49 of 2011 instituted for the purpose. The departmental proceedings so initiated has culminated in the order of punishment through resolution bearing Memo No.141 dated 7.6.2016 impugned at Annexure 2 and feeling aggrieved the petitioner is before this Court.

Mr. Dhananjay Kumar, learned counsel appearing for the petitioner questions the proceedings on the statutory violations underlying rule 139 (c) of the 'Pension Rules' as well as on merits by submitting that not only the proceeding is time barred, even on merits the allegations are not sustainable because the period mentioned in the charge memo at Form 'क' as well as in the impugned order which is 2003-07 and 1.1.2008 to 31.1.2008 is prior to the joining of the petitioner at Muzaffarpur.

In support learned counsel has placed reliance on a transfer order bearing Memo No.580 dated 1.2.2008 placed on record vide Annexure 3 series to the supplementary affidavit filed today to submit that it is only on 1.2.2008 that the petitioner who was holding the post of Assistant Director, Shukra Bhandaran Kendra, Bikramganj, Rohtas was posted as Incharge District Animal Husbandry Officer, Muzaffarpur. He submits that the name of the petitioner appears at serial no.5. He thus submits that neither rule 139 (c) of the 'Pension Rules' permits any proceeding beyond a period of 3 years nor the undisputed position where the petitioner was transferred to Muzaffarpur only on 1.2.2008 i.e. after the period in question, can he be subjected to any such proceeding.

The prayer has been contested by Mr. Prabhat Kumar, learned Assisting Counsel to Government Advocate No.11 who simply relies upon the gravity of the charges facing the petitioner to support the impugned action.

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

Rule 139 (c) of the 'Pension Rules' is self eloquent and reads under:

> "**139.** … … … … …
> … … … … …
> *(c).*The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

It is to be seen whether the rule could be pressed in service in the case in hand for it is undisputed that while the petitioner superannuated on 31.8.2010 the proceedings were initiated more than 4 years later on 11.9.2014. Rule 139 (c) of the 'Pension Rules' casts certain obligation on the State Government which needs to be satisfied before such power is exercised. The essential pre-requisites to such exercise are:-

(a) The State Government has to be satisfied that the service of the pensioner was not thoroughly satisfactory; and

(b) There was a proof of grave misconduct on his part while in service.

It is thus only on a satisfaction shown by the State Government on examination of the service records of the pensioner on its non-satisfactory character which warranted interference or if the State Government was in possession of proof of grave misconduct against the pensioner while in service that after giving a reasonable opportunity of show cause against the proposed action such power can be exercised with exception that no such power can be exercised after expiry of 3 years from the date of the order sanctioning pension.

A plain look of the show cause at Annexure 1 simply charges the petitioner of alleged financial irregularity in the matter of drugs purchase during the period 2003-07 and 1.1.2008 to 31.1.2008 during his posting as District Animal Husbandry Officer, Muzaffarpur. It also makes reference to a Vigilance Case No.49 of 2011 instituted for the purpose.

In my opinion the very foundation for initiating any action under rule 139 (c) is lacking and for which I would straightaway turn my attention to the transfer order at Annexure 3 series bearing Memo No.580 dated 1.2.2008 placed on record by way of supplementary affidavit which confirms that the petitioner was posted as Incharge District Animal Husbandry Officer, Muzaffarpur only on 1.2.2008 and prior thereto he was posted as Assistant Director, Shukra Bhandaran Kendra, Bikramganj, Rohtas. Meaning thereby, the petitioner was not holding the charge of the District Animal Husbandry Officer, Muzaffarpur during the period in question rather he has taken over charge thereafter following the transfer order dated 1.2.2008 and the allegation of the financial irregularity in drugs purchase does not extend beyond 31.1.2008. In the uncontested position noted, which finds support from the materials on record, it stands confirmed that the petitioner has been wronged and unnecessarily dragged in the matter.

The second aspect of the matter which renders the entire proceeding illegal is its mechanical initiation. It is manifest from Annexure 1 that it is proceeding simply on the institution of the vigilance case that the proceeding in question has been initiated without the State bothering to record any satisfaction on the non-satisfactory service record of the petitioner or recording any proven grave misconduct as mandated under rule 139 (c) of the 'Pension Rules' or the lapse of period of more than 4 years. In fact, neither there is any satisfaction drawn by the respondents on the unsatisfactory service record of the petitioner nor do they discuss any proof of grave misconduct rather simply relying upon the vigilance case instituted in the year 2011 that the State has chosen to pin down the petitioner which is insufficient to invoke rule 139 (c) of the 'Pension Rules'.

The third aspect of the matter is that even though the provisions underlying rule 139 (c) of the 'Pension Rules' puts a limitation of 3 years from the grant of pension, that the petitioner superannuated on 31.8.2010, it is after a lapse of more than 4 years that the proceeding in question has been initiated vide show cause dated 11.9.2014 impugned at Annexure 1.

Before recording my conclusion on the illegality of the proceedings in its entirety, I am persuaded to refer to the opinion of the Supreme Court expressed in the case of **State of Bihar Vs. Mohd. Idris Ansari** since reported in **1995(2) PLJR (SC) 51**. The relevant portion of paragraphs 7 and 8 of the judgment runs under:

> "7. There remains the question whether any assistance can be derived by the appellant authorities from Rules 139 of the Rules. … …. … …. …".
>
> "8. So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired Government servant or not in the circumstances contemplated by the Rule. The first circumstance is that if the service of the Government servant is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the concerned Government servant while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139 under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. … … … … …"

The orders impugned are absolutely silent on the satisfaction of mandatory requirements.

For the discussions aforementioned, neither on merits nor on the satisfaction of essential pre-requisites to such exercise, the proceeding is sustainable and in result the entire proceedings initiated against the petitioner culminating in the order bearing Memo No.141 dated 7.6.2016 impugned at Annexure 2 is quashed and set aside.

The writ petition is allowed with a direction to the respondent concerned to release the pension of the petitioner together with its arrears within four weeks of receipt/production of a copy of this judgment.

No order as to costs.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24-05-2018
Transmission Date	NA