IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1206 of 2016

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Mithilesh Kumar son of Ganesh Prasad Singh resident of Road No. 5, West Ashok Nagar, P.S. - Kankarbagh, Town + District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Departmental Enquiry Commissioner, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Special Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Additional Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
6. The Deputy Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
7. The Under Secretary-cum-Presenting Officer, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
8. The Inspector of Registration Offices, Koshi Division, Saharsa.
9. The Accountant General (A & E), Birchand Patel Path, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv.
		Mr. Rakesh Kumar Sharma, Adv.
For the Respondent/s	:	Mr. Rakesh Ranjan, AC to AAG-12
For the AG	:	Mr. K.P.Gupta, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-08-2018

The petitioner in this writ petition prays for quashing of the order passed by the State Government in its Registration, Excise and Prohibition Department bearing Notification No. 2166 dated 13.5.2015, whereby in exercise of powers vested under Rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules') an order is issued for deduction of 20% from the pension admissible to the petitioner. A copy of the order is impugned at Annexure 1 to the writ petition. The petitioner is also aggrieved by rejection of his review application as communicated through Memo No. 4457 dated 5.10.2015 of the Special Secretary, Department of Registration, Excise and Prohibition, impugned at Annexure 2 to the writ petition.

The facts of the present case lie in a very narrow compass. The petitioner held a post of District Sub-Registrar and was proceeded against by drawing a disciplinary proceeding under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') by service of a charge memo vide resolution bearing No. 2328 dated 9.5.2012, impugned at Annexure 4 to the writ petition. Four charges were levelled against the petitioner, all of which revolved around the registration allowed by the petitioner in respect of two plots of land by putting them under separate category of 'commercial' and 'residential', though the two plots were situated adjacent to each other and the parties transacting were also the same. The charge memo alleged failure of the petitioner to make spot enquiry in the matter which allegedly led to a loss of Government revenue to the tune of

Rs.1,25,000/-.

The petitioner responded to the charges by denying the same but the matter led to a formal enquiry. During the pendency of the enquiry the petitioner superannuated on 31.12.2012. On superannuation of the petitioner the proceedings were converted into one under Rule 43(b) of 'the Pension Rules' vide resolution No. 2066 dated 25.3.2013. The Departmental Enquiry Commissioner submitted his report on 25.6.2014 upholding the charges which was forwarded to the petitioner by the Deputy Secretary of the Department through letter dated 16.7.2014 at Annexure 6 series. The petitioner filed his reply to the second show cause at Annexure 7 again explaining the position but the same has resulted in the order of penalty, impugned at Annexure 1, whereby 20% of his pension has been ordered to be deducted and the review application also rejected vide Annexure 2. Feeling aggrieved, the petitioner is before this Court.

Mr. Ramakant Sharma, learned Senior Counsel has appeared on behalf of the petitioner alongwith Mr. Rajesh Kumar Sharma, Advocate on record and while denying the charges levelled against the petitioner as without foundation, he has invited the attention of this Court to the report of the 'Vibhagiye Gahan Samiksha Samiti' enclosed at Annexure 8, whereby a three Member Committee consisting of the Officers in the rank of Assistant Inspector General of

Registration after taking note of the explanation of the petitioner as to categorization of the two plots, have recommended for acceptance of the explanation of the petitioner while observing that there was no evidence found in the report submitted by the Inspector, Koshi Division, of receiving illegal gratification by the petitioner. He submits in reference to the explanation of the petitioner present at Annexure 7 that it has been explained by the petitioner that since one of the two plots was situated within 50 feet of the main road that it was put under the 'commercial' category while the other plot was situated beyond the distance of 50 feet, hence it was put in the 'residential' category as per the guidelines in the Minimum Valuation Register (MVR).

He, in reference to the report of the Departmental Enquiry Commissioner submits that the factum of spot enquiry has been accepted by the Departmental Enquiry Commissioner who though has not accepted the explanation of the petitioner in respect of the other charges. He submits that the matter was enquired into by the Inspector, Koshi Division whose report dated 28.7.2010 is enclosed at Annexure 'A' to the counter affidavit and since it was confirmed by the Inspector that the categorization of the two plots was not correct that the petitioner referred the matter under section 47A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Stamp Act') whereupon the deeds were revalued.

In the backdrop of undisputed facts on record it is submitted by Mr. Sharma, learned Senior Counsel that even if there could be an error of judgment by the petitioner, his reference under section 47A of 'the Stamp Act' has resulted in rectification of the error whatsoever, and in absence of any charge that the categorization by the petitioner of the two plots was backed by a motivated mind and had been done for unjust gain, a bonafide error in discharge of duties cannot be termed as misconduct for inviting a penalty either under 'the Disciplinary Rules' or 'the Pension Rules'.

The argument has been contested by the learned counsel for the State, who submits that the matter concerns Government revenue and any act of a Government employee dealing with the public revenue if it leads to a loss, it would amount to misconduct. He submits that the explanation given by the petitioner was tested by the Departmental Enquiry Commissioner as well as Inspector in his enquiry and each of them have held that the categorization by the petitioner of the two plots lying in the same locality as 'commercial' and 'residential' was not correct and contrary to the guidelines present in the Minimum Valuation Register. It is argued that once the petitioner has accepted one of the plots as 'commercial', the second plot lying adjacent thereto, in no circumstance could have been categorized as ‘residential’ and which act of the petitioner has led to loss of Government revenue. It is questioning the very act of the petitioner while discharging obligation of a District Sub-Registrar which had occasioned in loss of revenue that the order impugned has been held justified.

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

In sum and substance the allegation against the petitioner is that he had exceeded his jurisdiction in categorizing one of the plots as ‘residential’ even when he has categorized the adjacent plot as commercial inviting higher valuation as per ‘MVR’ guidelines. According to the allegation, the petitioner had made such categorization without holding spot enquiry and his categorization of one of the plots as ‘residential’ has resulted in loss of Government revenue.

The proceedings though initiated under ‘the Disciplinary Rules’ was converted into one under Rule 43(b) of ‘the Pension Rules’ and ultimately the order has been passed under Rule 139 of ‘the Pension Rules’. In my opinion, somewhere down the exercise, the State Government in its Registration, Excise and Prohibition Department has got confused on the mode of exercise because having converted the disciplinary proceeding into one under Rule 43(b) of 'the Pension Rules', the order passed under Rule 139 of 'the Pension Rules' is erroneous because the pre-requisites for exercise of jurisdiction under Rule 43(b) and Rule 139(b), are entirely distinct. The provisions underlying Rule 43(b) of 'the Pension Rules' would confirm that it is where a pensioner is found guilty of grave misconduct or to have caused pecuniary loss, in a departmental or judicial proceeding so held, that the Government reserves a right of withholding or withdrawing pension or any part thereof, whether permanently or for specified period. Rule 139, on the other hand, is put to exercise in a different circumstance where the sanctioning authority is of the opinion that the service record of a Government servant is not satisfactory. The provisions underlying Rule 43(b) and Rule 139(b) being so self eloquent, it is rather surprising as to how such a serious lapse has been committed by the State Government while passing the impugned punishment order.

In the present case there is no dispute that the disciplinary proceedings initiated against the petitioner under 'the Disciplinary Rules' was converted into one under Rule 43(b) of 'the Pension Rules' and which has resulted in the punishment which though purports exercise of power under Rule 139 of 'the Pension Rules' but having noted the notification converting the proceedings into one under Rule 43(b) of 'the Pension Rules' I would treat the punishment order as one under Rule 43(b) of 'the Pension Rules' because the foundation for the penalty is the disciplinary proceeding and not the non-satisfactory service records.

It is now to be seen whether the charges levelled against the petitioner are capable of being upheld as an act of grave misconduct or of causing pecuniary loss to the Government for inviting the penalty in question.

As I have observed above, it is the assessment of the petitioner as a District Sub-Registrar regarding the two plots in question as 'commercial' and 'residential', which is being doubted on misconduct as also of causing loss of Government revenue.

In so far as the issue of loss of Government revenue is concerned, the very reference by the petitioner under section 47A of 'the Stamp Act', which fact is undisputed, puts at rest this charge, especially where a correctional exercise was carried out by the petitioner following the report of the Inspector at Annexure 'A'.

As regarding the charge of grave misconduct in discharge of statutory obligation is concerned, an identical issue came up for consideration before a Division Bench of which I was a Member arising from L.P.A.No. 435/2016 (**the State of Bihar & ors. v. Jitendra Kumar Singh**) and in which an Assistant Administrator, Patna Municipal Corporation was proceeded against for incorrect assessment of municipal tax in respect of a municipal holding resulting in alleged loss of Government revenue. According to the allegation, the annual rental valuation estimated by the said petitioner was contrary to the guidelines. He was proceeded against and was punished under 'the Disciplinary Rules'. I am persuaded to reproduce the opinion expressed by the Division Bench which would squarely apply to the facts accompanying the present case:

> "14. On merits, the writ petitioner is said to have passed the order exercising quasi judicial authority in the matter of fixation of annual rental value of a holding in 1996. The exercise of assessment of annual rental value by respondent no.1 was carried out in the light of an office order dated 13.1.1996 passed by the Administrator of PMC. The said order issued vide memo no. 122 dated 13.1.1996 authorized the Assistant Administrators under PMC, of their respective area to dispose of objections being raised against implementation of new municipal tax policy. The Assistant Administrators were specifically required to submit the disposal of objection before the Administrator, PMC immediately. We may, at this stage, notice the comments of Additional Municipal Commissioner (Establishment) as contained in his letter dated 2.1.2014 on the petitioner's explanation against Prapatra 'Ka' issued on 28.12.2006. It is evident from the last sentence of sub-paragraph (Ka) of paragraph 2 of the said letter that the Additional Municipal Commissioner blamed the then Municipal Commissioner (his superior officer) of having withheld

the file and of having not passed any order on disposal of objection by the respondent no.1. This is not in dispute that the final decision was required to be taken by the Municipal Commissioner on any assessment which was being done by writ petitioner, in compliance of the office order issued vide memo no. 122 dated 13.1.1996. There is no allegation against respondent no.1, of disposal of the objection in the manner he dealt as back with any ulterior motive or on extraneous consideration.

15. Mr. Giri, learned Senior Counsel, in our view, appears to be correct in his submission that even if the allegations in charge sheet are taken to be true, no case of misconduct is made out. The Supreme Court in case of **Union of India vs. J. Ahmad** reported in **(1979) 2 SCC 286** had proceeded to ascertain as to what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty. The Supreme Court observed that Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that the conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. The Court specifically held that a single act of omission or "error of judgment" would ordinarily not constitute misconduct. In a subsequent decision in the case of **State of Punjab vs. Ram Singh Ex Constable** reported in **(1992) 4 SCC 54** the Supreme Court explained misconduct of a Government servant

for the purpose of departmental proceeding and held that misconduct is delinquency in its performance and its effect on the discipline and the nature of the duty. The court clearly held that "mere error of judgment, carelessness or negligence in performance of duty" will not constitute misconduct. Paragraph 6 of the said decision is relevant which reads as under:-

> "6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour, unlawful behaviour, willful in character; forbidden act, a transgression of establish and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

16. Yet another Supreme Court's decision in case of Inspector Prem Chand vs. Government of N.C.T. Delhi and others reported in (2007) 4 SCC 566, considering the previous decision in case of Union of India vs. J. Ahmad (supra) lays down held that error of judgment or negligence simpliciter is not of misconduct.

17. It is evidence from the facts on record that the only allegation against the writ petitioner is of assessing annual rental value of a holding on the basis of old Rules in place of new Rules, which had come into force in 1994. While doing the assessment, he had relied on an earlier decision of the Administrator of PMC in respect of the same holding, which order was passed on 30.11.1994, the assessment in that case, though related to the period prior to coming into force of 1993 Rules. In the absence of any ulterior motive attributed against him, respondent no.1 could not be said to have misconducted himself. His assessment may be an error of judgment or mistake, in the absence of any allegation of ill motive, no misconduct can be said to be made out.

18. The view expressed by us finds support from the opinion expressed by the Supreme Court in a similar matter reported in **(1999) 7 SCC 409 (Zunjarrao Bhikaji Nagarkar vs. Union of India and others**), (paragraph 40 to 44)."

As I have noted above, the facts in the present case is identical to the case of **Jitendra Kumar Singh** (supra), inasmuch as even in the present case, the doubt is on the categorization by the petitioner of the second plot as 'residential' without doubting his categorization of the other plot as 'commercial'. The reason assigned by the petitioner to justify his categorization is that since one of the plots came within 50 feet of the main road that following the guidelines in the 'MVR' he categorized it as 'commercial' and since the other was situated at a distance of more than 50 feet that as per the guidelines in the 'MVR', he categorized it as' residential'. Apart from the disciplinary proceeding so held, an enquiry was also held by the Inspector of Registration whose report is enclosed at Annexure 'A' to the counter affidavit and is dated 28.7.2010 which is two years prior to the date, when a decision was taken to initiate a disciplinary proceeding against the petitioner vide resolution dated 9.5.2012. The report of the Inspector at Annexure 'A' exonerates the petitioner of any allegation on unjust gain or illegal gratification even though he has held that the categorization was not proper and whereupon the documents were referred by the petitioner under section 47A of 'the Stamp Act' for proper valuation.

I fail to appreciate that once the department, on doubting the categorization got an enquiry held by the Inspector, who submitted his report on 28.7.2010 disputing the categorization but exonerating the petitioner of doing the act for any unjust gain and which report persuaded the petitioner to refer the documents for proper valuation under section 47A of 'the Stamp Act', where was the need to draw a disciplinary proceeding against the petitioner, more particularly where there was no evidence that the act was backed by a motivated mind or had been done for unjust gains. In fact Annexure 8 to the writ petition is an opinion by the three Member Committee consisting of Officers in the rank of the Assistant Inspector General of Registration on the enquiry report of the Inspector dated 28.7.2010, which recommends acceptance of explanation by the petitioner taking note of his defence as also the fact that the documents had since been referred under section 47A of 'the Stamp Act' and that there was no evidence of receipt of illegal gratification.

The charges at Annexure 4 nowhere alleges pecuniary gain by the petitioner though it talks about alleged revenue loss but which allegation again losses its sting in view of the reference made by the petitioner under section 47A of 'the Stamp Act' for proper valuation in view of the report of the Inspector enclosed at Annexure 'A' to the counter affidavit. The legal position is well settled in this regard and every act, which may not be strictly in tune with the guidelines, is not a misconduct, particularly if it is backed by a possible explanation, which explanation again, is not to be written of, simply because it does not suit the disciplinary authority. Misconduct has been well recognized amongst others, as an act which is backed by ill will, conscious violation or done deliberately with a view to cause loss to the Government and provide advantage to someone including the author of the act himself but a negligent act, an error of judgment or a bonafide error simplicitor which is backed by a possible explanation, cannot be sweepingly held as an act of misconduct especially where the fact finding report exonerates the delinquent of any motivated action.

The discussion above would confirm that even if there was some error in discharge by the petitioner as a District Sub-Registrar, it has been corrected on receipt of the report by the Inspector and in view of exoneration of the petitioner by the Inspector in his report as well as the three Member Committee at Annexure 8 there was no occasion for the respondents to engage the petitioner in a disciplinary proceeding.

For the reasons so discussed, the order of penalty as contained in the resolution bearing Memo No. 2166 dated 13.5.2015 at Annexure 1, whereby 20% of the pension has been reduced together with the rejection of the review application communicated through letter dated 5.10.2015 at Annexure 2 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

The respondent concerned is directed to take steps for restoration of pension as well as for making payment of arrears of 20% deducted amount which exercise be completed within a period of three months from the date of receipt/ production of a copy of this order.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.09.2018
Transmission Date	NA