IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3427 of 2014

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Ramashray Prasad Ram Son of Late Khelawan Mochi, Resident of Village - Dighikala, P.S. Sadar Hajipur, District – Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Food & Consumer Protection, Bihar, Patna.
3. The Director, Food Department of Food & Consumer Protection, Bihar, Patna.
4. The District Magistrate, Arwal.
5. The Sub Divisional Magistrate, Arwal.
6. The District Supply Officer, Arwal.
7. The District Provident Fund Officer, Jehanabad.
8. The Treasury Officer, Arwal.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Subhash Prasd Singh, G.A. 3
		Mr. Ghanshyam, A.C. to G.A. 3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 04-04-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following reliefs:

> *" That this is an application for issuance of a writ in the nature of mandamus commanding and directing the Respondent authorities to pay the amount of retirement benefit, such as, Gratuity and Leave Encashment with admissible/statutory interest and further a direction be issued to start Pension with effect from the date of retirement and to pay the*

arrear and/or for issuance of any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case."

3. The petitioner was appointed as Supervisor, Non Formal Education in the year 1980 and thereafter upon the scheme coming to an end, his service was adjusted under the State and he joined as Supply Inspector in the year 2006. On 03.07.2008, Vigilance P.S. Case No. 39 of 2008 was instituted and he was imprisoned in which chargesheet was also submitted on 05.01.2009. In the meantime, the petitioner was placed under suspension by order dated 29.08.2008 with effect from 03.07.2008 and upon the petitioner being released from jail, his suspension was revoked on 15.06.2009. On 20.07.2009, the decision to initiate departmental proceeding against him was taken but soon thereafter the petitioner superannuated on 31.07.2009 and accordingly, on 03.09.2009, the proceeding was converted under Rule 43(b) of the Bihar Pension Rules, 1950. On 20.07.2009 itself, memo of charge was issued and Conducting Officer as well as Presenting Officer were appointed. The enquiry report was submitted on 16.01.2010 and thereafter, the petitioner was issued a second show cause. Before any final order could be passed, the present writ application was preferred and during the pendency of the same, on 03.04.2014, the final order in

the departmental proceeding was passed by which 100% pension was forfeited. A separate order was also passed by which it was decided that except for subsistence allowance for the period of suspension, no further payment would be made. The petitioner, by way of I.A. No. 5837 of 2015, sought amendment in the writ petition challenging the said orders. The Interlocutory Application was allowed by order dated 28.07.2015 and, thus, challenge in this present writ application is also to the orders contained in Memo No. 2306 dated 03.04.2014 and Memo No. 9457 dated 12.12.2014.

4. The basic charge against the petitioner with the allegation is that in his authorization to the P.D.S. dealers for lifting of foodgrains, the amount to be lifted was more than the amount for which they had deposited Bank draft; on the basis of the same, the Stock Issue Order by the petitioner resulted in the P.D.S. dealers lifting more foodgrains than for which they had submitted Bank draft and further the allegation is that the same has led to lifting of foodgrains which were worth Rs. 2,28,000/- and Rs. 2,35,500/- more than what had been paid for and lastly that he had violated Government directions and instructions which reflected negligence and dereliction of duty. In the enquiry, the charges were found to be true. However, while seeking bail, the concerned P.D.S. dealers deposited the aforesaid amount, on the basis of which they were

granted bail. In the final order passed, the petitioner's entire pension has been withheld and further an order has been passed that he is not entitled to any further payment except for subsistence allowance for the period of suspension which are essentially assailed in the present writ application.

5. Learned counsel for the petitioner submitted that he had not issued any order exceeding the amount for which the dealers had paid and whatever interpolation or illegality has been committed has been at the level of the P.D.S. dealers and not by him. It was further submitted that the same is reflected from the conduct of the P.D.S. dealers by which they had paid the amount at the time of their release of bail. Learned counsel submitted that except for aforesaid allegation, the petitioner has not been awarded any other punishment in his entire career and, thus, after his retirement, when he has no other source of income, stopping of 100% of pension is unjust, improper and arbitrary. He submitted that the Court may interfere on the quantum of punishment as the same is clearly disproportionate to the offence alleged. It was further submitted that the Court has jurisdiction to go into such aspect. In this connection, learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Collector Singh v. L.M.L. Ltd.** reported as **(2015) 2 SCC 410**, the relevant being at paragraph no. 9. With regard to the

punishment of holding him not entitled to any payment except for subsistence allowance for the period of suspension, learned counsel submitted that the law required that if any separate punishment is required to be given, it can only be done after giving show cause to the delinquent, whereas in the present case, no such show cause has been issued and straightaway the order has been passed. For such proposition, learned counsel relied upon a Division Bench order of this Court in the case of **Dinesh Prasad v. State of Bihar** reported as **2006 (4) PLJR 514**, the relevant being at paragraphs no. 8 and 9.

6. Learned counsel for the State submitted that merely because the P.D.S. dealers have deposited the amount which was the value of the excess foodgrains lifted by them would not amount to absolving the petitioner of complicity in the crime. However, with regard to the quantum of punishment being disproportionate, learned counsel was not in a position to justify such extreme order of withholding of 100% pension. Further, even on the issue with regard to requirement for a second show cause to the person before any adverse order relating payment for the period of suspension is concerned, learned counsel has not controverted the fact that no such show cause was issued and also that the law requires for the same.

7. Having considered the matter, the Court finds that the orders impugned cannot be sustained. The order withholding 100%

pension in the departmental proceeding relating to the memo of charge, in the facts and circumstances of the case, as enumerated earlier, do not justify such extreme punishment. The Court is conscious of the fact that under normal circumstances, the quantum of punishment being in the domain of the Disciplinary Authority, may not be interfered with, but in certain cases where the Court comes across orders of punishment which apparently reflect disproportionate exercise of power by the Disciplinary Authority, the Court cannot remain a mute spectator and is required to interfere.

8. In view of the facts and circumstances of the present case, the Court finds that such order cannot be sustained and accordingly, it is set aside. The authorities are required to pass a fresh order taking into consideration the nature of the allegation and what has been observed and stated in this order. Such order be passed within four weeks from the date of production of a copy of this order before the respondent no. 2. Coming to the order disentitling the petitioner for any further payment, except for subsistence allowance for the period of suspension, the same is also set aside. However, the same would not entitle the petitioner to full salary as the petitioner would be required to make a representation before the respondent no. 2, with regard to consideration for payment of his full salary and upon the same, a separate and reasoned order

shall be passed. Let the same be also done within the same period.

9. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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