

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4919 of 2013

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1. Pramila Devi Wife Of Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 2. Arvind Kumar Son Of Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 3. Tarun Kumar Son Of Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 4. Sanjay Kumar Son Of Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 5. Sunita Kumari D/O Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 6. Sarita Kumari D/O Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 7. Renu Kumari D/O Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna
 8. Vinit Kumar Son Of Late Dr. Rajendra Chaudhary R/O Shanti Niketan Colony, Near Bihar College Of Pharmacy, New Bailey Road, P.S.- Rukanpura, District- Patna

.... Petitioners

Versus

1. The State Of Bihar
2. The Principal Secretary, Health Department, Govt. Of Bihar, Patna
3. The Additional Secretary, Health Dept., Govt. Of Bihar, Patna
4. The Regional Deputy Director, Health Services, Govt. Of Bihar, Patna
5. The G.S.-Cum-C.M.O., Nalanda
6. The Civil Surgeon-Cum-Chief Medical Officer, Sasaram At Rohtas
7. The Deputy Secretary, Department Of Finance, Govt. Of Bihar
8. The Bihar Public Service Commission, Bihar Through Its Secretary
9. The Accountant General, Bihar..... Respondents

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Appearance :

For the Petitioner/s	: Mr. Binod Kumar, Advocate
For the State	: Mr. Chandrashekhar Singh, AC to GA 10
For BPSC	: Mr. Ranjit Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 30-01-2018

1. This petition under Article 226 of the Constitution of India has been filed against the order of punishment dated



30.01.2013 issued by Under Secretary, Health Department Government of Bihar by which punishment of forfeiture of 50% of pension has been passed against the deceased petitioner.

2. Briefly stated, the facts of the case is that petitioner joined Health service as Medical Officer on 12.04.1978 and superannuated on 31.01.2005 from the post of Deputy Director, Health Services, Bihar.

3. It has been contended by the learned counsel for the petitioner that he had unblemished service record. It has been submitted that two days prior to his retirement a memo of charge dated 28.01.2005 was served upon him for initiation of departmental proceeding under rule 55 of Bihar Civil Service (Classification, Control and Appeal) Rules, 2005 subsequently converted under Bihar Pension Rules after retirement on the basis of letter of Civil Surgeon-cum-Chief Medical Officer, Sasaram dated 05.08.2000 in which it was alleged that while petitioner was posted in the year 1998-99 and 1999-2000 a total expenditure of Rs. 53,52,348/- was made but voucher with respect to expenditure of Rs. 10 lacs was in the office and Rs. 98078/- was spent on telephone for office and residence when allotment was only Rs. 17000/ and rest amount was spent from Pulse Polio fund in anticipation of allotment of fund from the department. It has further been alleged that from 11.10.1999 to 30.07.2000 petitioner spent Rs. 2,49,814= 20 on Jeep and Generator of office and residence



for Diesel and repair work in anticipation of allotment of fund from department and same was spent from Pulse Polio fund.

4. Petitioner submitted his reply to the memo of charges and gave explanation regarding the expenses made during his tenure but disciplinary authority was not satisfied with said explanation and directed for initiation of departmental proceeding against the petitioner and appointed Director Health Services as Inquiry Officer and Civil Surgeon, Sasaram as a presenting Officer. Inquiry Officer conducted the inquiry and submitted Enquiry report with findings in which non of the charges were found proved on 30.01.2006 and send the copy to the disciplinary authority for further action. Enquiry Officer again submitted supplementary Enquiry report although same is not permissible yet in supplementary Enquiry report there is no finding as charge to be proved. However there were observation in respect of diversion of fund made by petitioner from pulse polio fund showing financial indiscipline but this was not the charge against petitioner and finally enquiry Officer has observed absence of voucher is serious matter and suggested for Audit and than only truth can come out.

5. Petitioner was given second show cause notice dated 01.11.2006 stating therein that on basis of charges being proved in supplementary enquiry report and finding and to submit his representation in respect of finding of supplementary enquiry report in



15 days in which charges against him has been proved and deduction from his pension is under consideration of Government. Although charges against petitioners were not said to be proved and without differing with the findings of Enquiry report the Disciplinary authority held that charges were proved.

6. Surprisingly after the first proceeding a second proceeding was also initiated under the Bihar Pension Rules on 25.09.2005 after nine months of retirement of the petitioner, a memo of charge under the Bihar Pension Rules was served upon the petitioner for the alleged misconduct of 1991 when he was posted as Deputy Superintendent Sub-Divisional Hospital, Hilsa and the same being barred by law and limitation under Bihar Pension Rules could not have been initiated against the petitioner for misconduct of 1991 as same cannot be gone into by the disciplinary authority after retirement of petitioner from service as same is barred under the Bihar Pension Rules, the second proceeding could not have been initiated and the whole proceeding from the issuance of memo of charge conduct of inquiry and order of punishment is illegal and nonest in the eye of law and as such cannot be sustained.

7. The Disciplinary authority after receipt of two enquiry reports simultaneous considered both the reports and formed a tentative opinion to impose punishment of reducing pension by 50% and sought opinion from the BPSC with respect to proposed



punishment on both enquiry reports but BPSC opined that since charges were not found proved by Enquiry Officer the proposed punishment were disproportionate and did not concurred with the proposal of Government in its meeting held on 14.03.2012.

8. The Disciplinary authority after considering both Enquiry reports and not accepting the opinion of BPSC passed an order of punishment reducing pension of employee by 50%.

9. After hearing the parties and considering materials available on record and in view of the fact that in first Enquiry report although there is no finding of enquiry Officer that charge has been proved yet without differing with the finding of Enquiry Officer the Disciplinary authority has held charges as proved and in second enquiry in which enquiry officer as well as disciplinary authority has held charges as proved but since initiation of proceeding itself was bad and void-ab-initio as such resultant order of punishment is void and even ignoring the opinion of BPSC, although it is not binding, order of punishment of forfeiture of 50% pension has been passed which is not sustainable in law and is accordingly set aside.

10. Normally after setting aside order of punishment court remits the matter to the Disciplinary authority to proceed from the state it stage vitiated but since employee is now no more and his widow has been substituted in his place and there is no allegation of any misappropriation or defalcation of fund but irregularity pertains to



accounting and auditing of expenditure only and it has come in enquiry proceeding that keeping voucher of expenditure particularly of Block level was not the responsibility of deceased employee as such this Court is not inclined to grant liberty to department to continue departmental proceeding from Stage it stood vitiated.

11. During the pendency of writ petition the petitioner died and the widow of petitioner has been substituted as petitioner in this case. Respondents are directed to sanction the full pension as well family pension to the widow and pay all the retirement dues including full gratuity leave encashment and other service/retiral benefits which was due to the petitioner treating as no proceeding was ever initiated against the deceased petitioner and same to be complied within three months from the date of production/receipt of order.

The writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

