IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13119 of 2001

==

1 Asha Devi Wife of late Shiv Chandra Bhulesh @ Shiv Chandra Thakur@ Shiv Chandra Thakur Bhulesh Resident of Mohalla- Ishakpur, Ward No. 13, Mahnar Bazar, Distt. Vaishali Bihar, Pin- 844506

2 Ranjeet Kumar Thakur Son of late Shiv Chandra Bhulesh @ Shiv Chandra Thakur@ Shiv Chandra Thakur Bhulesh Resident of Mohalla- Ishakpur, Ward No. 13, Mahnar Bazar, Distt. Vaishali Bihar, Pin- 844506

3 Rupam Kumari Daughter of late Shiv Chandra Bhulesh @ Shiv Chandra Thakur@ Shiv Chandra Thakur Bhulesh Resident of Mohalla- Ishakpur, Ward No. 13, Mahnar Bazar, Distt. Vaishali Bihar, Pin- 844506

4 Kamod Kumar Thakur Son of late Shiv Chandra Bhulesh @ Shiv Chandra Thakur@ Shiv Chandra Thakur Bhulesh Resident of Village- Arnia, Block- Jandaha, Distt. Vaishali Bihar, Pin- 844505

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Co-operative Govt. of Bihar, Patna.
3. Finance Commissioner-Cum- Secretary, Govt. of Bihar, Patna.
4. Secretary, Deptt. of Personnel Govt. of Bihar, Patna.
5. Registrar, Co-operative Societies, Bihar, Patna.
6. Joint Registrar, Co-operative Societies HB, Bihar, Patna.
7. Joint Registrar, Co. Op. Societies Kosi and Purnea Division, Saharsa.
8. Joint Registrar, Co.Op. Societies Patna Division, Patna.
9. District Co. operative Officer, Patna.
10. District Co.operative Officer, Madhepura.
11. Assistant Registrar, Co. Op. Societies Patna Circle, Patna.
12. Assistant Registrar, Co.Op Societies Katihar.
13. Assistant Registrar, Co.Op. Societies, Udakishanganj, Madhepura.
14. Assistant Registrar, Co.Op. Societies, Incharge Inspector Establishment, Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Anil Kumar Mukund, Adv.
Mr. Purnendu Keshav, Adv.

For the Respondent/s : Mr.Hari Shankar Roy, JC to AAG 1.

==

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 13-08-2018

The original petitioner had filed the present writ petition seeking quashing of the order of punishment dated 31.3.1998 as also the appellate order dated 3.8.2001.

2. The brief facts of the case are that a departmental proceeding was initiated vide resolution dated 22.8.1990 on the allegation of the petitioner being absent in an unauthorized manner from 11.5.1977 to 29.10.1988 as well as on the ground of gross misconduct.

3. The Enquiry Officer had conducted a departmental proceeding, but the petitioner had failed to participate, hence the enquiry report dated 8.12.1995 was submitted by the enquiry officer finding that all the charges have been proved. The Disciplinary authority had then passed the order of punishment dated 31.3.1998.

4. The learned counsel for the petitioner submits that since the petitioner had retired on 30.06.1993 and the enquiry report was submitted on 8.12.1995, the departmental proceeding could not be held after his retirement nor the order of punishment dated 31.3.1998 could have been passed. The disciplinary proceeding was required to be converted under Rule 43(b) of the Bihar Pension Rules, hence without any specific order of conversion of the proceedings to one under rule 43(b) of the Bihar Pension Rules, no further enquiry or order of

punishment should have been passed. The learned counsel for the petitioner has further submitted that even accepting that the proceeding would have continued after retirement, a proceeding under Rule 43(b) of the Bihar Pension Rules does not take into account any misconduct pertaining to the Government servant being absent from duty in an unauthorized manner. It is further submitted by the learned counsel for the petitioner that the disciplinary authority, by the impugned order dated 31.3.1998, has inflicted punishment, treating the period of absence from 11.5.1977 to 29.10.1988 to be the period which shall not be taken into account for any purpose i.e. for computation of salary, pension etc., which is contrary to the provisions contained in Rule 43(b) of the Bihar Pension Rule inasmuch as according to Rule 43(b) of the Bihar Pension Rules, the State Government can only withhold or withdraw the pension or any part of it, whether permanently or for a specified period and can further order for recovery from pension, of the whole or part of any pecuniary loss caused to government, if the pensioner is found to be guilty of gross misconduct in the departmental or judicial proceedings or to have caused pecuniary loss to Government by misconduct or negligence, during his service period.

5. I have heard the learned counsel for the petitioner and

perused the materials on record. I find that the disciplinary authority could have imposed the punishment of withholding or withdrawing a pension or any part of it or could have ordered for recovery from the pension of the full or part of the pecuniary loss caused to the government, but could not have directed for either treating the period of unauthorized absence i.e. the period from 11.5.1977 to 29.10.1988 as a period not to be counted for any purpose or could not have directed for non-payment of salary for the said period. In view of the well settled law as also the provisions contained in Rule 43(b) of the Bihar Pension Rule, the punishment imposed by the disciplinary authority, by the impugned order dated 31.3.1998 does not come within the ambit and scope of the punishment which is authorized to be imposed under Rule 43(b) of the Bihar Pension Rules, hence the punishment order dated 31.3.1998 passed by the disciplinary authority is quashed. Accordingly, the appellate order dated 3.8.2001 is also bound to fall, hence the same is set aside.

6. The writ petition is allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	