IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1279 of 2017
In
Civil Writ Jurisdiction Case No.296 of 2011

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1. The State Of Bihar
2. The Principal Secretary, Department of Road Construction Bihar, Patna.
3. The Engineer in Chief Cum Special Secretary Cum, Additional Commissioner Department of Road Construction Bihar, Patna.
4. The Joint Secretary Department of Road Construction Bihar, Patna.
5. The Deputy Secretary (Vigilance) Department of Road Construction Bihar, Patna.

... ... Appellant/s

Versus

1. Gangeshwar Prasad Sharma S/o Late Sadhu Saran Singh Resident of Mohalla-Lakhibagh, Police Station Muffasil (Manpur), District Gaya.
2. S.P. Keshwav, Departmental Enquiry Comissioner Personnel and Administrative Reform Department Bihar, Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. P.K.Verma, Sr. Advocate
For the Respondent/s : Mr. Sanjay Kumar, Advocate
Mr. Jay Prakash Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 05-12-2018

The present appeal has been preferred by the State of Bihar against an order dated 26.07.2016 passed by a Bench of this Court in C.W.J.C. No. 296 of 2011, whereby and whereunder the writ application filed by Gangeshwar Prasad Sharma, respondent no. 1 herein, has been allowed by the learned Single Judge and while doing so, the Court set aside the penalty imposed upon the petitioner, in the form of forfeiture and reduction of pension by 10 per cent.

2. Learned counsel for the Appellant submitted that the writ petitioner being aggrieved by the order bearing Memo No. 9610(S) dated 30.06.2010, whereby he had been imposed a penalty of forfeiture and reduction of his pension by 10 percent by the State Government in exercise of power vested under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the "Rules), preferred the writ petition seeking relief from the Court.

3. It was submitted that the petitioner was holding the post of Executive Engineer, Road Construction Division, Nawada when charges were framed against him vide Memo dated 22.10.2005, levelling 9 charges on different counts. On enquiry, it was held vide Annexure-2 dated 24.06.2009, that the petitioner has been found partially guilty of charge nos. 2 and 4 while charge no. 6 was held in its entirety. However, the petitioner superannuated on 31.05.2008 and thus, the proceeding was converted into one under Rule 43(b) of the Bihar Pension Rules, 1950. A second show cause notice (Annexure -3) was served on the writ petitioner/respondent asking him to show cause against

the proposed penalty. The petitioner responded to the same and filed his reply thereto, but the State Government vide Memo No. 9609 dated 30.06.2010 imposed a penalty of forfeiture of 10 percent pension after due consideration of the enquiry report. The aforesaid decision was also approved by the Bihar Public Service Commission.

4. Learned counsel for the Appellant further submits that being aggrieved by the aforementioned order of punishment, the delinquent-writ petitioner came to this Court under Article 226 of the Constitution of India which was entertained, despite the alternative remedy being available to the petitioner. Learned counsel for the Appellant submitted that the learned Single Judge has proceeded to allow the writ application and set aside the order of punishment as against the writ petitioner as he has proceeded to interpret Rule 43(b) of the Bihar Pension Rules erroneously stating that since the State suffered no pecuniary loss, and that the findings of the enquiry with regard to charge nos. 2, 4 & 6 were based on no evidence. Moreover, the three charges did not disclose any grave misconduct and only indicated willful negligence by the public officer and did not concern any financial loss to the government. As such, no penalty could have

been imposed against the delinquent. It was pointed out that the learned Single Judge had held that the State had suffered no consequential loss and even after charge nos. 2, 4 & 6 have been proved in a departmental enquiry related to making payment to the contractors despite their failure to carry out the work of construction of road between Gaya to Nawada (KM 32 to 34) under agreement no. 3, 30F-2 of 1996-97, 97-98 and charge no. 4 relates to the same road (KM 38 to 44) to carry out the measurement of the work done under the agreement and, releasing the payments without conducting such measurement whereas charge no. 6 related to the Gaya- Tungi-Hisua road (KM 32 to 44) and having released payments to the contractor without imposing penalty for the breach of the time frame so prescribed under the agreement.

5. The further ground urged by the appellants is that the Court was misguided in its interpretation of Rule 43(b) of the Bihar Pension Rules as it had held that the charges proved against the writ petitioner would not amount to grave misconduct as no financial loss had been suffered by the Government as nowhere in the pension rules, Rule 43(b) finds the application of the provision to only charges where financial loss has been suffered as is

evident from Rule 43(b) of the Bihar Pension Rules, which is quoted hereinbelow :

> ***Rule 43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:***
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> ***Provided that ………………………...”***

6. Learned counsel for the Appellant thus, submitted that considering the language as contained in Rule 43(b), the learned Single Judge could not have assumed that the Rule does not envisage a condition of financial loss for defining grave misconduct as imposed in Rule 43(b) and that there could be several charges which may not result in financial loss but still be grave in nature so as to attract the stringent provision under Rule 43(b) of the Bihar Pension Rules. It was thus submitted that the punishment order was founded on the findings of the Departmental Enquiry Officer, who had found the charge no. 6

true, charge nos. 2 and 4 partly proved, which was grave in nature and interference in the order of punishment is against the judicial mandate given by the Hon’ble Apex Court in a catena of decisions. He, thus, submitted that the decision arrived at by the learned Single Judge setting aside the order of punishment was on misappreciation of law and such grave charges having been proved at the departmental enquiry, the interference under Article 226 of the Constitution of India was wholly unwarranted and fit to be set aside.

7. It was also submitted that the writ petitioner had also not been able to demonstrate as to whether there was any procedural lacuna in conduct of the departmental proceedings which would necessitate interference under the extra ordinary writ jurisdiction. The order of punishment was passed after due enquiry in accordance with law and after arriving at a finding the order of punishment was recommended and approved by the Bihar Public Service Commission and further affirmed by the State Government.

8. On the last occasion when the matter was taken up, this Court *prima facie* noticed the existence of some misconception and as such called upon the respondents, who had

appeared to resist the appeal. Accordingly, this Court has also heard learned counsel for the respondent-writ petitioner who has taken us through the charges levelled against the writ petitioner. A closer look at the charges reveal that the respondent had been in office as Executive Engineer between January 1999 to March 1999 when the payments were released in favour of the contractors. It appears on a scrutiny of the enquiry report that the payments were released on the letter of the Superintending Engineer since the same is based on the measurement book as endorsed by the Assistant Engineer. It thus, appears that the whole issue revolves around whether even after the charges having been proved, the petitioner could be held guilty of grave misconduct so as to have caused pecuniary loss to the Government by misconduct/negligence. Had the action of the writ petitioner been negligent and if such negligent action had caused pecuniary loss to the government, he could have been considered to have been guilty of grave misconduct but merely on the basis of inefficient conduct, the petitioner could not have been said to have committed grave misconduct resulting in causing pecuniary loss to the Government and, therefore, on our consideration of the entire gamut of circumstances the proceedings after superannuation was not required.

9. Having perused the enquiry report, it appears that the contract had been subsisting since the 1997-98 and request for extension of time had been put in before the department, but not specifically extended by it, yet the work had been continuing. It further appears that on the recommendation of the Assistant Engineer, who had made the measurement, the payments were recommended by the petitioner and approved by the Superintending Engineer. Nevertheless the charges against the writ petitioner show that he had made payment beyond the time without imposing fine, and taking this to be the act of misconduct, the Enquiry Officer has indicted the writ petitioner.

10. In the wake of such facts and circumstances and in our considered opinion, it would not necessarily be enough to indicate that the petitioner was guilty of misconduct, as the learned Single Judge has clearly distinguished grave misconduct from lack of efficiency. In doing so, learned Single Judge has referred to **P. Ramanatha Aiyar's Law Lexicon,** where misconduct has been defined as thus:-

> ***"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not***

> ***necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statue which is being construed."***

11. In view of such facts and circumstances, the learned Single Judge has rightly inferred that the writ petitioner could not be said to have been guilty of misconduct, leave alone grave misconduct nor had he been willfully negligent so as to cause financial loss to the State Government. After perusal of the enquiry report, we are of the considered opinion that the gravity of charge is not such as to attract the rigours of Rule 43(b) and thus, the punishment order saddling the petitioner with forfeiture of 10 percent is uncalled for and excessive.

12. Moreover, the enquiry report also did not reflect the extent of loss caused to the State and, therefore, for this reason also the imposition of the penalty on the petitioner in the form of forfeiture of pension @ 10 percent, cannot by any stretch of imagination, be substantiated. As such, we find and hold that the learned Single Judge has in conformity with the settled principles of law and has found the imposition of penalty on the

petitioner in the form of forfeiture of pension after continuation of the proceedings, post retirement, to be wholly unwarranted and unsustainable.

13. After having heard learned counsel for the parties and upon due consideration of the entire facts and circumstances of the case, we do not find any infirmity in the order of the learned Single Judge. Thus, the judgement dated 26.07.2016 passed in C.W.J.C. No. 296 of 2011 is upheld.

14. The Appeal is devoid of any merit and is accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

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