

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21806 of 2014

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1. Jyotish Kumar Bhagat Son of Late Ram Prasad Bhagar Resident of Mohalla-Goshala , P.S.- Katihar, District-Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Revenue, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Katihar, District-Katihar.
4. The Additional Collector, Katihar, District-Katihar.
5. The Establishment Deputy Collector, Katihar.
6. The Circle Officer, Balrampur, District-Katihar.
7. The Circle Officer, Falka, District-Katihar.
8. The Circle Officer, Kadawa, District-Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Siya Ram Shahi, Indu Bhushan &
Sunil Kumar

For the Respondent/s : Mr. Kamlesh Kishore, AC to SC 12

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 30-08-2018

Heard learned Counsel for the petitioner and the learned Counsel for the State.

2. Originally the writ petition was filed challenging the order of the Collector, Katihar dated 25.7.2014 bearing Memo No. 1088, to the extent it directs that for the period of suspension i.e. between 8.1.2008 to 26.2.2012, the petitioner would not be entitled to any allowance or salary.

3. The brief facts giving rise to the said order is that alleging some misappropriation in advances and funds by the petitioner while he was posted as Revenue Karmchari under Balrampur Circle, a proceeding was initiated against him. The petitioner was not treated fairly in the matter of conduct of proceeding, alleging procedural violation he had approached this Court by filing CWJC No. 17303 of 2008. The writ petition was allowed under order, dated 6.8.2010, and the matter was remanded to the stage of charge memo since the initiation of the



proceeding was not found to be in accordance with law.

4. The respondents under the liberty granted by this Court proceeded against the petitioner afresh. The petitioner again alleged procedural violation in the matter of conduct of proceeding against him and approached this Court by filing his second writ petition (CWJC No. 14630 of 2001). Again the petitioner's writ petition was allowed under order, dated 2.2.2012, reinstating the petitioner. The respondents were allowed liberty to proceed afresh in accordance with Rule 17(4) of the Bihar CCA Rules by issuing a fresh charge memo. Thereafter the petitioner was reinstated on 25.2.2012. The sequence of event subsequent upon his reinstatement need not be considered in detail since the petitioner was again proceeded against and during currency of the proceeding, he attained the age of superannuation on 30.6.2013.

5. Subsequent thereupon, the petitioner himself gave an application to the authorities on 21.4.2014 in which the petitioner owned up the loss and liability of Rs. 13,25,096.00, apparently in an effort to buy peace. He gave his consent in view of the intervening circumstances of superannuation that the said amount of alleged loss to the government may be recovered from his pensionary dues. The consent however, came with the rider that his dues for the period 8.1.2008 to 28.2.2012 should not be interfered with. The same was also due to the petitioner in view of his reinstatement in terms of the order passed in CWJC No. 14630 of 2011.

6. Relying upon the said consent, the respondent authorities issued order, dated 10.5.2014, bearing Memo No. 591, under the signature of Collector, Katihar. The Collector under the said order directed recovery of the amount of Rs. 13,25,096.00 proportionately from his gratuity as well as pension. The said order has also been challenged now at the stage of hearing in this proceeding by filing I.A. No. 6453 of 2018. This Court is not inclined to entertain the petitioner's challenge to the same.

7. It is submitted by the learned Counsel appearing for the



petitioner that Rule 139(C) does not contemplate such an order. He submits that the order, dated 10.5.2014, is not in accordance with Bihar Pension Rules.

8. Submissions made by the Counsel for the petitioner is that when Rule does not provide for such action, even consent of the petitioner cannot confer such a jurisdiction upon the authority to make such deduction. Merely for the fact that the respondents have issued an order mentioning a particular provision under the Bihar Pension Rules, the petitioner in opinion of this Court cannot take advantage of the same.

9. The test is that even if such provision has not been mentioned in the order and when the petitioner has himself owned responsibility and given consent for recovery of the amount from his pensionary dues, can he be permitted to turn around and challenge the consequent action thereto by filing writ petition and that too four years after the recovery has already been made?. The answer would be in the negative. Consent has been given by the petitioner in his application, dated 21.4.2014, which is binding on the petitioner. Relying upon his application owning responsibility for the said loss to government, respondents have acted upon the same by issuing the order, dated 10.5.2014, bearing Memo No. 591, directing for recovery of the said amount of alleged loss caused to the government. Having acted upon the said consent the respondents also cannot be permitted to subsequently issue an order imposing any further liability upon the petitioner by denying him his dues for the period of suspension i.e. 8.1.2018 till 28.2.2012.

10. It has rightly been pointed out by the learned Counsel for the petitioner that before issuing such an order depriving the petitioner of his dues for the said period, no proceeding whatsoever has been conducted against the petitioner. Denial of the said dues as also recovery, contrary to the consent granted by the petitioner on 21.4.2014, which was acted upon by the respondent authorities by issuing Memo no. 591, dated 10.5.2014, is not sustainable in law. The order has been passed without hearing the petitioner or conducting any proceeding known to law, but



visits the petitioner with civil consequence of depriving him of his dues in respect of period 8.1.2008 to 28.2.2012 which cannot be done.

11. In view of the aforesaid circumstances this Court would quash the order, dated 25.7.2014, bearing Memo No. 1088, to the extent it directs that the petitioner would not be entitled to any dues for the period of suspension i.e. 8.1.2008 to 28.2.2012.

12. As a result of quashing of the order, the authorities would be obliged to calculate the dues admissible to the petitioner for the said period and pay the same to him. Let the consequential action be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

13. The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.09.2018
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