IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19980 of 2016

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Smt. Pratima Singh, Retired District Program Officer, Wife of Shri Parmanand Pandey, Resident of Mohalla- Laxminarayan Nagar, Bela, P.O.-Ram Krishna Ashram, Bela, P.S.-Mithanpura, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Principal Secretary, Department, Department of Social Welfare, Government of Bihar, Patna.
3. The Chief Controller of Accounts, Finance (Audit) Department, Government of Bihar, Patna.
4. The Special Secretary, Department of Social Welfare, Government of Bihar, Patna.
5. The Joint Secretary, Department of Social Welfare, Government of Bihar, Patna.
6. Shri Amarnath Mishra, Retired then the Joint Secretary, Department of Social Welfare, Government of Bihar, Patna.
7. The District Magistrate, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate with
Ms. Vagisha Pragya Vacaknavi, Adv.

For the Respondent/s : Mr. Krishna Kant Singh, AC to SC-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-06-2018

The petitioner prays for quashing of the notification bearing Memo No.3374 dated 28.7.2016 of the State Government in its Social Welfare Department, whereby and whereunder the petitioner has been punished with an order of recovery of Rs.50,49,542.50 to be made from her movable/immovable properties by invoking the provisions of the Bihar and Orissa Public Demands Recovery Act (hereinafter referred to as the 'PDR Act'). A copy of the notification is impugned at Annexure P/1 to the writ petition.

The petitioner also questions the resolution bearing Memo No.368 dated 31.1.2013, whereby the proceedings were initiated against the petitioner under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Disciplinary Rules'), by service of a charge memo, a copy of which is impugned at Annexure P/22 to the writ petition.

The petitioner has questioned the resolution bearing Memo No.4736 dated 23.9.2013 whereby the Enquiry Officer and the Presenting Officer were appointed, a copy of which is enclosed at Annexure 3 to the writ petition.

It is on the basis of an audit report submitted in respect of the Child Development Project Officer, Runni Saidpur, district Sitamarhi for the financial year 2003-04 to 2004-05 bearing Audit Report No.101/2007-08 listing alleged financial irregularities against the petitioner in the capacity of Child Development Project Officer that the respondent State in its Social Welfare Department woke up from slumber to initiate a disciplinary proceedings against the petitioner under the provisions of the 'Disciplinary Rules' on the date of superannuation of the petitioner i.e. 31.1.2013 by service of a charge memo enclosed with the resolution of the State Government bearing Memo No.368 dated 31.1.2013, a copy of which is enclosed at Annexure P/2 to the writ petition. A plain reading of the charge memo would confirm that the foundation for the charge lies on the audit report exclusively for that is the only evidence referred to in the charge memo.

According to the respondents, despite service of the charge memo issued under the ‘Disciplinary Rules’, the petitioner failed to respond thereto and thus an ex-parte enquiry report was submitted by the Additional Secretary –cum- Conducting Officer, Social Welfare Department on 28.4.2015 vide Annexure P/4 to the writ petition. A second show cause notice was served on the petitioner to which she filed her reply on 23.6.2015 vide Annexure P/22 and which has resulted in the punishment order impugned directing recovery of an amount of Rs.50,49,542.50 stated to be the amount misappropriated by the petitioner while serving as a Child Development Project Officer, Runni Saidpur, District- Sitamarhi.

It is not in dispute that following another disciplinary proceedings initiated against the petitioner for alleged misconduct during her tenure as Child Development Project Officer, Dholi, that she has been visited with the punishment of forfeiture of 90% of her pension vide notification bearing Memo No.3373 dated 28.7.2016 of the State Government in purported exercise of powers vested under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the ‘Pension Rules’) , a copy of which is at Annexure ‘A’ to the counter affidavit of the respondents and which punishment order is pending adjudication in CWJC No.8002 of 2017 as manifest from the statement made in paragraph 5 of the supplementary affidavit filed on behalf of the petitioner.

Mr. Giri, learned senior counsel appearing on behalf of the petitioner while questioning the entire proceedings on merits, has questioned the punishment order on grounds noted in the order recorded on 15.05.2018 which runs under:

> “ … … …. … …. …
> (a) No evidence either oral or documentary was led to support the charge;
> (b) Although the petitioner was not intimated about the proceeding nor the charge memo was served on her but even if the proceedings were held ex-parte, it was the duty of the Presenting Officer to support the charge with cogent material as well on the Enquiry Officer to record his finding on some evidence, which is missing;
> (c) The punishment imposed vide Annexure- 1 is stranger to Rule 43 (b) of the Bihar Pension Rules which though envisages the recovery of loss from the pension of the petitioner but not beyond; and
> (d) The order of the Disciplinary Authority does not answer the single issue raised in the second show cause reply filed by the petitioner, a copy of which is placed on record at Annexure- P/22. …. ….”

The learned State Counsel was directed to respond to the issues raised by Mr. Giri which went to the root of the matter as it questioned the very jurisdiction exercised by the State in imposing a punishment in purported exercise of powers under the ‘Pension Rules’ which nowhere conceived of a recovery from the moveable/immovable assets of a delinquent by invoking the provisions of the ‘PDR Act’.

Mr. Krishna Kant Singh, learned Assisting Counsel to Standing Counsel No.10 though has canvassed rather vigorously to pin down the petitioner on the seriousness of the allegation which was founded on the financial irregularity and abuse of powers yet could show no provision under the ‘Pension Rules’ which would empower the State to pass an order of recovery from the assets of a delinquent in purported exercise of powers under the ‘Pension Rules’ by resorting to the mechanism under ‘the PDR Act’.

I have heard learned counsel for the parties and I have perused the records.

The order of punishment is not sustainable on many a grounds and I am persuaded to hold that the entire responsibility for such failure lies on the shoulder of the authorities responsible for the delay in initiation of such proceedings and conduct thereof, even when, the report was submitted almost 5 years of the date when the proceeding was initiated. A mere look at the charge memo at Annexure P/2 would confirm that it entirely rests on the audit report submitted in and around the year 2008. Mr. Giri, learned senior counsel appearing for the petitioner has referred to the reply filed by the petitioner at Annexure P/5 to submit that each of the objections raised in the Audit Report No.101/2007-08 has been explained by the petitioner way back on 5.4.2008 and did not result in any proceeding rather it is after the delay of 5 years and on the date when the petitioner was superannuating that hurriedly the proceedings in question was initiated under the 'Disciplinary Rules'.

A cursory glance of the charge memo would confirm that no oral evidence has been relied upon in the charge memo except the audit report. The enquiry report is at Annexure P/4 and it is on the basis of the allegations present in the charge memo as well taking note of the opinion of the Presenting Officer that the Enquiry Officer has submitted his report without bothering to ask the Presenting Officer to support the charge by leading evidence on alleged financial misappropriation. The enquiry report confirms that no evidence was led during the enquiry which was exclusively resting on the audit objection. The petitioner was served with the second show cause and though she rebutted each of the allegations individually through an exhaustive reply at Annexure P/22 but has been visited with the order impugned which neither discusses the issues raised nor qualifies for a punishment order under the 'Disciplinary Rules' or comes within the ambit of rule 43(b) of the

'Pension Rules'.

Mr. Giri though had questioned the very initiation of the disciplinary proceedings as according to him, a mere issuance of charge Memo on 31.1.2013 vide Annexure P/2 would not satisfy the requirement of initiation of disciplinary proceedings as held in the judgment of the Division Bench since reported in **2000(2) PLJR 765 (The State of Bihar vs. Man Bahadur Mahto)** and the Division Bench judgment reported in **2009(1) PLJR 816 (State of Bihar Vs. Sachidanand Singh)** but in my opinion the very judgments relied upon by Mr. Giri answers the issues so raised. The issuance of the charge memo on 31.1.2013 which is the date of superannuation of the petitioner cannot be faulted. The proceeding was correctly initiated and since the petitioner had superannuated on the said date, it translated into a proceeding under rule 43(b) of the 'Pension Rules', which again suffers no infirmity as also held in the judgments so referred.

This would bring this Court to the other issues raised by Mr. Giri as noted above and it would not detain this Court to hold that since undisputedly no evidence either oral or documentary was led during the enquiry proceedings, the order impugned at Annexure P/1 is resting on no evidence. In fact the punishment imposed vide Annexure P/1 is neither supported by the 'Disciplinary Rules' nor is the State empowered to pass such order in purported exercise of powers under rule 43(b) of the ‘Pension Rules’.

This Court has been routinely noticing the callous discharge of powers by the State while passing orders in disciplinary matters by merely taking note of the allegations, without bothering to meet the objections raised by the delinquent. The case in hand is nothing different for a plain reading of the order of punishment at Annexure P/1 would confirm that it is simply being swayed by the issues present in the audit objection and without noting the exhaustive rebuttal of the petitioner to the second show cause at Annexure P/22 as also the earlier explanation present at Annexure P/5 that the State has found an amount of Rs.50,49,542.50 recoverable from the petitioner and having opined thus the order has been passed for its recovery from the movable/immovable assets of the petitioner by invoking the provisions of the ‘PDR Act’.

Rule 43(b) of the ‘Pension Rules’ is self eloquent and the State Government has been reserved with the jurisdiction of withholding or withdrawing the pension of a delinquent either in part or totally, whether permanently or for specified period, for any grave misconduct or pecuniary loss caused by the delinquent but the said statutory prescription nowhere empowers the State Government either to move beyond the pension amount or to invoke the ‘PDR

Act' or to interfere with the assets of the delinquent.

As held, the enquiry report is resting on no evidence and the order of the State Government bearing Memo No.3374 dated 28.7.2016 impugned at Annexure P/1 is resting on no material except bald allegation which has been mechanically accepted without meeting or discussing the objections raised by the petitioner thereto. Neither on merits nor on the jurisdiction exercised, is the order bearing Memo No.3374 dated 28.7.2016 impugned at Annexure P/1 sustainable and is accordingly quashed and set aside.

The writ petition is allowed.

Let the records retained by Mr. Krishna Kant Singh, learned Assisting Counsel to Standing Counsel No.10 be returned to the department concerned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22-06-2018
Transmission Date	NA