IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10130 of 2018

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Ganesh Jha, son of Late Sita Ram Jha, resident of Mohalla- Mithila Colony, P.O.- Nasriganj, P.S.- Danapur, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Director-in- Chief, Health Services (Administration), Department of Health, Government of Bihar, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Principal Secretary, Patna Medical College, Patna.
5. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Adv.
Mr. Akshansh Ankit, Adv.

For the State : Mr. N.P. Yadav, SC-23
Ms. Vijaya Laxmi Srivastava, AC to SC-23

For the AG : Mr. Binod Kumar Labh, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

Date : 11-12-2018

Heard learned Senior counsel Mr. Ashok Choudhary appearing on behalf of the petitioner, Mr. N.P. Yadav, SC-23 along with Ms. Vijaya Laxmi Srivastava AC to SC-23 appearing on behalf of the State as well as Mr. Binod Kumar Labh, counsel appearing on behalf of the Accountant General, Bihar, Patna.

Petitioner in the present writ application seeks quashing of Memo No. 1061 (4) dated 19.10.2016 issued by the respondent no. 2, the Director-in-Chief (Administration), Health Services, Department of Health, Government of Bihar, Patna as contained in Annexure-8 whereby and whereunder 5% of the pension of the petitioner has been forfeited under Rule 139(b) of the Bihar Pension Rules, 1950. The petitioner also seeks quashing of Memo No. 745(4) dated 30.06.2017 as contained in Annexure-9 wherein the appeal filed by the petitioner has been rejected.

The petitioner retired from the post of Librarian in Patna Medical College, Patna on 31.07.2010. Petitioner had earlier approached this Court for payment of his retiral dues in C.W.J.C. No. 22305 of 2002 wherein vide order dated 21.03.2013, the matter was disposed of to conclude the Audit inquiry within a period of six months and clear balance retiral dues of the petitioner. The petitioner has enclosed the Audit report of the year 2013-14, which is Annexure P-5, which bears no date. From the Audit report, it appears that a list of librarians has been noted from the year, 1967 till the year of audit. It also appears that Audit of the library of the Patna Medical College and Hospital has been done for the first time. The Principal, Patna Medical College was the authority with regard to the

Administration and Finance relating to the library. Part-1 of the Audit report deals with medical books, some of which has been found to be lost and has been quantified to be 5552 and its value in terms of money has been assessed as 19,16,388.00. Apart from the Medical books, medical journals have been found to be lost, which have been quantified for a sum of Rs. 224153/-. It has also been stated in the Audit report that there was no evaluation done at any point of time earlier and the librarians posted during the Audit period, have not been found to have any financial power.

From a plain reading of the Audit report, it appears that the Audit has been conducted for the first time but none of the librarians have been specifically named to have caused the loss. However, the petitioner was served with a show cause notice on 24.02.2016 as contained in Annexure-P/6 to reply for loss of books and journals.

The petitioner filed his reply (Annexure-P/7) stating therein that he had handed over the charge of books and journals upon his retirement in the year 2010 itself. Having found the reply, unsatisfactory punishment order dated 19.10.2016 was issued forfeiting 5% of the pension of the petitioner. The appeal preferred by the petitioner before the

Director in Chief (Administration) Health Services, Bihar, Patna was dismissed on 30.06.2017 which are under challenge.

Learned Senior counsel for the petitioner submits that the Audit report had not arrived at any finding against the loss of books and journals against the petitioner as Audit was conducted for the first time in the year 2013-14 relating to the period 1925 to 01.08.2010 till 2013-14. While no verification was available between 1925 to 05.09.1967 from 06.09.1967 till the date of inquiry at least 5 librarians including the petitioner was posted as librarian in the Patna Medical College and Hospital. He submits that the punishment order could not have been issued as charges were not proved against the petitioner as the Audit report has taken note of the fact that earlier at no point of time there was a calculation and evaluation of the books which was done for the first time in the year, 2013-2014. He further submits that the punishment order of deduction of 5% from pension of the petitioner has been passed under Rule 139(b) of the Bihar Pension Rules, and in view of the decision of **Chandreshwar Prasad Sinha Vs. State of Bihar & Anr. since reported in (2001) 9 SCC 369,** para-7, no amount of pension could not have been forfeited as the petitioner was not proceeded under Rule 43(b) of the Bihar Pension Rules. He submits that no disciplinary proceedings has been initiated or conducted against the petitioner as such the deduction of 5% of pension under Rule 139(b) of the Pension Rules is not sustainable. No charge was proved against the petitioner hence the loss so caused could not be attributable against the petitioner hence the orders under challenge is fit to be quashed.

Learned counsel appearing on behalf of the State on the other hand submitted that an Audit was conducted by the Audit team in the year 2013-14 and it was found that medical books worth Rs. 19,60,388/- had been lost and medical journals worth Rs. 2,24,153 were also not found. Petitioner was posted as librarian between 01.04.2002 to 08.11.2004 and between 19.10.2006 to 31.07.2010. Hence, quantifying the loss 5% pension has been forfeited from the pensionary benefits of the petitioner under Rule 139(b) of the Bihar Pension Rules. It has further been submitted that the petitioner was negligent in his duties for which way back in the year 2006 the petitioner was suspended which is Annexure-A to the counter affidavit. However, counsel for the State could not reply as to what amount has been quantified and proved to be lost for which the petitioner could be punished.

Heard the parties.

Petitioner retired as Librarian from the Patna Medical College and Hospital on 31.07.2010. The Audit report is of the year 2013-14 wherein no financial irregularity has been alleged against the petitioner. In pursuance to the Audit report no proceedings under Section 43(b) has been initiated or conducted against the petitioner and as such no charges have been proved against the petitioner. It is only on the basis of the Audit report that prima facie the charge has been said to be proved against the petitioner. Hence 5% pension has been forfeited by way of punishment under Rule 139(b) of the Bihar Pension Rules.

The Apex Court in the case of **State of Bihar & Ors. Vs. Md. Idrish Ansari since reported in (1995) Suppl. 3 SCC 56** has held that Rule 139(a) and 139(b) can be invoked only if the delinquent has been found guilty in departmental proceeding under Rule 43. The said proposition has been upheld in the case of **Chandreshwar Prasad Sinha** (supra).

Admittedly, the petitioner was not proceeded departmentally under Rule 43(b) or even before/after his retirement. The audit report pertained to the year 1925 to 2013-14. Although from the Audit report, it appears that between 1925 to 05.09.1967 the names of the Librarian posted in the

Patna Medical College and Hospital was not available neither any records with regard to up keep of medical books and journals was available, but Librarians were posted between different period of time between 06.09.1967 till the date of the audit which was some time in the year 2013-14. The Audit report simply enumerates the loss of medical books and medical journal and also specifies that the Principal of the concerned College is an overall incharge vested with financial powers. How the charges, without framing of charges, initiation of departmental proceedings, that too after more than six years of retirement, could the punishment order be passed? In absence of departmental proceeding having ever been initiated or conducted against the petitioner and without any quantification of the loss at the hand of the petitioner, the impugned order of punishment as contained in Annexure-P/8 dated 19.10.2016 issued by the respondent no. 2, the Director in Chief (Administrative) Health Services Bihar, Patna cannot be sustained. The appellate order as contained in Annexure-P/9 dated 30.06.2017 is also not sustainable and are accordingly quashed. Respondent no. 2 is directed to make payment of remaining retiral benefits with admissible interest to the petitioner within a period of two months from the date of receipt/production of a copy of this order.

Writ application is allowed.

(Nilu Agrawal, J)

Sudha/devendra

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.12.2018
Transmission Date	NA