

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1605 of 2017

In
Civil Writ Jurisdiction Case No.5728 of 2014

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Md. Islam, Son of Late Md. Shafique, Resident of Village - Sakri Sarahiya,
Police Station - Kundandi, District - Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Agriculture, Govt. of Bihar, Patna.
3. The Director, Department of Agriculture, Govt. of Bihar, Patna.
4. The Joint Director, Department of Agriculture, Govt. of Bihar, Patna.
5. The Deputy Director, Department of Agriculture, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Kumar Singh

For the Respondent/s : Mr.Sarvesh Kumar Singh - Aag-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 18-11-2019

Heard learned counsel for the appellant and learned counsel
for the respondents.

2. The present intra-court Appeal is directed against the
judgment dated 10.10.2017 passed in CWJC No. 5728 of 2014 by the
learned single Judge whereby while setting aside the order dated
29.11.2013 passed by the Director, Agriculture, Bihar, by which 25%
pension of the petitioner was withheld, the matter was remitted to the
disciplinary authority to proceed in accordance with law and pass a
final order.

3. Learned counsel appearing on behalf of the appellant



submitted that remittance of the matter to the respondent authorities after five years of retirement of the appellant-petitioner, is patently bad. He contended that once the learned single Judge had come to the conclusion that there was procedural illegality in proceeding with the enquiry under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as the 'Rules') and had quashed the order impugned, whereby 25% pension of the petitioner was withheld, the matter ought not to have been sent back for proceeding afresh as there was no occasion for the respondents to proceed against the appellant under Rule 43(b) of the Rules.

4. Per contra, learned counsel appearing on behalf of the State submitted that there is no illegality in the order passed by the learned single Judge. He submitted that in case of a procedural irregularity in the departmental proceeding, the discretionary order passed by the writ court remitting the matter back, by no stretch of imagination can be held to be bad, as the learned single Judge has not overstepped his jurisdiction.

5. Having heard the parties, we find no substance in the submission of learned counsel for the appellant. Rule 43(b) of the Rules authorizes the State Government to withhold 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 the 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 the Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

6. The learned single Judge gave due consideration to the contentions advanced on behalf of the appellant and set aside the order impugned only on account of procedural irregularities. Since the writ petition was not allowed on merit, the learned single Judge rightly remitted the matter back to the respondents for passing order afresh. It has been rightly submitted by the learned counsel for the State that the learned single Judge has not overstepped his jurisdiction in remitting the matter back.

7. The appeal is devoid of any merit.

8. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

(Anil Kumar Sinha, J)

suji/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

