

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15736 of 2017

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Jitendra Prasad S/o Late Gopal Prasad, R/o J-156, P.C. Colony, P.O.- Lohia
Nagar, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration,
Government of Bihar, Patna.
3. The Commissioner, Darbhanga Division, Darbhanga.
4. The District Magistratate, Darbhanga.
5. The Department Enquiry Commissioner, Bihar, Patna.
6. The Principal Secretary, Department of Panchayati Raj, Government of
Bihar, patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Kumar
For the Respondent/s : Mr.Sheo Shankar Prasad-Sc8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 17-05-2019

The petitioner, by way of the present writ petition, has sought for quashing of the resolution dated 31.03.2011, whereby and whereunder a departmental proceeding has been initiated against the petitioner herein. The petitioner further seeks quashing of the enquiry report dated 29.07.2015 and the resolution dated 25.8.2016, contained in Memo No. 11710 dated 30.08.2016 whereby the petitioner has been inflicted punishment of withholding of 10% pension up to 10 years.

2. The brief facts of the case are that the petitioner joined the Bihar Administrative Service on 19.11.1981 on the



post of Deputy Collector and superannuated from the service on 31.8.2013 while posted as Joint Secretary, Education Department, Government of Bihar. It has been stated that apart from the allegation levelled in the present case, there has been no complaint or any departmental proceeding pending against the petitioner herein during his entire career. A charge sheet dated 25.9.2009 was issued against the petitioner herein mainly on the allegation of not handing over the amount under the project head of the Municipal Corporation, Darbhanga, thus contravening the guidelines of the said project and showing negligence and slackness in the ongoing construction work of the bridge under the Kewati division. The petitioner had then filed his reply to the said charge sheet whereafter the departmental proceeding had continued and enquiry report was submitted by the Enquiry Officer dated 29.7.2015 finding the charges No.1 to 4 to have been fully proved while charge no. 5 was not found to have been proved as against the petitioner herein. A second show cause notice dated 13.8.2015, enclosing the enquiry report dated 29.7.2015 was issued to the petitioner herein and the petitioner herein submitted his reply to the same on 29.8.2015. Thereafter, the disciplinary authority by a resolution dated 30.8.2016, while considering the report of the



enquiry officer and the reply filed by the petitioner herein to the second show cause notice found the charges No. 1 to 3 to have been self proved in view of the acceptance of the said allegation by the petitioner in his show cause reply, hence the petitioner has been inflicted with the punishment of withholding of 10% pension up to 10 years under Rule 43(b) of the Bihar Pension Rules.

3. The learned counsel for the petitioner has submitted that the order of punishment dated 30.8.2016 has been passed without considering the defence of the petitioner herein. The learned counsel for the petitioner has further drawn the attention of this Court on the merits of the charges and has submitted that the petitioner is innocent and whatever has been done by him has been done in public interest. The learned counsel for the petitioner has also referred to a judgment reported in 1999(2) PLJR 294 [**Kamla Sharan Singh vs. The State of Bihar & Ors.**] to contend that the respondents will have to show that the service record of the petitioner was not thoroughly satisfactory in order to reduce pension under Rule 139(b) of the Bihar Pension Rules. In this regard it may be relevant to point out that the present case is not a case under Rule 139(b) of the Bihar Pension Rules, hence the said judgment is not applicable in the



present case.

4. The learned counsel for the petitioner has next relied upon a judgment reported in 2003(3) PLJR 458 [**Awadh Bwhari Chaudhary vs. State of Bihar & Ors.**] to contend that the State cannot withhold pension or any part thereof till such time an order is passed under Rule 43(b) of the Bihar Pension Rules and it is only in cases of proved misconduct that a part or whole of pension can be withheld. In this regard it is stated that the said judgment, relied upon by the learned counsel for the petitioner, is not applicable in the present case since here the final order dated 30.8.2016 has admittedly been passed under Rule 43(b) of the Bihar Pension Rules.

5. The learned counsel for the petitioner has also relied upon a judgment reported in 2004(3) PLJR 708 [**Muneshwar Prasad Sinha vs. State of Bihar & Ors.**] to contend that rule 139 of the Bihar Pension Rules empowers the authority to suitably reduce the amount of pension if the employee's service had not been thoroughly satisfactory. However, the same does not cover specific losses caused due to grave misconduct since for the same there is a separate rule 43(b) of the Bihar Pension Rule. It may be pointed out that the said judgment is also of no avail to the petitioner herein inasmuch as no recovery is directed



to be made in the present case, whereas on the contrary the pension has only been reduced to the extent of 10% and that too for 10 years.

6. The next judgment relied upon is a judgment reported in 2005(3) PLJR 28 [**Shivajee Jha vs. State of Bihar & Ors.**] wherein it has been held that once an employee retires and no proceeding had been initiated against him till he was in service, proceeding under Rule 43(b) of the Bihar Pension Rules can be initiated, if subsequently it was detected that pecuniary loss was caused to the Government by the concerned employee, but till such proceeding is initiated, pension of the retired employee cannot be withheld. The said judgment is also not applicable in the present case inasmuch as the departmental proceeding had already been initiated before the retirement of the petitioner herein which stood converted automatically under rule 43(b) of the Bihar Pension Rules, subsequent to the retirement of the petitioner and thereafter, after a full-fledged enquiry and complying with the procedure laid down as also after complying with the principles of natural justice, the final order dated 30.8.2016 has been passed, hence the present case is not a case wherein no proceeding has been initiated.

7. Yet another case, reported in 2005(3) PLJR 591



[**Sukdeo Narain Verma vs. State of Bihar & Ors.**] has been relied upon wherein it has been held that any order under Rule 43(b) can be passed subject to the rider that such departmental proceeding shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceeding in case the proceedings are initiated after superannuation of the charged employee. The said case is not at all applicable in the present case inasmuch as in the present case the proceeding was initiated prior to the superannuation of the petitioner.

8. Lastly, a judgment reported in 2006(2) PLJR 457 [**Rambilash Pathak vs. The State of Bihar & Ors.**] has been referred to wherein it has been held that the provision of Rule 43(b) of the Bihar Pension Rules cannot be applied for the purposes of withholding of a part of the pension on the ground of inefficient functioning during the service tenure. In this context, it is stated that firstly no law has been laid down in the said judgment and secondly, the present case is entirely different wherein full-fledged enquiry has been held and the petitioner has been found to be guilty.

9. Per contra, the learned counsel for the respondents, referring to the counter affidavit filed in the present case, has



submitted that when the petitioner was posted as the Deputy Development Commissioner, Darbhanga, it was alleged that the fund relating to B.R.G.F. scheme had not been transferred to the Municipal Corporation and the petitioner had not even informed the Municipal Corporation regarding the earmarking of an amount of Rs. 138.47 lacs to the Municipal Corporation, Darbhanga. Thus, the departmental proceeding was initiated against the petitioner herein upon framing of the charges vide department's resolution dated 1.4.2011 and an enquiry officer was appointed. The petitioner had superannuated on 31.8.2013 whereafter vide resolution No.14185 dated 15.10.2014, the departmental proceeding in question was converted under Rule 43(b) of the Bihar Pension Rules. Thereafter, enquiry officer had submitted his enquiry report by his letter dated 30.7.2015 wherein charges No. 1 to 4 were found to have been fully proved as against the petitioner herein. A second show cause notice was issued to the petitioner herein, which was replied to by the petitioner and after consideration of the same as also upon taking into account the findings of the enquiry officer and upon application of mind, the disciplinary authority has taken a decision to inflict punishment of deduction of 10% of pension for ten years and, accordingly, the punishment order dated



30.8.2016 has been passed after concurrence of the Bihar Public Service Commission.

10. I have heard the learned counsel for the parties and gone through the materials on record. Firstly, I find that departmental proceeding was initiated against the petitioner herein prior to his retirement and upon his superannuation, the same was converted into a proceeding under rule 43(b) of the Bihar Pension Rules by a resolution dated 15.10.2016. This Court also finds that there is no illegality or irregularity in the conduct of the entire disciplinary proceedings leading to passing of the final order of punishment dated 30.8.2016. The learned counsel for the petitioner has not been able to point out any discrepancy in conduct of the departmental proceeding and has merely tried to address this Court on merits. Even on merit, this Court does not find that the petitioner has got any case, nonetheless, it may be stated here that it is a well settled principle of law that re-appreciation of evidence is not permissible in exercise of a jurisdiction under Article 226 of the Constitution of India. In this regard, it may be relevant to quote paragraph-7 of a judgment rendered by the Hon'ble Apex Court reported in (2011) 4 SCC 584 [**State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya**] herein below:-



“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. [Vide B.C. Chaturvedi v. Union of India (1995)6 SCC 749, Union of India v. G. Ganayutham, (1997)7 SCC 463, Bank of India v. Degala Suryanarayana (1999)5 SCC 762, and High Court of Judicature at Bombay v. Shashikant S. Patil, (2000)1 SCC 416”].

11. It is equally a well settled law that this Court can only see as to whether the enquiry has been held by a competent authority or the enquiry has been held according to the



procedure prescribed in that behalf or there is some violation of the principles of natural justice in conducting the proceedings or the authorities have disabled themselves from reaching a fair conclusion by taking into account some extraneous materials or the conclusion on the very face of it is arbitrary and capricious or the findings are based on no evidence, however, the present case is not a case where the departmental proceeding/ enquiry suffers from the aforesaid lacuna, hence no interference is warranted by this Court.

12. The law is well settled to the effect that the High Courts, under Articles 226 and 227 of the Constitution of India, would not re-appreciate the evidence or interfere with the conclusion reached at in the enquiry, in case the same has been conducted in accordance with law. The High Courts are further precluded from going into the adequacy of evidence or entering into the issue of reliability of evidence or interfering, if there be some legal evidence on which the findings can be based or correcting the error of fact, however, grave it may appear to be. In this regard, reference be had to a judgment reported in (2015) 2 SCC 610 [**Union of India & Ors. Vs. P. Gunasekaran**].

13. This Court is in agreement with the findings and the



conclusions of the disciplinary authority as well as this Court finds that neither there has been any deviation in the conduct of the enquiry nor there has been any violation of the principles of natural justice nor the disciplinary authority has acted in an arbitrary manner, hence there is no occasion for interference with either the resolution dated 31.3.2011 by which a departmental proceeding was initiated or with the enquiry report dated 29.7.2015 or with the resolution contained in Memo dated 30.8.2016 whereby and whereunder the petitioner has been inflicted with the punishment of withholding of 10% pension up to 10 years.

14. For the reasons mentioned herein above, the present writ petition, being devoid of any merit, is dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	09.05.2018
Uploading Date	20.05.2019
Transmission Date	N/A

