

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9009 of 2017

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Jhakari Ram son of Late Harishchandra Ram resident of Mohalla - Surya Vihar Phase - 2, Post Office - Ashiana Nagar, Police Station - Rajiv Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. Additional Secretary, Department of Mines and Geology cum Presenting Officer, Government of Bihar,
5. Joint Secretary, Department of Mines and Geology cum Conducting Officer of Departmental Proceeding, Government of Bihar, Patna.
6. Deputy Director, Mines and Geology, Patna Circle, Patna.
7. The Under Secretary to Government, Department of Mines and Geology, Government of Bihar, Patna.
8. The Bihar Public Service Commission through its Secretary, Bihar Public Service Commission, Bihar,
9. Accountant General, Bihar State Veer Chand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	: Mr. Chitranjan Sinha, Sr. Advocate. Mr. Akhilesh Dutt Verma, Advocate.
For the B.P.S.C.	: Mr. Zakir Haider, Advocate.
For the State	: Mr. Gopal Krishna, AC to GA 2.
For the Accountant General	: Mr. Anjani Kumar Sharma, Advocate.
For the Mines	: Mr. Naresh Dixit, Advocate. Mr. B.B. Tiwary, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 01-02-2019

Heard the learned counsel for the petitioner and the State.

2. The petitioner has challenged the order contained in Memo No. 2606 dated 04.10.2016 issued under the signature of Under Secretary to the Government, Department of Mines and Geology, Bihar, Patna whereby, after finding the petitioner to be guilty of



the charges raised against him, he has been inflicted with a punishment of seizure of 100% pension on a permanent basis under the provisions of Rule 43 A read with 43B of the Bihar Pension Rules, 1950.

3. It appears that on the involvement of the petitioner in Economic Offence Case No. 1 of 2014 for having amassed property disproportionate to his known sources of income, the petitioner was put under suspension and a departmental proceeding was initiated against him. During the pendency of the disciplinary proceeding and during the period of suspension, the petitioner superannuated on 30.04.2014.

4. Prior to his superannuation, it is the case of the petitioner that he demanded some relevant documents from the presenting officer which were not made available to him. With the superannuation of the petitioner, the proceedings were converted into one under rule 43B of the Bihar Pension Rules, 1950 vide order dated 26.06.2014.

5. On the petitioner receiving a letter asking him to respond to the second show cause notice, the petitioner again demanded certain clarification regarding presentation of wrong facts in the enquiry report. The show cause reply was filed by the petitioner, but he was saddled with a penalty of seizure of 100% pension for life.



6. Mr. Chitranjan Sinha, learned senior advocate appearing for the petitioner has argued that the order impugned is illegal, unjustified and improper and in violation of principle of natural justice. No consideration was made for the services rendered by the petitioner for 32 years and he was inflicted with the punishment of seizure of 100% pension and that also for life. Though the learned counsel for the petitioner initially tried to assail the findings of the enquiry report on factual aspects and the whole enquiry proceeding to have been vitiated on account of non-observance of the requirements under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, but later, limited his prayer to the consideration by this Court only with respect to the punishment viz. seizure of 100% of pension, on the touchstone of proportionality and reasonableness. It was urged that under no circumstances, despite there being a provision for the same under Rule 43B of the Bihar Pension Rules, 100% pension could have been withheld/seized without giving cogent reasons for the same.

7. Learned counsel for the State however has submitted that in the raid conducted by the Economic Offence Unit, Bihar at the residence of the petitioner at Patna and other places, property amounting to Rs. 1.67



crores were found to be more than the known sources of income of the petitioner leading to registration of a case under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. During the pendency of the criminal case, the petitioner was suspended and departmental proceedings were initiated with the framing of charge and the appointment of enquiry officer and the presenting officer. The petitioner superannuated in the meanwhile and the proceeding was converted into one under Rule 43B of the Bihar Pension Rules, 1950.

8. It has further been submitted on behalf of the State that the petitioner did not take any steps to file his reply to the second show cause and thus the disciplinary authority had no option but to affirm the findings arrived at by the enquiry committee holding that all the charges against the petitioner to be proved. Under the aforesaid circumstances, it was urged by the State that the punishment of seizure of 100% pension for life was neither disproportionate nor unreasonable.

9. Corruption in government service is an evil which has cascading effects over the general administration and no lenient view can be taken with respect to an employee who is found to have indulged in corrupt practices. Normally no interference by the judiciary is required, unless it is proved that the delinquent



employee has been proceeded against in an arbitrary and whimsical manner without affording any opportunity to him to explain his case. Even with respect to the punishment meted out to such delinquent employee, the courts normally would not like to substitute its own judgment with that of the disciplinary authority. Nonetheless if the factors which ought to weighed with the disciplinary authority has been completely ignored or thrown to the winds, it would serve no purpose in observing judicial restraint in not interferring with the same.

10. Sentencing an employee after a departmental proceeding is an important aspect of any proceeding and the same cannot be carried out without an element of sensitiveness. While sentencing an employee, the factors which would constitute important indices for coming to a conclusion would be (a) nature of charges, (b) past conduct and (c) whether any penalty was imposed earlier and most importantly the nature of duties assigned to the delinquent employee.

11. In the present case, the involvement of the petitioner in the criminal case was only on the finding that he had amassed property which was disproportionate to the known sources of his income. No specific instance of any bribe taking or of having departed from any set rule of principles has been alleged against the petitioner. A



punishment can only be justified if the quantum is commensurate with the gravity of the misconduct and any disproportionate penalty would definitely be violative of Article 14 of the Constitution of India.

12. Corruption in government service is a very serious offence but the same cannot only be thrust upon an employee in whose house properties of higher valuation than his known sources of income have been found. Lest this Court may not be misunderstood, no misplaced sympathy is being shown to the delinquent employee but seizure of 100% pension for life cannot, in this circumstance, be tested positive on the touchstone of proportionality or reasonableness.

13. A punishment can be said to be disproportionate if it is shocking to the conscious of the court or no reasonable man would impose such punishment. A court will definitely not substitute its own opinion but can definitely form an opinion regarding the proportionality of the same.

14. The gravity of an offence is no doubt an indicator to the disciplinary authority for making a choice of sentence but it is equally true that the sentence ought not to be more grave and harsh than the charge.

15. The sentence imposed upon the petitioner does not, in the opinion of this court, cross the litmus test



of proportionality as also reasonableness. Seizure of 100% pension would leave an employee with nothing to feed him. The property, which was not found to be in proportion to his known source of income will not, even if the charge is accepted to be absolutely true, give him anything for sustaining himself. With the seizure of 100% pension, the basic human right of an employee/delinquent employee would be taken away.

16. For the aforesaid reasons, I do not countenance the correctness of the quantum of the punishment. Hence without commenting upon the disciplinary proceeding against the petitioner in its totality, only the punishment imposed of 100% seizure of pension for life is set aside.

17. The matter is remitted to the disciplinary authority for revisiting the quantum of punishment with reasonableness and such sensitiveness which is required.

18. In order to facilitate the fresh decision making with respect to the punishment alone, the petitioner is directed to make a representation before the concerned authority/disciplinary authority along with a copy of this order, within a period four weeks from today. On receipt of the aforesaid representation/application, the disciplinary authority/concerned authority shall dispose of such representation after giving a hearing to the petitioner



by passing a fresh order on punishment within a period of eight weeks thereafter.

19. With the aforesaid direction/observation, the writ petition is allowed and disposed off.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2019
Transmission Date	

