IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17311 of 2019

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Uday Sharma, S/o Late Hriday Singh, Resident of Village- Harpura, P.o.- Mohammadpur, P.S.- Bikram, District- Patna, presently residing at Village, P.O. and P.S.- Naubatpur, District- Patna, the retired Panchayat Secretary, Gram panchayat Raj, Bihta, Block- Bihta, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary Panchayati Raj Department, Govt. of Bihar, Patna
3. The District Magistrate Patna, District- Patna
4. The District Panchayat Raj Officer, Patna, District- Patna
5. The Additional Collector, Patna-cum-Conducting Officer of Departmental Proceeding, District- Patna
6. The Block Development Officer, Bihta, District- Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Ms. Anita Kumari, Advocate
For the Respondent/s	:	Mr. P.N. Shahi, AAG-6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-10-2019

Heard learned counsel for the parties.

2. Order dated 26.02.2019, passed by the District Magistrate, Patna, in exercise of power under Rule 43(b) of the Bihar Pension Rules, 1950 whereby a decision has been taken to (i) withhold 20% of the petitioner’s entitlement of pension and (ii) to recover the amount misappropriated by him, is under challenge in the present writ application.

3. The petitioner was working as Panchayat Secretary under Bihta Block. Admittedly, he retired after attaining the age of

superannuation on 29.02.2016. He is said to have withdrawn a sum of Rs. 31,66,800=00 out of the panchayat funds appertaining to five panchayats in the name of completion of various schemes under the said panchayats, after he had already superannuated. There is no dispute about this crucial aspect of the matter.

4. It is the petitioner's case, however, that his re-employment as Panchayat Secretary on contractual basis was under consideration at appropriate level and his name was accordingly recommended for his re-employment. Under the presumption that he would be continuing as Panchayat Secretary, he had withdrawn the said amount of Rs. 31,66,800=00, despite his retirement from Government service.

5. It transpires that because of the petitioner's conduct of having withdrawn the said amount of Rs. 31,66,800=00, after his retirement from service, the respondents were not finalising his death-cum-post retiral benefits. The petitioner in that background, had approached this Court by filing a writ application seeking following reliefs :-

> *"I. For payment of full and final pension as well as arrears of penson.*
> *II. For payment of General Provident Fund amount with uptodate statutory interest till the date of actual payment.*
> *III. For payment of Group Insurance.*
> *IV. For payment of Statutory as well as*

penal interest due to delayed payment.”

6. This Court, considering the conduct of the petitioner in the writ proceedings dismissed the writ application by an order dated 06.02.2018, passed in CWJC No. 895 of 2017, paragraphs 10 and 11 of which read thus :-

> *“10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court has not been persuaded to exercise its extraordinary, prerogative, writ jurisdiction under Article 226 of the Constitution of India for the reason that the petitioner has not come to the Court with clean hands. On a specific query of the Court as to whether the amount of over Rs. 31 lakhs has been withdrawn by the petitioner after his superannuation, the categorical stand is in the affirmative. The petitioner being aware of his date of superannuation and the fact that no formal order for his re-employment on contractual basis has been issued, the petitioner could not have touched even one rupee from the Government fund and in fact had no authority to keep on discharging his official duties as a Panchayat Secretary. Once the petitioner has admittedly drawn over Rs. 31 lakhs and that too in a span of a few months without the Competent Authority approving such re-employment on contractual basis, the petitioner cannot plead ignorance or take the stand that it was bona fide. The mala fide is writ*

> *large, as there can be no justification or any reason for a person who has superannuated to withdraw any amount and in the present case when the amount is huge, just because the money has been invested or spent on the scheme, would not absolve the person of the liability of having withdrawn the amount totally without any authority in law.*
> *11. For reasons aforesaid, the writ petition stands dismissed."*

7. An appeal was preferred under the Letters Patent of this Court against the said order, giving rise to LPA No. 541 of 2018. The Division Bench of this Court, however, modified the order passed in C.W.J.C. No. 895 of 2017 (supra) in the light of the Full Bench decision of this Court in case of Arbind Kumar Singh vs. The State of Bihar (CWJC No. 15328 of 2016 decided on 04.04.2018) holding that the State was required to decide the claim of the petitioner pertaining to settlement of his post retiral claim accordingly. The Division Bench, while allowing the appeal by an order dated 25.06.2018, made following observations :-

> *"On the petitioner filing a certified copy of this order, respondents shall settle the post retiral claims of the petitioner strictly in accordance to the directions issued and the law laid down by the full Bench in the case of Arbind Kumar Singh (supra), the claim of the petitioner shall be settled and paid within a period of 45 days from the date of*

> *receipt of certified copy of this order. As far as recovery of the amount from the petitioner is concerned, the same shall be proceeded in accordance to the requirement of law."*

8. It transpires that a decision was, thereafter, taken for initiation of a proceeding against the petitioner under the provisions of Bihar Pension Rules. Charge was framed accordingly, considering the petitioner's conduct of withdrawal of huge amount of public money after his superannuation. A Conducting Officer was appointed. The petitioner was given an opportunity to explain his conduct. Charge was specific to the effect that withdrawals were made after his superannuation. Even in the reply filed by the petitioner the allegation that the withdrawals were made after his superannuation was admitted. He, however, in order to establish his bonafide, took a plea that he was tipped for appointment on contractual basis as Panchayat Secretary after his retirement and, therefore, presumed that he would continue to function as Panchayat Secretary, though on contractual basis. The fact remains that before he had made withdrawals after his superannuation, there was no official communication to him of any decision to appoint him on contractual basis as Panchayat Secretary. As a matter of fact, the proposal was turned down.

In his explanation, he also took a plea that after having withdrawn the said amount of Rs. 31,66,800=00 he had spent substantial amount out of it for implementation of various schemes.

9. Learned counsel appearing on behalf of the petitioner, assailing the impugned order dated 26.02.2019, has submitted that the impugned order does not reflect any consideration on the petitioner's explanation, before agreeing with the adverse report of the Inquiry Officer, though the petitioner had submitted his detailed representation against second show cause notice.

10. I do not find any merit in the contention on behalf of the petitioner, inasmuch as, the fact that the petitioner had withdrawn public money after his superannuation to the tune of Rs. 31,66,800=00 is not at all in dispute. The charge framed against the petitioner for taking action against him under Rule 43(b) thus stands uncontroverted and admitted. There was, rather, no defence by the petitioner in the proceeding under Rule 43(a) to justify unauthorised withdrawal of huge amount of money except that he was genuinely expecting his contractual appointment after his superannuation.

11. Rule 43(a) of Bihar Pension Rules puts future good

conduct as implied condition for grant of pension. The Government has authority under the said provision of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or 'be guilty of grave misconduct'. Rule 43(a) of the Rules reads thus :

> *"43(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive."*

12. I am mindful of the fact that impugned order refers to Rule 43(b) of Rules, which, in my opinion, needs to be read with Rule 43(a) of the Rules for the purpose of action which has been taken against the petitioner.

13. In view of the facts, which are admitted, the impugned order cannot be said to be suffering from the vice of non-application of mind. Power under Rule 43(a) or 43(b) can be exercised by the State Government for withholding or withdrawing pension or any part of it, whether permanently or for a specified period, if a retired employee is found in a 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 or after his retirement. The petitioner had, admittedly, withdrawn the money unauthorisedly. Criminal case is said to be still pending.

14. Considering the aforementioned admitted facts and circumstances of the case, I do not find it to be a fit case to invoke prerogative, equitable writ jurisdiction of this Court under Article 226 of the Constitution of India on the ground of non-application of mind.

15. I do not find any merit in this application. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.10.2019
Transmission Date	NA