

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.527 of 2018

In
Civil Writ Jurisdiction Case No.14143 of 2014

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
 2. The District Magistrate/ Collector, Darbhanga.
 3. The Dy. Collector Establishment, Collectorate, Darbhanga.
 4. The Circle Officer, Darbhanga Sadar, Darbhanga.
 5. The Block Development Officer, Kewati, Darbhanga.
 6. The District Accounts Officer, Darbhanga.
 7. The District Treasury Officer, Darbhanga.
 8. The District General Provident Fund Officer, Darbhanga.

... .. Appellant/s

Versus

Uday Chandra Choudhary, Assistant (Retired), son of Late Murali Bihari Choudhary, resident of Village and P.O.- Beri, P.S.- Kusheshwar Asthan, District- Darbhanga, at present residing at Village & P.O. & P.S.- Kewati, District -Darbhanga.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Utsav Kumar, A.C.to G.A.-4
For the Respondent	:	Mr. Satya Nand Shukla, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 29-08-2019

Re: I.A. No.9572 of 2018

1. Heard learned counsel for the appellants.
2. We have perused the facts stated in the limitation petition and we find sufficient reason to condone the delay. The delay is, accordingly, condoned and the appeal shall be treated to be within time.



3. I.A. No.9572 of 2018 stands allowed accordingly.

Re: L.P.A. No. 527 of 2018

The instant appeal has been preferred by the State of Bihar against the order dated 03.10.2017 passed in C.W.J.C. No.14143 of 2014 by a learned single Judge of this Court, whereby and whereunder the prayer of the writ petitioner for grant of his full pension for the last ten years has been allowed with a direction to the Collector to pay arrears of pension and other amount lying due to the petitioner within a period of two months. The learned single Judge has also set aside Memo No.1410 dated 04.09.2017, by which the petitioner had been inflicted the following punishment :

“The petitioner is directed to pay a sum of Rs.1,19,946.74 as interest of Rs.1,29,225/-the amount which was defalcated by the petitioner on 29.7.2002 till 4.3.2014 and withholding of 10% pension of the petitioner permanently.”

2. The writ application before this Court had been filed in the nature of *certiorari* for quashing Memo No.2-13/09/12/440/East Laheriasarai dated 04.03.2014, by which the Collector, Darbhanga had passed an order to the Block Development Officer, Kewti, Darbhanga to recover



misappropriated amount of Rs.1,29,225/- from the petitioner along with 8% interest (Annexure 3 to the writ petition).

3. The brief facts, which led to the filing of the writ application, are as under:

(i) The petitioner was a Clerk (Nazir) at Kewti Block and superannuated from service on 30.06.2007 after handing over charge and submitting all duly filled up documents regarding payment of his service pension and other retiral dues before the authorities.

(ii) In view of the fact that the petitioner did not receive his retiral dues and pension, he preferred a writ application, bearing C.W.J.C. No.9623 of 2009, which was heard and disposed of on 12.08.2009 with a direction to the petitioner to file a fresh representation and upon filing of such representation along with a certified copy of the order, the respondents would consider the grievances of the petitioner in accordance with law expeditiously, preferably within a period of four months on receipt of such representation so that payment of retiral dues and other admissible dues could be settled and paid to the petitioner without delay.

(iii) Since the said order was not complied with within the aforesaid period, the petitioner preferred a contempt



application, bearing M.J.C. No.4049 of 2009, wherein a show cause was filed stating that the provident fund dues to the tune of Rs.1,17,044/- has been paid into the Bank account of the petitioner and further steps were being taken for payment of provisional pension. As such, the contempt application was dismissed on 20.05.2010.

(iv) However, no steps were taken to make payment to the petitioner thereafter and the petitioner was served with a charge in Form-‘Ka’ under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as “the Rules”), whereby a departmental proceeding was initiated against him for allegedly defalcating a sum of Rs.1,29,225/- making the Senior Deputy Collector, Darbhanga as an Enquiry Officer. The aforementioned Enquiry Officer, vide report dated 02.04.2011, finding the charge to be proved against the petitioner submitted his report and, accordingly, vide Letter No.2366 dated 30.12.2011, Letter No.2610 dated 30.12.2011, Letter No.1816 dated 06.09.2012, Letter No.1106 dated 14.05.2013 and Letter No.1866 dated 29.08.2013, called for the details of the payments to be made to the petitioner.

(v) In response to the aforementioned letters, the Block Development Officer, Kewti, vide Letter No.2564 dated



21.12.2011 and Letter No.1454 dated 03.06.2013, informed that the A.G., Bihar, Patna while issuing the pension payment order and gratuity has deducted 10% while making payment of the aforementioned amount to the petitioner. Furthermore, it was also indicated in the aforementioned letter that from the unutilized earned leave of the petitioner, Rs.93,296/- as well as group insurance amount (along with interest of Rs.14,828/-) amounting to Rs.1,08,124/- had been deducted from the petitioner and deposited in the Nazarat Treasury of Block-Kewti. The Block Development Officer had further intimated, vide Letter No.2320 dated 22.08.2013, that the petitioner wanted to deposit the rest amount of Rs.21,101/- (129225.00-108124), which is apparent from Annexure 3 to the writ petition.

(vi) Accordingly, the Collector finding the charge as against the petitioner to have been proved had directed for deduction of the defalcated amount of Rs.1,29,225/- from the pension of the petitioner with interest thereon at the rate of 8% per annum. The petitioner represented on 17.07.2014 against the order of the Collector, but when no action was taken thereon, the petitioner was constrained to move this Court seeking the following reliefs :



“(a) A writ in the nature of certiorari or any other appropriate writ(s) order or direction to quash/set aside the order vide Memo no.2-13/09-12-440/East Laheriasarai dated 4.3.2014 passed by the Collector, Darbhanga.

(b) A further writ of mandamus also be issued commanding the respondents to settle the genuine claim of the petitioner which are as follows :

(i) pay 10% deducted amount of pension of the petitioner and its arrear.

(ii) pay Group insurance amount of the petitioner and with interest.

(iii) unutilised leave amount of the petitioner as per circular No.819 dated 23.09.2009 issued by the finance department as its penal interest as admissible as per rule of the Govt. of Bihar.

(c) pay any other dues for which the petitioner be found entitled under Bihar Service Rule.

(d) Any other appropriate writ order or direction as your Lordship may deem fit and proper.”

4. The contention of the petitioner is that the petitioner superannuated on 30th June, 2007 and the charge in Form-‘Ka’ was only given to him in the year 2009 and despite the fact that the authorities had already deducted the amount from his unutilized leave and group insurance, a further order was passed for recovering the defalcated amount from his pension, which was wholly arbitrary and erroneous.

5. In the counter affidavit filed on behalf of the respondents, it has been stated that in compliance of the order



passed in C.W.J.C. No.9623 of 2009 and because the contempt application, bearing M.J.C. No.4049 of 2009, was ensuing, the respondents made certain payments and in course of such enquiry, the District Accounts Officer, Darbhanga, vide Letter No.561 dated 05.08.2009, stated that the petitioner had defalcated an amount of Rs.1,29,225/- and, therefore, a chargesheet was given to the petitioner in Form-'Ka' and a proceeding was initiated under the provisions of Rule 43(b) of the Rules.

6. A show cause notice, vide Letter No.62 dated 05.04.2010, was issued to the petitioner and upon considering his show cause, the petitioner was held guilty of defalcation of an amount of Rs.1,29,225/-. A report contained in Letter No. 289 dated 02.04.2011 was submitted by the conducting officer, whereafter the Collector, Darbhanga passed the impugned order dated 04.03.2014 to recover the defalcated amount from the petitioner along with an interest at the rate of 8% per annum. The respondent, however, contended in paragraph 14 that the entire amount was adjusted from the unutilized leave salary and the group insurance amount, but only the amount of interest at the rate of 8% per annum has not been deposited. It was thus submitted that the petitioner



was not entitled to any relief and the writ application be dismissed.

7. In the supplementary counter affidavit filed by the respondent-State, the charge memo was also produced, which indicated that the date of defalcation started from 29.07.2002 on the date on which he has assumed charge in the Nazarat, wherein he had made cutting/overwriting in the amount of Rs.1,71,757.46 to make it appeared as Rs.71,757.46, thus clearly defalcating an amount of Rs.1,00,000/-. The records further revealed that he had also made alterations in the actual advance taken by other employees and such activity of the petitioner has been discovered by the District Accounts Officer, Darbhanga. For the said act of defalcation, a report had been sent by the Accounts Officer to the Establishment Deputy Collector, whereupon an F.I.R. was also lodged bearing Sadar Darbhanga P.S. Case No.336/09 dated 02.12.2009.

8. The respondents thus contended that under such circumstances, the petitioner was proceeded against and ultimately, the order of punishment was inflicted in exercise of the powers conferred on the State Government under Rule 43(b) and also under Rule 139 of the Rules. The final order



was passed and the punishment, referred to above, was inflicted, vide order contained in Memo No.1410 dated 04th September, 2017. The aforementioned order was brought on record in the counter affidavit and was subsequently challenged by the writ petition in I.A. No.6726 of 2017. It was thus contended by the writ petitioner that the enquiry which was conducted was not in accordance with the procedure as envisaged under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the “C.C.A. Rules, 2005”) and there were glaring anomalies inasmuch as the presenting officer did not produce any document to prove the charge and the enquiry officer himself became the presenting officer and submitted report on 30.03.2011.

9. It was further contended that not a single witness was examined and the copy of the enquiry report was not supplied to the petitioner nor was he asked to show cause on the finding of the enquiry report before being inflicted any punishment. It was submitted that while the enquiry report was submitted in the year 2011, the Collector wrote a letter seeking directions from the disciplinary authority and it was only in the year 2017 that the petitioner was inflicted with the



punishment of recovery of the defalcated amount and also the punishment of withholding of 10% of pension. It was thus submitted that being contrary to the provisions of Rule 17 of the C.C.A. Rules, 2005, the impugned order was fit to be set aside. However, the respondents have resisted the prayer of the writ petitioner on the ground that the petitioner had defalcated the money by making cuttings and overwritings. From the report dated 05.08.2009 of the District Accounts Officer submitted in response to the District Collector, Darbhanga's Letter No.1066 dated 27.06.2007, it appears that the said authority had also submitted an interim enquiry report on 21.08.2007, vide his letter No.561.

10. The learned single Judge after hearing the parties and upon consideration of the pleadings made in the writ application as also the counter affidavit came to the conclusion that the respondents had not followed the procedure as provided under Rule 17 of the C.C.A. Rules, 2005 and therefore allowed the writ application by setting aside the impugned order of punishment and further directed that the pension of the petitioner which had been withheld be paid to him. The operative part of the order is extracted hereunder :



“8. Even in a proceeding under Section 43B of the Bihar Pension Rules, the Enquiry Officer is legally bound to conduct the enquiry in accordance with the procedure meant for the departmental enquiry. The Enquiry Officer should have given opportunity to the Government servant to show cause and should have asked the Presenting Officer to produce the evidence on behalf of the Disciplinary Officer to prove the charge but the Enquiry Officer himself took up responsibility of the Presenting Officer and perused the records and submitted the report holding the petitioner guilty of defalcation. The Enquiry Officer did not act as independent arbitrator rather he took the duty of the Presenting officer as well and thereby his action and report is vitiated as it carries the elements of biasness. It is also settled law that of course the strict rules of Evidence Act is not adhered to during the course of departmental proceeding but the evidence has to be adduced and the document has to be proved in accordance with law. The Enquiry Officer based his enquiry report on the basis of internal enquiry (Annexure-1) but that enquiry report is not proved during the course of departmental proceeding in accordance with law. It further transpires that the Collector, after receipt of the enquiry report, sat over the matter for more than six years and when the petitioner filed writ petition, the Collector issued the letter on 4.9.2017 inflicting punishment of withholding 10% pension of the petitioner permanently but the Disciplinary Authority did not serve the copy of the enquiry report to the petitioner nor



asked the petitioner to show cause and therefore the order of the Collector is also bad on account of violation of natural justice.”

11. Aggrieved by the aforementioned order of the learned single Judge, learned counsel for the Appellant-State of Bihar has urged that the order impugned is fully legal and valid and has been passed under the provisions of Rule 43(b) of the Rules, wherein the Government has power to withhold pension under Rule 43(b) itself. It was contended that the District Accounts Officer had submitted his detailed enquiry report, vide Letter No.561 dated 05.08.2009, and on the basis of the same, Form-`Ka` was issued against the petitioner under Rule 43(b) of the Rules and a departmental proceeding was initiated, vide order dated 11.12.2009. It was further urged that after conclusion of the enquiry, the conducting officer submitted his report, vide Letter No.289 dated 20.04.2011, and found the allegation against the writ petitioner to be true. Accordingly, after perusal of the aforementioned enquiry report, the Collector ordered the B.D.O., Kewti, vide Letter No.440 dated 04.03.2014, to recover the amount of Rs.1,29,225/- along with 8% of interest from the petitioner. However, it is needful to mention that the petitioner himself agreed and the aforementioned principal amount was deposited by the writ petitioner himself in the year 2013 by



adjusting the same against his unutilized leave salary and also the group insurance amount and the difference in amount was also paid by him. This fact stands noted in the order dated 04.03.2014 itself and, therefore, the Collector had sought further instructions from the Principal Secretary, Department of General Administration, Bihar, Patna, vide his letters dated 05.02.2014 and 22.02.2016.

12. Learned counsel for the appellants further submitted that in response to the aforementioned letters, the Department had issued instructions vide its Letter No.7155 dated 19.05.2016, wherein it was clarified that no additional provision is required for imposing punishment under the proceedings initiated under Rule 43(b) of the Rules. The Government has power to stop or return of pension under Rule 43(b) itself and thus the Collector, Darbhanga, vide Memo No.1410 dated 04.09.2017, concluded the departmental proceedings against the petitioner and imposed the following punishments:

(i) To recover the defalcated amount of Rs.1,29,255/- and to recover an amount of Rs.1,19,946.74 on the defalcated amount as interest at the rate of 8% per annum from 29.07.2002 till 04.03.2014



(ii) Permanent withholding of 10% of the pension amount.

13. Learned counsel for the appellants further submitted that the learned single Judge also failed to appreciate that there is a provision of appeal against the order dated 04.09.2017, which ought to have been availed by the petitioner before coming to this Court. Learned counsel for the appellants has placed reliance on the judgment of the Apex Court in the case of **Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani**, reported in (2013) 6 SCC 530, wherein it was stated at para 14 as under :

“14. in the present case, the High Court after reappreciating the entire evidence available on record, came to the conclusion that in the course of enquiry proceedings, certain witnesses had not been examined in the presence of the delinquent respondent, and that hence, no proper opportunity was given to him to cross-examine such witnesses. Moreover, the documents relied upon by the enquiry officer, were not properly proved by any witness and ultimately, it was held that the findings of the enquiry officer stood vitiated for non-compliance with mandatory requirements of the Regulations applicable herein, as well as for violating the principles of natural justice. The Court further held that the appellate authority had not applied its mind to the case, and had failed to consider the case as required under Regulation 46(2) of the 1960 Regulations. Thus, in light of the aforementioned observations, the Court set aside the punishment imposed upon the respondent,



and also refused to give the appellant any opportunity to continue the enquiry from the point that it stood vitiated, consequently therefore, denying any opportunity to prove the documents relied upon, as also denying the respondent adequate opportunity to cross-examine the witnesses concerned, etc. only on the ground that a long time had now passed.”

14. It was thus urged by the learned counsel that if at all the learned single Judge has found any anomaly in the conduct of the departmental proceeding, it should have been remitted back to the disciplinary authority to conduct the enquiry from the point it stood vitiated, but in not doing so, the learned single Judge has clearly deprived the appellants of the opportunity to prove the document on which it had relied for inflicting punishment. Learned counsel further referred to paragraph 18 of the aforementioned judgment, which is extracted hereunder:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in



question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)”

15. In view of such facts and circumstances, learned counsel for the appellants prayed that the impugned order and directions of the learned single Judge are clearly erroneous on both facts and law and are required to be re-visited and the appeal be allowed.

16. We have heard learned counsel for the parties and perused the materials on record.



17. The issue of defalcation by the petitioner appears to have been re-examined at length by the District Accounts Officer in his report at Annexure 1, which was wholly relied upon by the enquiry officer and the contention of the writ petitioner that the same should not be relied upon, as it was not proved at the departmental enquiry does not find favour with us. We hold thus that the petitioner by depositing the amount has clearly admitted his misdemeanour and therefore if the petitioner himself being fully aware of the procedure and having not raised any objection to the same during the course of enquiry, as is also evident from the ordersheet and having deposited the amounts and further having absented himself on several consecutive dates, the enquiry officer finally submitted his report on the basis of his show cause dated 19.05.2010. Thus, the contention of the petitioner that he was not issued any show cause is also not correct, as he himself chose to abstain from the same nor has he raised any objection to the manner of the proceeding so as to seek benefit under Rule 17 of the C.C.A. Rules, 2005.

18. We are, however, conscious of the fact that law entails that under such circumstances, where the proceeding has been found to be vitiated, the matter when placed under judicial



review should be remitted back from the stage where it was vitiated, but, at the same time, it is further a settled law that once the Court sets aside the order of punishment on the ground that the enquiry was not properly conducted, the Court must not necessarily in every case proceed to grant all consequential reliefs.

19. Now the only issue which remains is as to whether considering the gravity of the offence, the disciplinary authority ought to have been given a fresh opportunity to proceed against the petitioner in order to prove the gravity of charge.

20. We find and hold that in view of the fact that the writ petitioner had virtually admitted his guilt by depositing the defalcated amount, to remit back the matter would only entail further delay in determining the issue at hand. We, however, find that the learned single Judge has clearly erred in granting relief to the petitioner after setting aside the impugned order of punishment in view of the finding of submission of defalcated amount by the petitioner. Thus, all that remains is the second part of the punishment. The departmental authority having found that the petitioner was guilty of defalcation has directed for recovery of the principal amount with interest at the rate of 8%.

21. We are of the considered opinion that since the recovery was already effected on 22.08.2013, the interest thereon



should be charged only up to the aforementioned date as mentioned in the order of punishment and we remit the matter back to the disciplinary authority with regard to the second part of the punishment, wherein the interest has been calculated. It will, however, be open to the disciplinary authority to proceed from the stage of issuance of second show cause notice with regard to the punishment inflicted on the petitioner, which shall be duly considered in accordance with law and under the provisions of the Rules as envisaged under Section 43(b). The order of the learned single Judge is, however, set aside with the above mentioned observations and directions.

22. The appeal stands allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	A.F.R.
CAV DATE	08.08.2019
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