

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7520 of 2017

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Yogesh Chandra Singh, Son of late Mahabir Prasad Singh, resident of village – Khandbihari, Police Station – Haveli Kharagpur, District – Munger..

.....Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Bihar, Patna.
2. The Principal Secretary, Department of Education, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Director (Administration)-cum-Additional Secretary, Department of Education, Bihar, Patna.
5. Md. Nurul Hoda, Son of Late Sk. Md. Hasan, Resident of village – Bhabhata, Police Station – Sathi, District – West Champaran at Bettiah.
6. The Secretary, Managing Committee of Janta Middle School, Murli Narkatyaganj, Police Station –Shikarpur, District – West Champaran at Bettiah.

.....Respondents

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Opposite Party/s : Mr. Sanjay Kumar, A.C. to G.P. -23

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

09. 01.09.2020

Heard Mr. Sanjay Kumar, learned counsel for the petitioner and Mr. Sanjay Kumar learned A.C. to G.P. – 23 for the State.



2. This writ petition was initially filed for quashing the order contained letter no. 298 dated 25.04.2017 issued under the signature of the Director (Administration)-cum-Additional Secretary, Department of Education, Bihar, Patna, whereby the powers under Rule 139 (C) of the Bihar Pension Rules have been invoked and the petitioner has been directed to submit the reply to the alleged memo of charge framed in format 'K'.

3. A brief narration of facts appears to be necessary.

4. The petitioner, while working as District Superintendent of Education, West Champaran had recommended the case of Md. Nurul Hoda (respondent no. 5) to the District Accounts Officer for approval of his pay scale as according to the petitioner, he was validly appointed as an Assistant Teacher and the salary had to be paid to him.

5. However, later, the then District Education Officer, West Champaran rescinded the approval of the matric trained pay scale to Mr. Md. Nurul Hoda. Because of this, aforesaid Md. Nurul Hoda approached this Court vide C.W.J.C. No. 15560 of 2013 challenging the order whereby the approval of pay scale of matric trained was



cancelled. The writ petition was dismissed and alongside an observation also was made that since the petitioner had approved the scale of pay wrongly, the amount of money which was paid to Mr. Md. Nurul Hoda be recovered from the petitioner after subjecting him to departmental proceeding.

6. The challenge to the aforesaid order vide L.P.A. No. 235 of 2014 also failed.

7. The L.P.A. was disposed of on 31.10.2017 with a direction that the authorities must monitor the action with respect to compliance of the order passed by this Court in C.W.J.C. No. 15560 of 2013, specially with respect to the directions given in paragraph -30 of the said order.

8. During the pendency of this writ petition, the explanation offered by the petitioner to the notice under Rule 139(C) of the Bihar Pension Rules referred to above was rejected by order dated 17.10.2017. When the petitioner came to learn about this from the counter affidavit in the case, he preferred an Interlocutory Application seeking amendment in the pleading and making a request for setting aside the aforesaid order also.



9. Mr. Sanjay Kumar, learned counsel for the petitioner submits that the entire proceedings have adversely affected the petitioner without his having been heard at any point of time. It has been pointed out that when Mr. Md. Nurul Hoda, who is respondent no. 5 in the present case, had approached this Court vide C.W.J.C. No. 15560 of 2013, the petitioner was never noticed and the observation in paragraph -30 of the aforesaid writ petition was made without noticing the petitioner. Even in the L.P.A., the petitioner was not noticed. All of a sudden, the petitioner received the notice under Rule 139(c) of the Bihar Pension Rules asking him to explain as to why there should not be a reduction in his pension amount, which would ultimately amount to appropriating the extra amount which was paid to Mr. Md. Nurul Hoda because of the purported wrong exercise of the power by the petitioner in his capacity as District Superintendent of Education.

10. It appears from the records that the petitioner retired from service as District Education Officer, Nalanda at Bihar Sharif. The order in C.W.J.C. No. 15560 of 2013 was passed on 14.08.2013. As noted above in the L.P.A. No. 235 of 2014, the petitioner was neither made a party nor was ever noticed. Only after his retirement, the



petitioner received the letter dated 25.04.2017 seeking explanation from him under Rule 139(C) of the Bihar Pension Rules.

11. Mr. Sanjay Kumar has, therefore, argued that notwithstanding the orders passed in C.W.J.C. No. 15560 of 2013 and L.P.A. No. 235 of 2014, the amount in question could not have been recovered from the petitioner under the provisions of Rule 139 (C) of the Bihar Pension Rules.

12. Rule 139 (C) of the Bihar Pension Rules is being extracted herein below for ready reference:-

“ The State Government reserves to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pensions was first passed.



13. The aforesaid provisions of the Bihar Pension Rules is only an explanation to Rule 139(a), which mandates that the full pension to an employee admissible under the Rules is not to be given as the matter of course, or unless the service rendered has been really approved. Rule 139(b) of the Bihar Pension Rules further declares that if the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. Thus withdrawal of any part of the pension or reduction in the quantum of pension can only be ordered if it is found that the service rendered by the employee is not satisfactory or is not approved. An isolated instance like the present one, where allegedly there has been a wrong decision with respect to approval of scale of pay to an employee, would not constitute sufficient material for an employer to come to the conclusion that the service rendered by the concerned employee is unsatisfactory. If at all any recovery could have been made from the petitioner, it could be under the provisions contained in Rule 43(b) of Bihar Pension Rules. The State Government under the aforesaid Rules has the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period in case of any pecuniary loss



having been caused to the Government and that also if it is on account of the pensioner having been found in a departmental or judicial proceeding guilty of grave misconduct or has caused pecuniary loss to the Government by misconduct and negligence during his service including the service rendered on re-employment after retirement. There is another requirement for invoking the provisions of Rule 43 (b) of Bihar Pension Rules. The departmental proceedings against the pensioner, if not instituted while he was on duty, shall not be instituted without the sanction of the State Government and for an event which took place more than four years before the institution of such proceeding.

14. In the present case, learned counsel for the petitioner has argued that that there has been no sanction for departmental proceeding nor any departmental proceeding has been initiated against him. In that view of the matter, notwithstanding the orders passed in C.W.J.C. No. 15560 of 2013 and L.P.A. No. 235 of 2014, the amount cannot be recovered.

15. As opposed to the aforesaid contention, Mr. Sanjay Kumar learned A.C. to G.P. -23 submits that the order passed by a Single Judge of this C

been affirmed by a Division Bench



cannot be ignored and has to be given effect to specially when in the appeal, there is a definite direction for monitoring the action taken against the employee. There was no other way but to proceed against the petitioner under Rule 139(c) of the Bihar Pension Rules.

16. True, it is that the order passed in L.P.A. No. 235 of 2014 has not been challenged and it has attained finality. No proceeding under Rule 43(b) of the Bihar Pension Rules could have been initiated against the petitioner because he was not subjected to any departmental proceeding. However, in a writ jurisdiction, a learned Single Judge found that he has caused pecuniary loss to the Government by negligence during his service tenure. Thus there is a finding of the court of law that pecuniary loss to the Government had been caused because of the action of the petitioner. The petitioner was never heard. Rule 43 (b) of the Bihar Pension Rules could not have been invoked in the absence of any departmental proceeding against the petitioner, The time when such action could had been taken by the petitioner is well past four years. Thus there cannot be any resort to provisions of Rule 43(b) of Bihar Pension Rules. As an isolated instance, if at all, it is found that the action of the petitioner rendered his services unsatisfactory warranting withdrawal or



reduction of pension so that the amount which has been paid in excess of entitlement of Mr. Md. Nurul Hoda be appropriated from his pension, at least the explanation offered by the petitioner ought to have been properly evaluated.

17. The order dated 17.10.2017 does not reflect any reason for rejecting the explanation offered by the petitioner.

18. Any order which is not invested with reasons, cannot be sustained in the eye of law. All that the order indicates is that Mr. Md. Nurul Hoda was not entitled to the matric trained pay scale. Under what circumstances the petitioner approved the pay scale to aforesaid Md. Nurul Hoda has not been adverted to. This inference can be made from a bare reading of the order which does not list any reason for rejecting the explanation offered by the petitioner.

19. The order dated 25.04.2017, therefore, is held to be unsustainable in the eyes of law and is set aside.

20. This Court refrains from setting aside the initiation of the proceeding under Rule 139 (c) of Bihar Pension Rules on the ground that the order passed in L.P.A. No. 235 of 2014 has attained finality and this Court cannot undo the effect of a Division Bench judgment.



21. The matter is remitted to the Director (Administration)-cum-Additional Secretary, Department of Education, Bihar, Patna for writing out a fresh order after adverting to the explanation offered by the petitioner and giving reasons for rejecting such explanation. If it is found that the explanation offered by the petitioner is correct then, necessary sequel order shall also be passed for returning the amount to the petitioner which has been recovered from his pension. While deciding the explanation afresh, the concerned authority shall also consider whether it would be appropriate to apportion the amount which has been paid in excess to entitlement of Mr. Md. Nurul Hoda between the petitioner and the recipient of that amount.

22. The writ petition stands disposed of accordingly.

(Ashutosh Kumar, J)

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