

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5703 of 2017

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Rudra Narayan Ram S/o- Late Ramawatar Ram, Resident of Village-
Lachhnauta, P.O.- Laukaria, P.S.- Palanawa, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar,
Patna.
3. The Director, Primary Education, Department of Education of Government
of Bihar, Patna.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dilip Kumar Tiwari, Advocate Mr.Nageshwar Prasad Sinha, Advocate
For the Respondent/s	:	Mr.Mr. Prashant, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

14 12-07-2021 This matter was heard at length on 28.04.2021. The

Court noticing the submissions of the petitioner and the State,

has passed the following order:-

“Heard Mr. Dilip Kumar Tiwari,
learned counsel for the petitioner and Mr.
Prabhat Ranjan Singh, learned counsel for
the State.

Learned counsel for the
petitioner submits that in connection with
Trap case, the petitioner was apprehended by
the Vigilance and a Vigilance case was
registered against the petitioner. During the
pendency of the Vigilance case, the
respondents decided to initiate departmental
proceeding. However, only empty formality
was completed by the department as neither
the presenting officer was available in the



enquiry nor any witness or document was adduced in the departmental proceeding to prove the charge, yet the petitioner was dismissed from service only on the ground of seriousness of the charge at the dictate of the Principal Secretary of the Department.

The order of dismissal dated 04.04.2014 and the appellate order was considered by this Court and vide judgment dated 10.05.2016 passed in C.W.J.C. No. 11234 of 2014 set aside the same and considering the fact that the petitioner superannuated, the Court directed the respondent to proceed under Rule 43(B) of the Bihar Pension Rules. Thereafter the respondents issued show-cause notice to the petitioner and without considering the reply to show-cause in its proper perspective and without awaiting the finding of the pending Vigilance case, the respondents decided to forfeit full pension of the petitioner in purported exercise of power under Section 139 of the Bihar Pension Rules.

Mr. Tiwari, learned counsel for the petitioner submits that the action of the respondent in the facts of the case is illegal, arbitrary and the order of punishment of forfeiture of 100% pension during the pendency of the Vigilance case is unsustainable in the eye of law.

The Vigilance case is pending since, 2010. We are in 2021. In the aforesaid circumstance, the Court is of the considered view that if the Vigilance case is not concluded against the petitioner within one year, the petitioner shall be entitled to restoration of full pension. Prima facie, the Court is of the view that the action of the respondent forfeiting the pension in the



present case notwithstanding the pendency of the Vigilance case is not justified particularly when full dressed departmental proceeding was not conducted against the petitioner in accordance with the procedure prescribed under the conduct Rules.

However, in order to scale the balance, the Court grants time to the respondents to file additional affidavit indicating therein whether the respondent shall ensure conclusion of the trial of the pending Vigilance case within one year from today in the event the trial is not concluded within one year then the petitioner shall be entitled to payment of full pension on the date of retirement till the date of conclusion of Vigilance case or the respondents have to give an undertaking to as to payment of 20% interest from the date of retirement till the date of actual payment, if the vigilance trial is concluded after one year.

In the aforesaid circumstance, the case is adjourned for 28.06.2021 to enable the respondents to file specific counter affidavit on the issue:

- (a) That the vigilance case, if not concluded within one year, the petitioner shall be paid entire post retiral dues and all other admissible dues;
- (b) In the event, the Vigilance case is not concluded within a period of one year and if payment is not made, the respondent shall take responsibility to pay interest at the rate of 20% per annum on all dues of the petitioner including the arrears of salary,



post retiral dues from the date of its accrual till the date of actual payment after the conclusion of the Vigilance case.

Put up this case on 28.06.2021.”

The Court was constrained to pass order as prima facie the Court was of the view that the proceeding under Section 43B of the Bihar Pension Rules was not strictly in accordance with the Rules and the principles of natural justice and fair play. The Court noticed the peculiar facts of the case and the pendency of the vigilance case where the allegation of taking bribe is the charge framed against this petitioner.

The Vigilance Case is pending since 2010. In the process of completing formality of enquiry no witness was examined muchless the witnesses of the trap case to establish the charges and simply because the allegations are serious, 100% pension of the petitioner has been forfeited in this case.

In response to the order dated 28.4.2021, a supplementary counter affidavit has been filed on behalf of the Director, Primary Education. The stand of the respondents in the supplementary counter affidavit filed on 9.7.2021 contained in paras 4,5,6 and 7 is as follows:-

“4. That it is most respectfully submitted that this Hon’ble Court earlier



while hearing the matter had been of the view, that prima-facie the action of the respondent forfeiting the pension in the present case notwithstanding the pendency of the vigilance case is not justified particularly when full dressed departmental proceeding was not concluded against the petitioner in accordance with the conduct Rules.

5. That in such attending facts this Hon'ble Court had been pleased to direct for filing of specific counter affidavit on the issue.

(a) That the vigilance case, if not concluded within one year, the petitioner shall be paid entire post retiral dues and all other admissible dues.

(b) In the event, vigilance case is not concluded within a period of one year and if payment is not made, the respondent shall take responsibility to pay interest at the rate of 20% per annum on all dues of the petitioner including arrears of salary, post retiral dues from the date of its accrual till the date of actual payment after conclusion of the vigilance case.

6. That it is submitted that the matter was considered at the level of the directorate and after a thorough consideration it was thought fit and proper to exercise the 1st option granted by this



Hon'ble Court in its order dated 28.04.2021 i.e. the vigilance case, if not concluded within one year, the petitioner shall be paid entire post retiral dues and all other admissible dues.

7. That it is submitted that if the pending vigilance case is not concluded within one year from a particular date, the petitioner would be paid pensionary benefit and other admissible dues as submitted above.

On consideration of the rival contentions of the parties and on perusal of the documents enclosed with the writ petition and the counter affidavit, the Court is of the considered view that the order forfeiting 100% pension of the petitioner is not in consonance with the rule prescribed for such penal action, principles of natural justice and fair play as well as the Bihar Pension Rules. As such, the order dated 21.09.2017 inflicting punishment of forfeiture of 100% pension of the petitioner as contained in Annexure-4A to the I.A. No. 6622 of 2018 is hereby quashed. However, quashing of Annexure-4A of I.A. No. 6622 of 2018 will not automatically restore the pension of the petitioner. The benefit of pension would depend upon the result of the vigilance case. If the Vigilance case which is pending since 2010, is not concluded within a period



of one year, the petitioner shall be entitled to payment of entire post retiral dues as well as admissible arrears of salary and other allowance as per the supplementary counter affidavit filed on behalf of the respondents in response to the order dated 28.4.2021.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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