

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19518 of 2019

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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. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. The Additional Secretary, Department of Mines and Geology, cum Presenting Officer, Government of Bihar, Patna.
5. The Joint Secretary, Department of Mines and Geology cum Conducting Officer of Departmental proceeding, Government of Bihar, Patna.
6. The 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, Patna.
9. The Accountant General, Bihar, Veer Chand Patel Path, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 21783 of 2019

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Jhakari Ram, S/o Late Harishchandra Ram, Resident of Mohalla Surya Vihar Phase-2, P.O.- Ashiana Nagar, P.S.- Rajiv Nagar, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Principal Secretary, Department of Mines and Geology, Govt. of Bihar, Patna
4. The Additional Secretary, Department of Mines and Geology, cum Presenting Officer, Govt. of Bihar, Patna
5. The Joint Secretary, Department of Mines and Geology, cum Conducting Officer of Departmental proceeding, Govt. of Bihar, Patna
6. The Deputy Director, Mines and Geology, Patna Circle, Patna



7. The Under Secretary to Government Department of Mines and Geology, Govt. of Bihar, Patna
8. The Bihar Public Service Commission through its Secretary, Bihar Public Service Commission, Bihar, Patna
9. The Accountant General, Bihar, Veer Chand Patel Path, Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 19518 of 2019)

For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate

For the Respondent/s : Mr.Gyan Prakash Ojha (GA-7)

For the Mines : Mr. Naresh Kikshit, Spl. P.P.

Mrs. Kalpana, Advocate

For the BPSC : Mr. Neeraj Kumar, Advocate

For the Accountant General: Mr. Ram Kinker Choubey, Advocate

(In Civil Writ Jurisdiction Case No. 21783 of 2019)

For the Petitioner/s : Mr.Akhilesh Dutta Verma

For the Respondent/s : Mr.S.K. Mandal (SC-3)

Mrs. Neelam Kumari, AC to SC-3

Mr. Bipin Kumar, AC to SC-3

Mr. Arjun Prasad, AC to SC-3

For the Mines : Mr. Naresh Kikshit, Spl. P.P.

Mrs. Kalpana, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT**

Date : 25-02-2021

Heard learned counsel for the petitioner and the respondents.

2. Since both the writ applications involve the issue of forfeiture of pension of petitioner, with the consent of the parties both the writ applications have been heard together and are being disposed of by this common judgment.

3. These are the 3rd and 4th writ applications involving the issue of forfeiture of pension.

4. Earlier C.W.J.C. No. 548 of 2016 was filed by the petitioner for payment of pensionary benefits. In the meanwhile,



the respondents decided to forfeit the 100% pension in purported exercise of power under Rule 43(b) of the Bihar Pension Rules.

5. The decision to forfeit 100% pension was challenged in C.W.J.C. No. 9009 of 2017. In view of the subsequent development, C.W.J.C. No. 548 of 2016 was disposed of on 01.11.2017 with liberty to the petitioner to challenge the legality and validity of forfeiture of 100% pension in C.W.J.C. No. 9009 of 2017.

6. The petitioner was aggrieved by the order passed in C.W.J.C. No. 548 of 2017 filed L.P.A. No. 1672 of 2017, which was dismissed vide order dated 08.05.2018.

7. The issue as to forfeiture of 100% pension was examined by a Co-ordinate Bench of this Court in C.W.J.C. No. 9009 of 2017 and the Court on appreciation of various aspects of the matter came to the finding that forfeiture of 100% pension is not justified and directed the respondents to revisit the issue of quantum of punishment of forfeiture of 100% pension. The relevant part of the order passed in C.W.J.C. No. 9009 of 2017 is quoted herein below:

“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 conscience 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.”

8. The petitioner thereafter filed C.W.J.C. No. 19518 of 2019 against the decision of forfeiture of 60% pension and C.W.J.C. No. 21783 of 2019 has been filed challenging the



decision forfeiting 100% pension amount permanently notwithstanding the fact that the issue of forfeiture of 100% pension was considered by the writ Court in C.W.J.C. No. 9009 of 2017.

9. In the order as contained in Memo No. 2038 dated 04.07.2019, the respondents have decided to forfeit 60% pension of the petitioner in view of the fact that Special Court (Vigilance) has taken cognizance on the charge-sheet submitted, which is still pending. In the aforesaid background of the fact, these writ applications are before this Court.

10. In view of subsequent decision of forfeiture of only 60% pension, the writ petition challenging the decision in C.W.J.C. No. 21783 of 2019 has become irrelevant and the same has to be read as modified as forfeiture of 60% pension.

11. Since the Vigilance case is still pending, the Court is constrained to hold that the decision forfeiting 60% pension shall abide by the final outcome of the Vigilance Case. If the decision in the Vigilance case ultimately decided in favour of the petitioner, the petitioner would be entitled to challenge the decision of forfeiture of pension in the light of decision of the Vigilance case. However, in the event, the Vigilance Court convicts the petitioner, the order of forfeiture of 60% pension shall remain intact.



12. It goes without saying that the petitioner should be paid post retiral dues @ 40% pension at the earliest preferably within a maximum period of four months from the date of receipt/production of a copy of this order.

13. All the previous orders passed in this case shall be read in the light of the order passed by this Court today.

14. With the aforesaid, both the writ applications stand disposed of.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2021
Transmission Date	NA

