

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22661 of 2019

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Ram Das Ram Son of Late Budhan Ram, Resident of Kurji Kothiyan Vikash
Nagar, Phulwari, P.S.- Digha, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary, Department of Registration, Excise and Prohibition, Bihar, Patna.
3. The Inspector General, Registration, Bihar, Patna.
4. The District Registrar, Samastipur.
5. The District Registrar, Munger.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Pramod Kumar Singh
For the Respondents	:	Mr. Vikash Kumar, SC-11
		Mr. Raman, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 26-08-2021

The matter has been taken up for hearing *on-line* because of COVID-19 Pandemic restrictions.

2. The petitioner, at the relevant point of time, was working as the District Sub-Registrar, Samastipur. A complaint was made on 15.02.2006 before the Additional Director General, Cabinet (Vigilance), State of Bihar, against him and an Upper Division Clerk posted at the Registration Office, Samastipur, making an allegation of demand of bribe by the aforesaid two persons in the matter of registration of a sale-deed in respect of a piece of land. Allegedly, certain part transaction had already taken



place between them and the complainant. Based on the said complaint, a trap was organized by the Vigilance Investigation Bureau leading to the petitioner's arrest, allegedly while accepting bribe of a sum of Rs.1500. A criminal case was instituted in which charge-sheet has been submitted.

3. The petitioner was placed under suspension as he was taken into custody. Subsequently, he was granted bail by this Court in the criminal case, whereafter his joining in the department was accepted. However, he was again put under suspension and a departmental proceeding was initiated against him in respect of three charges including the charge relating to allegation for which criminal case was instituted as charge No.1. Charge No. 3 was in four parts. The petitioner participated in the said departmental enquiry by filing his written statement of defence. He denied all the charges levelled against him. The enquiring authority submitted his report on 14.12.2007 recording his finding that 1st 2nd and 3rd part of Charge No. 3 were not proved and 4th part of the said charge stood proved against the petitioner. In respect of charges No. 1 and 2, he refrained from recording any finding with his reasoning that for the said allegation, criminal case was pending before a Court of law. The disciplinary authority considered the report of the enquiring authority and subsequently



by a notification dated 06.08.2008, of the Department of Registration, Excise and Prohibition, issued in the name of the Governor of Bihar, it was decided to impose upon the petitioner punishment of withholding of two increments with cumulative effect for charge No. 3, which was found to have been proved. The order further recorded that the petitioner shall not be entitled to any emolument over and above the subsistence allowance for the period during which he had remained under suspension. In respect of charge No. 1, it was decided that decision shall be taken in that regard by the Court, apparently because of the nature of accusation leading to institution of criminal case.

4. The petitioner retired on 31.10.2010. Nearly six years after passing of the order in the departmental proceeding dated 05.08.2008, the department came out with another notification dated 01.04.2014 to the effect that in the departmental proceeding initiated against the petitioner, decision was taken in respect of charge no.3 only and, therefore, since the punishment was incomplete and partial, the departmental proceeding initiated against the petitioner could not be treated to have been completed. Accordingly, it was decided to proceed against the petitioner under Rule 43(b) of the Bihar Pension Rules. An enquiry officer and a conducting officer were appointed. The enquiring authority, this



time, submitted his report on 09.07.2014, which has been brought on record by way of Annexure-7 to the writ application.

5. On close reading of the report of the enquiring authority, it is evident that no oral evidence was adduced in support of charge No.1, which related to the allegation against the petitioner of having been caught red handed by the Vigilance Investigation Bureau while accepting bribe. The second charge against the petitioner was to the effect that the conduct of the petitioner had the effect of tarnishing the image of the department.

6. This is not in dispute that there was no witness produced by the department before the enquiring authority to substantiate the charge against the petitioner of having taken bribe. Only on the allegation that a first information report was registered against him and the petitioner was taken into custody, the charge No. 1 against the petitioner has been held to have been proved. Charge No. 2, in the Court's opinion, cannot be treated to be a charge constituting misconduct as it merely states the consequence of conduct of the petitioner of tarnishing the image of the department.

7. In the Court's opinion, it is a case of no evidence based on which the enquiring authority recorded his finding of the petitioner's guilt in response to charge No.1.



8. The disciplinary authority, accepting the report of the enquiring authority has imposed punishment of withholding of 100 percent of pension by a notification issued on 25.03.2015 exercising power under Rule 139(c) of the Bihar Pension Rules. The said decision dated 25.03.2015 has been put under challenge in the present writ application.

9. Mr. Pramod Kumar Sinha, learned counsel appearing on behalf of the petitioner has submitted that the very initiation of the proceeding under Rule 43(b) of the Bihar Pension Rules after the disciplinary authority had already passed final order in the earlier departmental proceeding is beyond jurisdiction and illegal. He has submitted that once the disciplinary authority in its own wisdom had decided to conclude the departmental proceeding, the same could not have been initiated afresh subsequently.

10. Mr. Raman, learned A.C. to S.C.-11, on the other hand, has argued that there is no illegality in the impugned decision of the State Government as the first order, whereby the punishment of withholding of two increments with cumulative effect was passed cannot be said to have the effect of final conclusion of the departmental proceeding in the absence of final decision having been in relation to charge No. 1 and 2. He has submitted that accordingly the department rightly decided to



proceed against the petitioner for taking action in accordance with the provisions under the Bihar Pension Rules after the petitioner, retired upon attaining the age of superannuation.

11. In my opinion, this writ application deserves to succeed on three counts.

12. Firstly, from the impugned notification, it is evident that decision to withhold 100 percent pension has been taken in exercise of power under sub-rule (c) of Rule 139 of the Bihar Pension Rules. The said power can be exercised for revising an order relating to pension passed by the subordinate authorities under the control of the State Government in case, the State Government is 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. It does not confer any power to withhold 100 percent pension. Further, the provision requires that no such power shall 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 such power shall be exercised after expiry of three years from the date of the order sanctioning the pension was first passed.



13. Rule 139(c) of the Pension Rules contemplates reduction in the amount of pension in certain circumstance. Rule 139(c) of the Rules reads as under : -

“139(b). 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 is 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 pension was first passed.

14. The impugned order does not refer to any order of the authority subordinate to the State Government, which by the impugned order has been revised. The order has been passed nearly four and a half years of his retirement. There is no mention in the impugned order that the petitioner was informed of the proposed action to be taken under Rule 139(c) of the Rules. The impugned order, in Court’s opinion, is beyond jurisdiction.



15. Secondly, Mr. Sinha is right in his submission that the departmental proceeding, which was initiated against the petitioner initially, stood concluded with passing of the final order by the disciplinary authority vide notification dated 06.08.2008. After the said departmental proceeding having concluded, subsequently, no proceeding could have been initiated in respect of the same charge. The department could have waited for the decision in the criminal case for taking any action against the petitioner in accordance with law in view of decision as contained in the notification dated 06.08.2008. Subsequent order amounts to reviewing the earlier order dated 06.08.2008 without any sanction of law.

16. Thirdly, on perusal of the report of the enquiring authority, I am of the view that there was no oral evidence led to substantiate the charge against the petitioner of having accepted bribe. Mere fact that a first information report was registered and the petitioner was taken into custody on the allegation of accepting bribe cannot be termed adequate for the enquiring authority to have reached a conclusion that the petitioner had accepted bribe. This fact ought to have been proved by the department in the departmental enquiry by leading evidence. Since no evidence was led, in the Court's opinion, the finding of the enquiring authority



holding the petitioner guilty of the said charge is perverse. The decision of the disciplinary authority, whereby he has accepted the report of the enquiring authority and has imposed punishment under the provisions of the Bihar Pension Rules is equally unsustainable and deserves interference.

17. Accordingly, the impugned order dated 25.03.2015 is set aside. The consequences shall follow. It is, however, observed that the respondents shall be at liberty to take appropriate decision after conclusion of the criminal case in accordance with law.

18. This application is allowed with the aforesaid observation.

19. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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