

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8211 of 2021

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Jaydev Rajak, Son of Late Sukkan Rajak, Resident of Village- Phaphot,
Meghaul, Police Station- Khodawandpur, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Panchayati Raj, Govt. of Bihar, Patna
3. The Divisional Commissioner, Munger Division, Munger
4. The District Magistrate, Begusarai
5. The Deputy Development Commissioner, Begusarai
6. The Sub Divisional Officer, Teghra, Begusarai
7. The Block Development Officer, Mansoorchak, District- Begusarai
8. The Mukhiya, Gram Panchayat Raj Satha, Block Mansoorchak, District- Begusarai.
9. The Accountant General, Pay & Accounts Office, Birchand Patel Path, Patna
10. The Accounts Officer, Pay & Accounts Officer, Birchand Patel Path, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate
For the Respondent/s : Mr. Anwar Karim, AC to GP-10
For the Accountant General : Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 20-12-2022

Heard Mr. Umesh Kumar Mishra, learned counsel for the petitioner, Mr. Anwar Karim, learned AC to GP-10, for the State and Mr. Ram Kinkar Choubey, learned counsel for the Accountant General, Bihar, Patna.

2. The matter was earlier heard on 13.12.2022 and on a joint prayer made by the parties, this case was directed to be listed on 21.12.2022, however, it appears that on account of secretarial inadvertence, the matter is listed today i.e. on 20.12.2022. Be that



as it may with the consent of the learned counsel for the parties, the present writ petition is being heard and disposed of by the present order/judgment.

3. The present writ application has been filed for the following reliefs:

“I. For issuance of an appropriate writ in the nature of certiorari for quashing the memo no. 611 dated 07.04.2019 issued under the signature of the District Magistrate, Begusarai, by which, the District Magistrate, Begusarai has directed for deduction of 10% (ten percent) from the pension of the petitioner under Section 139 of the Bihar Pension Rules after completion of departmental proceeding under Section 43(B) for the charges having proved against him in the departmental proceeding and on finding his explanation/show cause reply unsatisfactory, without considering the facts and circumstances of the case of the petitioner in the right perspective.

II. For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to make payment of full pension of the petitioner, as the direction for deducting of 10% of the pension of the petitioner is arbitrarily and only with a view to harass the petitioner, which would appear from the fact that there is no allegation against the petitioner of misappropriation of Government money and in



the enquiry report, the Deputy Development Commissioner, Begusarai has submitted his report on 18.02.2013 before the District Magistrate, Begusarai, in which, he has stated that all the schemes have properly been executed and there is no financial irregularity or misappropriation and all the schemes have been executed properly. The only defect, the Deputy Development Commissioner, Begusarai, in his report has pointed out that the records are not being properly maintained.

III. For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to release the full pension to the petitioner, as there is no allegation against the petitioner, which requires, the deduction of 10% (ten percent) from the pension of the petitioner, which would be clearly evident from the records of this case and only with a view to harass the petitioner such an arbitrary decision has been taken.

IV. For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the petitioner will be found entitled in the facts and circumstances of the case.”

4. Shorn of unnecessary details, learned counsel for the petitioner submits that while the petitioner was working as Panchayat Secretary in Satha Gram Panchayat, Begusarai, he was entrusted work for implementation of certain Government



schemes viz. construction of road, toilets and installation of solar lights etc. under various schemes. Having been found certain irregularities, the petitioner was served with a show-cause notice along with the then Mukhiya of Satha Gram Panchayat vide Memo No. 788 dated 22.11.2012 asking them to file their explanation with regard to irregularities found in all four of the schemes under Backward Regions Grant Fund (hereinafter referred to as 'the BRGF') Programme. In response to the aforesaid show-cause notice, the petitioner and the then Mukhiya jointly submitted reply to the Deputy Development Commissioner on 31.01.2013, Begusarai, along with the aforesaid reply the petitioner submitted all the relevant measurement book and vouchers showing completion of the work. Having considered the show-cause reply of the petitioner, the Deputy Development Commissioner vide his letter dated 18.02.2013 submitted a report mentioning therein that no financial irregularity or misappropriation was found and all the schemes were duly executed, however, he found some short comings, as the records are not being properly maintained.

5. It is the case of the petitioner that without considering the aforesaid enquiry report of the Deputy Development Commissioner, Begusarai, the District Magistrate, Begusarai vide



his Memo No. 214 dated 06.05.2013 directed for initiation of departmental proceeding against the petitioner, apart from the lodging of the F.I.R. and put the petitioner under suspension. Subsequent thereto, the suspension of the petitioner was revoked and vide Memo no. 103 dated 14.03.2014, a memo of charge in Prapatra 'Ka' was issued under Rule 17(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred as Bihar CCA Rules, 2005'). The Deputy Collector, Begusarai has been nominated as conducting officer and the Block Development Officer, Mansoorchak, Begusarai has been made the presenting officer and further directed to complete the disciplinary proceeding within two months and submit the report. It is needless to say that in the meantime, the petitioner on attaining the age of superannuation on 31.01.2016, superannuated.

6. As the proceeding could not be completed within two months, as earlier stated by the District Magistrate, the Deputy Development Commissioner, Begusarai vide letter no. 746 dated 01.07.2016 submitted the record of departmental proceeding before the District Magistrate, Begusarai containing the enquiry report, however, having found that the enquiry report not satisfactory, the District Magistrate, Begusarai vide his order as



contained in Memo no. 285 dated 25.03.2017 (Annexure-9) differing with the findings of the enquiry officer directed for further enquiry under Section 17 of the Bihar CCA Rules, 2005 and to submit a fresh report after considering the materials afresh. This time the Deputy Development Commissioner, Begusarai has been made the conducting officer and the Block Development Officer, Mansoorchak was made the presenting officer.

7. On receipt of the show-cause notice, the petitioner submitted his show-cause reply giving explanation of all the charges. The presenting officer also submitted his report before the conducting officer and considering the aforesaid materials, the conducting officer submitted his report as contained in Annexure-12 to the writ petition and out of seven charges, the conducting officer has found four of the charges proved against the petitioner. Thereafter the District Magistrate, Begusarai vide his Memo No. 809 dated 24.08.2018 issued second show-cause notice to the petitioner. In response thereto, the petitioner submitted his show-cause reply and explained the entire facts and circumstances. However, finally the District Magistrate, Begusarai has passed the impugned order dated 07.04.2019, as contained in Annexure-14 to the writ petition inflicting punishment of deduction of 10% of the pension of the petitioner under Rule 139 of the Bihar Pension



Rules.

8. Mr. Mishra, learned counsel appearing on behalf of the petitioner submits that the entire departmental proceeding is not in conformity with the provisions as prescribed under the Bihar CCA Rules, 2005, inasmuch as there is complete violation of Sub-Rules (4), (6), (14) and (18) of Rule 17 of the Bihar CCA Rules, 2005.

9. He further submits that though the memo of charge was issued in the year 2014 with a clear stipulation to complete the departmental proceeding within two months, however the same was not done and the petitioner has been allowed to superannuate on 31.01.2016 and the departmental proceeding was converted under Rule 43(b) of the Bihar Pension Rules, 1950 but from the record it appears that there is no sanction of the State Government. He next submitted that there is no financial or pecuniary loss caused to the Government nor the petitioner has been found guilty of grave misconduct. Further the order of punishment withholding of 10% of the pension under Rule 139 of the Bihar Pension Rules, 1950 is not at all attracted in the present case. It is also the submission of Mr. Mishra that initially the conducting officer submitted his report wherein the petitioner has not been found guilty of the charges, but without assigning any



reason for disagreement, the same was not accepted and direction has been issued for fresh enquiry in complete disregard of the settled proposition of law and, in fact, in the teeth of Rule 18 of the Bihar CCA Rules, 2005.

10. Per contra, learned counsel for the State in order to justify the impugned order of punishment submits that the departmental proceeding was initiated against the petitioner, as he had committed gross illegality in carrying the work assigned under various schemes, while he was posted as Panchayat Secretary in Gram Panchayat, Satha under Mansoorchak Block in the district of Begusarai. Learned counsel for the State further submits that in the departmental proceeding, the Additional Collector was made conducting officer and the Block Development Officer, Mansoorchak was made the presenting officer and after conducting enquiry, the conducting officer submitted report, but as the same was not found satisfactory, hence the District Magistrate, Begusarai vide his order dated 25.03.2017 appointed the Deputy Development Commissioner, Begusarai as conducting officer and the Block Development Officer, Mansoorchak, as presenting officer under Rule 17 of the Bihar CCA Rules, 2005 and directed him to submit a clear report.

11. During the departmental proceeding, the conducting



officer has found the charge nos. 1, 3, 4 and 5 proved and accordingly submitted his report before the District Magistrate, Begusarai. The District Magistrate, Begusarai on being found the explanation of the petitioner not satisfactory and considering the enquiry report, imposed the penalty vide order dated 07.04.2019. While concluding his submission, learned counsel for the State submits that the petitioner has been allowed proper opportunity of hearing and the entire departmental proceeding has been conducted by adhering to the procedures prescribed under the Bihar CCA Rules, 2005 and at no point of time, the petitioner has raised any grievance with regard to non-compliance of any of the provisions causing prejudice to the right of the petitioner.

12. This Court carefully heard the learned counsel for the parties and considered the materials available on record.

13. For proper appreciation of the issue involved in the present writ application, it would be relevant to quote Rules 43(b) and 139 of the Bihar Pension Rules, 1950.

“43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss



to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve 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 pension was first passed.”

14. From the materials available on record, it is evident that neither the petitioner has been found guilty of grave misconduct nor any pecuniary loss has caused to the Government by misconduct or negligence. Further, so far exercise of power under Section 139 of Bihar Pension Rules is concerned, 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. It is the fact that no



such show-cause notice in this regard has ever been served to the petitioner.

15. It is also evident from the materials available on record that there is no compliance of Sub-rule 4 and 6 of the Rule 17 of the Bihar CCA Rules, 2005, apart from violation of Rule 18 thereof, as neither the petitioner has been provided the list of witnesses nor the disciplinary authority has assigned any reason for its disagreement with the findings of the enquiry authority on the article of charge. This Court is not oblivious of the fact that the disciplinary authority, if it is not itself the inquiring authority may, for the reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of the Rule 17 of the Bihar CCA Rules, 2005 as far as may be. However, the order of the District Magistrate, Begusarai remitting the case to the inquiring authority for further enquiry and/or differing with the findings of the inquiring authority is devoid of any reasons, and as such per se illegal. The Hon'ble Supreme Court in the case of **Punjab National Bank and Ors. vs Kunj Behari Misra**, reported in (1998) 7 SCC 84 has been pleased to observe as follows:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read



into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

15. Further the impugned order does not reflect any application of mind with respect to the findings as to why the services of the petitioner has not been found to be satisfactory nor any show-cause notice has been served on this point. The impugned order also suffers from non-application of mind, as while passing the impugned order of punishment, the disciplinary authority failed to discuss the enquiry report as to out of seven charges, only four charges have been found proved and no financial irregularity or pecuniary loss has caused to the State Government. This Court would, therefore, come to the



conclusion that the impugned order dated 07.04.2019, as contained in Annexure-14, suffers from procedural impropriety, apart from in the teeth of the relevant provisions of Bihar CCA Rules, 2005 and hold that the proceeding leading to issuance of the order of punishment dated 07.04.2019, as contained in Annexure-14, was without any sanction of law and unsustainable. Accordingly, the order of punishment dated 07.04.2019 is hereby quashed. As the petitioner has already superannuated, no fresh departmental proceeding could be initiated.

15. As a result of quashing of the impugned order, the petitioner would be entitled to payment of his deducted 10% of the pension, which is to be paid within a period of eight weeks from the date of receipt/production of a copy of this order.

16. The writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.01.2023
Transmission Date	NA

