

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9633 of 2011

Basudeo Das S/O Late Moti Ram R/O Vill.- Alam Nagar, P.S.- Alam Nagar,
Distt.- Madhepura, Presently Posted As A Deputy Secretary, Planning and
Development Department, Govt. Of Bihar, Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary General Administration Department, Govt. Of Bihar,
Patna
3. The Joint Secretary General Administration Department, Govt. Of Bihar,
Patna
4. The O.S.D., General Administration Department, Govt. Of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dr. Mayanand Jha, Sr. Advocate Mr. Arvind Kumar, Advocate
For the Respondent/s	:	Mr.Devendra Kr Sinha Aag2

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 01-09-2022

Pursuant to the order dated 18.08.2022, Mr. B.
Rajendra, Principal Secretary, G.A.D. is present in the Court. He
fairly assisted the State Counsel.

2. On 18.08.2022 following order was passed:-

“Perusal of the records it is evident that petitioner was subjected to disciplinary proceedings on certain allegations. It is learnt that inquiring officer held that only one charge is proved out of sixteen charges. Further, in not completing the disciplinary proceedings the petitioner was compelled to approach this Court on two occasions one in CWJC and another in MJC (Contempt) despite that the concerned disciplinary



authority has not passed the final order in the disciplinary proceedings which is launched against the petitioner. On the contrary, after retirement of the petitioner there was an internal communication from the Office of the Secretariat to the Office of the Accountant General to deduct 100% pension from the petitioner's pension.

In the light of these facts and circumstances, Principal Secretary, General Administration Department, Govt. of Bihar, Patna is hereby directed to appear in person on the next date of hearing along with complete records to assist in the matter.

Relist this matter on 01.09.2022.”

3. In the instant petition, petitioner has prayed for following reliefs:-

“That this is an application for issuance of an appropriate writ/order/direction setting aside the decision of the Govt. on file No. 2/C.3 – 3091/ 2005 (page Nos. 112 to 118) bearing dispatch No. 4424 dt. 6.1.11 issued by the Chief Minister Bihar's Secretariat whereby it has been decided to withhold 100% pension of the petitioner (without any final order being passed and communicated to the petitioner in a Departmental Proceeding under Section 43(b) of the Bihar Pension Rules) and consequential letter No. 362 dt. 10.1.11 issued by the Officer on Special Duty, General Administration Department, to the Accountant General, Bihar communicating such decision and hold



that the decision is disproportionate, discriminatory & arbitrary.”

4. Undisputed facts are that the petitioner was subjected to disciplinary proceedings while he was in service and it has reached up to the stage of issuance of second show cause notice and furnishing of explanation/reply on behalf of petitioner on 07.06.2010 and 28.06.2010 respectively. Thereafter, the disciplinary authority/appointing authority proceeded to adopt short circuit method to the extent of withholding of 100% pension. To that effect a communication has been made to the office of the Accountant General.

5. It is astonished to know that disciplinary authority who is Secretary/ State Government without completing the disciplinary enquiry which was launched against the petitioner under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (For short Rules, 2005) read with Bihar Pension Rules in so far as passing of final order in a disciplinary proceedings pursuant to the inquiring officer's report, second show cause notice on 07.06.2010 and petitioner's reply dated 28.06.2010. Even to this day, the disciplinary authority has not opened his/her eyes to pass a final order in a disciplinary proceedings in terms of Rule 18 of Rules, 2005



read with Rule 43(b) of Bihar Pension Rules. On the other hand, contrary to the aforesaid provisions 100% pension of the petitioner has been forfeited.

6. In the light of these facts and circumstances, petitioner is entitled to all retiral benefits, if it is not paid to him. Further, he is entitled to pension from the date he has attained age of superannuation and retired from service till date and he is entitled to monthly pension from time to time till passing of final order in a departmental enquiry which was launched against the petitioner. The petitioner is permitted to file additional reply to the second show cause notice in view of later development. Such additional reply/explanation to the second show cause notice be submitted within a period of two months from today. On receipt of additional reply, if any, the disciplinary authority is hereby directed to pass a detailed speaking order in terms of provisions of Rules, 2005 read with the Bihar Pension Rules.

7. The above exercise shall be completed within a period of two months from the date of receipt of petitioner's additional reply against the second show cause notice.

8. The official respondents have not adhered to the Rules, 2005 read with the Bihar Pension Rules pursuant to the



disciplinary proceedings launched against the petitioner. Disciplinary/ appointing authority has adopted short circuit method of deducting 100% pension from petitioner while writing a letter to the Accountant General. That apart, it is to be noticed that even notice has not been issued to the petitioner that his 100% pension would be withheld.

9. In view of the lapses on the part of the State- official respondents i.e., Secretariat officials of the State of Bihar- Respondent- concerned department is hereby directed to pay cost of Rs. 1,00000/- . The cost shall be remitted in the Patna High Court Legal Services Committee within a period of two months from the date of receipt of this order.

10. With the above observations, the present petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.09.2022
Transmission Date	

