

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12491 of 2012

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Jitendra Kumar Son Of Late Dwarika Prasad Sharma Resident Of Village -
Naudhariya, Police Station - Buniadganj, District - Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Pramandal, Gaya
3. The Collector, Gaya
4. The Block Development Officer, Bodh Gaya, Gaya
5. The Anchal Adhikari, Bodh Gaya, District - Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG 4

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

Date : 12-10-2022

On 27.09.2022, following order was passed:

“Matter is of the year, 2012. In the earlier session, matter was heard and State counsel was asked to verify which is the statutory provision of law that if employee is placed under suspension he is required to report before the suspending authority on day to day basis. Further, whether a suspended employee could be charge-sheeted for remaining unauthorized absence during the suspension period.

Mr. Anjani Kumar, AAG 4, learned counsel for the State sought pass over after few cases to assist this case. When the present matter was taken up after few cases still the State counsel, Mr. Anjani Kumar could not assist this Court. Matter is of the year, 2012 and at the behest of the State counsel matter cannot be prolonged from time to



time for a trivial issue stated (supra). Therefore, the suspending authority is hereby directed to appear in person along with complete records and statutory relevant provision of law subject to payment of cost of Rs. 10,000/-. Cost shall be paid by the State counsel in the Patna High Court Legal Services Committee for the reasons that he has taken time after few cases and he could not make available the relevant statutes.

Relist this matter on 12.10.2022.”

2. Whatever adverse order passed against *Mr. Anjani Kumar Singh*, AAG 4 stands withdrawn, cost has already been paid.

3. Heard the matter on merits.

4. Deceased - Dwarika Prasad Sharma was placed under suspension on 31.07.1989 and it was revoked on 27.08.1990. He was placed under suspension arising out of allegation that he has alleged to have misappropriate a sum of Rs. 87,705/- during the intervening period from 18.02.1989 to 24.06.1989 for which he was subjected to criminal proceedings in Bodh-Gaya P.S. Case No. 45/1992 for the offence under Section 409 I.P.C. Arising out of the alleged allegations he was subjected to disciplinary proceedings on 16.07.1991 and it was concluded in imposition of penalty of dismissal from service on 19.08.1992. Feeling aggrieved and dissatisfied with the order of dismissal deceased preferred appeal before the Commissioner and dismissal order was confirmed. Further deceased preferred C.W.J.C. No. 9697 of



1999 and it was allowed in favour of the deceased on 11.03.2005 and the matter was remanded to the disciplinary authority to commence afresh departmental proceedings. Accordingly, on 20.03.2006, Collector, Gaya appointed Executive Officer, Gaya as inquiring officer. Show cause notice was issued on 18.04.2006. Thereafter, inquiring officer submitted a report on 02.03.2007 while holding that charge nos. 1 and 2 are not proved and charge no. 3 was proved. In the result, second show cause notice along with inquiring officer's report was furnished to the deceased on 22.11.2007. On receipt of Notice deceased – Dwarika Prasad Sharma submitted explanation, the then Collector, Gaya proceeded to pass order while re-affirming the earlier dismissal order dated 19.08.1992 on 28.06.2008. The deceased – Dwarika Prasad Sharma preferred an appeal and it was rejected on 10.05.2012. In the meanwhile, deceased - Dwarika Prasad Sharma died on 18.01.2010. Hence, the present petition is filed by the legal heirs of the deceased - Dwarika Prasad Sharma.

5. Learned counsel for the petitioner submitted that question of affirming earlier order of dismissal dated 19.08.1992 on 28.06.2008 and its confirmation by the appellate authority is contrary to decision rendered in C.W.J.C. No. 9697 of 1999 dated 11.03.2005 for the reasons that once the order of dismissal was set



aside and matter is remanded to the disciplinary authority to hold afresh inquiry, question of re-affirming an order which is not existing in the eye of law as it was set aside and its confirmation by the appellate authority amounts to contempt.

6. Learned counsel for the petitioner further submitted that disciplinary authority cannot impose any of the penalty under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'Rules, 2005') in the light of Rule 3 of Rules, 2005 (Applicability Clause). Learned counsel for the petitioner submitted that Rules, 2005 are not applicable to such of those dead or retired employees. In the present case deceased - Dwarika Prasad Sharma has attained age of superannuation and retired from service on 31.12.1991 during pendency of afresh inquiry. In other words, deceased - Dwarika Prasad Sharma is deemed to be in service and retired from service in the light of decision of this Court passed in C.W.J.C. No. 9697 of 1999 dated 11.03.2005. It is also submitted that at this distance of time, matter cannot be remitted to the disciplinary authority to pass appropriate order under the Bihar Pension Rules while invoking Rule 43 (b) for the reasons that disciplinary authority/government under Rule 43 (b) could be invoked only against such of those employees who



are alive. In other words, no action can be taken against legal heirs of the deceased employee – Dwarika Prasad Sharma.

7. *Per contra*, learned counsel for the respondent State resisted the aforesaid argument and submitted that having regard to the alleged allegations relating to misappropriation of 87,705/- during the intervening period from 18.02.1989 to 24.06.1989, it is fit case to impose penalty. The aforesaid contention of the petitioners are too technical and the same cannot be appreciated.

8. Heard learned counsels for the respective parties.

9. Late Dwarika Prasad Sharma was placed under suspension and it was revoked. Further, he was subjected to disciplinary proceedings and it was concluded in imposition of dismissal from service on 19.08.1992 and it was affirmed by the appellate authority on 27.05.1999. Both the orders were subject matter of litigation before this Court in C.W.J.C. No. 9697 of 1999 and it was allowed in favour of late Dwarika Prasad Sharma on 11.03.2005 while remanding the matter to the disciplinary authority. The disciplinary authority proceeded to initiate afresh inquiry on 20.03.2006 and it was concluded in re-affirming the earlier order of dismissal dated 19.08.1992 on 28.06.2008 and it was affirmed by the appellate authority, the disciplinary authority who has affirmed earlier order of dismissal on 28.06.2008 and its con-



firmation by the appellate authority are totally in violation of this Court order dated 11.03.2005 in C.W.J.C. No. 9697 of 1999. There is total non-application of mind. The disciplinary authority should have taken note of the order of this Court dated 11.03.2005 read with the fact that deceased late Dwarika Prasad Sharma has attained age of superannuation and retired from service on 31.12.1991 and so also Applicability Clause namely Rule 3 of Rules, 2005 for the reasons that Rules, 2005 seized to be operated insofar as deceased - Dwarika Prasad Sharma as on 28.06.2008, as he was not in service as on 28.06.2008.

10. Further, it is not a case for remand to the disciplinary authority to pass afresh order in the light of the Rule 43 (b) of Bihar Pension Rules as deceased – Dwarika Prasad Sharma had died on 18.01.2010. No orders can be passed against legal heirs of the deceased employee. In the light of these facts and circumstances, petitioner has made out a *prima facie* case so as to interfere with the order dated 28.06.2008 and 10.05.2012 *vide* Annexures 8 and 9. They are set aside. In the result, the concerned respondent is hereby directed to extend all monetary and service benefits which was due to the deceased - Dwarika Prasad Sharma. In this regard, necessary calculation shall be made by the competent authority and determine monetary benefits. The same



shall be disbursed in favour of legal heirs of the deceased - Dwarika Prasad Sharma while identifying their identity that they are legal heirs of deceased - Dwarika Prasad Sharma. The above exercise shall be completed within a period of four months from the date of receipt of this order, failing which the legal heirs of the deceased - Dwarika Prasad Sharma are entitled to simple interest @ 6 % per month on all arrears from the date of presentation of the present petition.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	18.10.2022
Transmission Date	

