IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10471 of 2020

Abhiram Jha Son of Late Jaivir Jha Resident of Village- Vargaon, Police Station- Sonbarsa, District- Saharsa at Present residing at Ramnagar, Purnea, P.O.- Polytechnic, Purnea, Police Station- Khajanchi Hat, District- Purnea.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. Additional Chief Secretary Revenue and Land Reforms Department, Government of Bihar, Patna.
3. Deputy Secretary Revenue and Land Reforms Department, Government of Bihar, Patna.
4. Commissioner Purnea Division, Purnea.
5. Collector Kishanganj, District- Kishanganj.
6. Additional Collector Kishanganj, District- Kishanganj.
7. Sub. Divisional Officer Kishanganj, District- Kishanganj.
8. Deputy Collector Land Reforms, Kishanganj, District- Kishanganj.
9. Circle Officer Thakurganj, District- Kishanganj.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Adv

For the Respondent/s : Mr. Mukul Prasad, AC to GP-18

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-08-2022

Heard learned counsel for the petitioner and learned State counsel.

2. The petitioner has assailed resolution of the Revenue and Land Reforms Department, Government of Bihar, bearing Memo No. 1062 (15), dated 25.08.2020, purported to have been passed under Rule 139 of the Bihar Pension Rules preceded by an inquiry under Rule 43(B).

3. The impugned order visits the petitioner with a penal consequence of withholding 80 percent of his pension for a period of 15 years.

4. By filing interlocutory application bearing I.A. No. 01/2022, the petitioner has also assailed the resolution dated 07.01.2021 issued by the State of Bihar in the Revenue and Land Reforms Department purporting to be a decision under Rules 9(5) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 {for short 'CCA Rules"}, resolving to treat the period in between 02.04.2009 (the date of termination) till 30.11.2010 (the date of petitioner's retirement) as period of suspension; and that for the said period, the petitioner would be entitled to nothing but subsistence allowances.

5. Learned counsel for the petitioner submits that both these orders are unsustainable.

6. The order dated 07.01.2021 is unsustainable as the same has been passed in purported exercise of power under Rule 9(5) of the CCA Rules, which could not have been done post-retirement of the petitioner.

7. In so far as the order of punishment dated 25.08.2020, it is submitted that the same is also unsustainable for more reasons than one. The first submission is that the order is purported to have been passed under Rules 139 of the Bihar Pension Rules, which is clearly impermissible. Rule 139 provides the revisional power, whereas the order from its very perusal would show that it is not an order passed in exercise of revisional jurisdiction, rather it is an order of penalty after proceeding purported to have been conducted under Rules 43(B). The next submission is that even on merits, the order is unsustainable, since the findings, based on which the petitioner has been punished, are speculative, unsustainable being devoid of substance and not based on any facts. The authority has proceeded merely on assumptions.

8. The learned State counsel has submitted that the petitioner was proceeded against for four charges, as contained in charge memo dated 25.01.2006 on प्रपत्र (क)**.** The charges against the petitioner are as follows:-

(a) While posted as Circle Inspector at Circle Office- Thakurganj, the petitioner in spite of not being a competent authority recommended for temporary lease for tea cultivation of Govt. land and the same was against the guideline of the Revenue and Land Reforms Department, Government of Bihar.

(b) As per Letter No:- 1697/Revenue dated 22/11/1995 of the Revenue and Land Reforms Department, Government of Bihar for establishment of

industrial unit ¾ acre of land was allowed to be allotted but by misinterpreting the same, the petitioner recommended for lease of govt. land for tea cultivation.

(c) The petitioner recommended lease for tea cultivation of Gair Majarua land in Pothia and Thakukrganj Circle which was against the Letter No:-576/Revenue dated 08/04/1999 of the Revenue and Land Reforms Department, Government of Bihar.

(d) The petitioner recommended lease for different persons of same family which was against the Govt. direction and rule.

9. Specific findings have been recorded in the impugned order dated 25.08.2020 with reference to each charge after giving due opportunity to the petitioner. The procedure having been followed, this Court may not interfere with the findings as the matter is being considered within the limited scope of judicial review which is confined only to the decision making process.

10. On consideration of rival submissions, this Court would observe that the settled legal parameters for exercise of judicial review does not restrict the Court's scrutiny of orders so as to ascertain whether the findings are perverse, and whether there is any material whatsoever to sustain the findings recorded in the course of inquiry or as affirmed by the Disciplinary Authority. The four charges have specifically been replied by the petitioner by detailed and elaborate reply (Annexure-P/3 series).

11. The Inquiry Authority as well as the Disciplinary Authority has recorded the findings without taking into consideration the petitioner's response to the four charges.

12. It is the specific case of the petitioner that the applications for settlement of land for tea cultivation were received by the District Magistrate, who had forwarded the applications for getting a report with respect to the lands proposed to be settled in favour of the applicants through the Circle Officer, Thakurganj. The said Circle Officer has deputed the petitioner (Circle Inspector), Revenue Karamchari and Circle Amin to submit a report. The petitioner has thereafter submitted a report placing all the facts on record. It is specifically averred by the petitioner in his reply that he had stated that lands were *Gair Majarua Am* land and also reported the relevant provisions of the Industrial Policy, 1995 under which tea cultivation had been considered as an area of thrust and considered as an industry.

13. In so far as the other allegation, namely, charge no. 3, it is also submitted in the petitioner's reply that the petitioner had clearly mentioned in his report that the lands were recorded as *Gair Majarua Am* land.

14. The sum and substance of the petitioner's stand in the reply is that the report contained all the requisite details. There was no suppression of any relevant fact or any misrepresentation with respect to the fact as existing.

15. The higher officials, including the Collector were the competent authorities for taking the final decision on the report over which the petitioner, being a subordinate employee, neither had any control nor could he limit the consideration. In view thereof, the authorities were required to consider the stand of the petitioner in its right perspective, which apparently has not been done, which is clear from the impugned order dated 25.08.2020.

16. The finding in respect of charge no.3 reads as follows:

> "स्पष्टतः उनकी या तो. यह कर्तव्यहीनता है या संबंधित पक्षकारों के साथ मिली भगत।"

17. From bare perusal of the finding, it is apparent that there is no specific decision on charge no. 3; and the finding is speculative.

18. The findings in respect of charge no. 4 reads as follows:

"जैसा कि आरोप सं0-1 एवं 2 में विस्तृत विवेचना की गई कि राजस्व एवं भूमि सुधार विभाग का उल्लिखित पत्र औद्योगिक इकाई / प्लांट की स्थापना से संबंधित था न कि चाय की खेती के प्रयोजन के लिए। अतः निश्चित रूप से इस पत्र में निहित भावना थी कि अलग-अलग उद्यमियों को अलग-अलग 5 एकड़ भूमि औद्योगिक इकाई / प्लांट हेतु बन्दोबस्ती की जाय।"

19. The finding is more alleging that the petitioner has misinterpreted the provisions of the industrial policy whereas in his reply the petitioner has submitted a report based on the industrial policy, enclosing a copy of the same. Thus, all the facts were before the decision making authorities and, therefore, findings in respect of charge no. 4 are perverse, speculative and unsustainable in the eyes of law.

20. The Court also takes notice of the fact that the allegation is that the recommendation has been made for personal gain, however, no illegal motive has been proved with respect to any material in the inquiry nor is there a finding that the petitioner's report was actuated by any motive to derive personal gains from the recommendation.

21. In view of the discussion above, this Court would observe that within the settled parameters of judicial review as enunciated recently in the decision of the Hon'ble Apex Court in the case of ***Union Of India & Ors v. P. Gunasekaran*** reported in **2015 (2) SCC 610,** the impugned order dated 25.08.2020 is clearly unsustainable. The findings are presumptuous, speculative not based on any material whatsoever and perverse, to say the least. The impugned order dated 25.08.2020 is, therefore, quashed.

22. In view of quashing of the order of punishment, the order dated 07.01.2021, purported to have been issued under Rules 9(5) of CCA Rules as a sequel to the order of punishment, must also collapse. The same is also quashed.

23. The writ petition is allowed. The petitioner is held entitled to consequential benefits.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
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