IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1319 of 2023

==

Jai Shankar Mandal Son of Late Lakshmi Naryan Mandal, Resident of Village- Bhawanpura, Kharik District- Bhagalpur, Bihar- 853202

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary Cum Principal Secretary, General Administration Department, Bihar, Patna.
3. The Additional Secretary, General Administration Department, Bihar, Patna.
4. The Under Secretary, General Administration Department, Bihar, Patna.
5. The Special Secretary, General Administration Department, Bihar, Patna.
6. The Managing Director, Bihar State Food and Civil Supply Corporation Limited, Bihar, Patna.
7. The Secretary, Food and Consumer Protection, Department, Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Vinay Ranjan, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP-4
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate Ms. Usha Kumari, Advocate

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 04-04-2023 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Food and Civil Supplies Corporation Ltd.

2. Petitioner in the present case is seeking quashing of the resolution as contained in memo no. 9445 dated 10.06.2022 issued under the signature of Under Secretary, General Administration Department, Bihar, Patna whereby and whereunder in purported exercise of power under Section 139 of the Bihar Pension Rules, 1950, punishment of forfeiture of

100% pension of the petitioner has been inflicted.

3. Learned counsel for the petitioner submits that the petitioner superannuated from service on 31.01.2019 as Senior Deputy Collector. Three years after his retirement, vide letter no.2348 dated 22.02.2022 article of charges/memo of charges were served upon him wherein it was alleged that during the year 2013-14 when the petitioner was posted as District Manager in the Corporation at Sitamarhi he did not follow the guidelines issued by the Corporation in the matter of obtaining the deed of pledge as well as the deed of agreement which resulted in non-recovery of the amount of rice from the millers ultimately causing loss to the government exchequer. The petitioner was asked to submit his explanation.

4. Learned counsel for the petitioner submits that on receipt of the article of charge and the memo of charge as contained in Annexure- '1' series to this application, the petitioner submitted a letter dated 09.03.2022 (Annexure- '2'). By Annexure-2, he requested the Under Secretary to the Government in the General Administration Department, Bihar that for purpose of giving an explanation he should be made available the documents relating to the four millers, the relevant S.I.O. showing supply of paddy to them. He requested for providing the photocopy of those documents. The respondents did not respond to the letter as contained in Annexure- ‘2’. No departmental proceeding was instituted against the petitioner under the Bihar Pension Rules, 1950 (hereinafter referred to as ‘the Rules of 1950’), however the respondents proceeded to pass an order forfeiting 100% pension of the petitioner in exercise of power under Rule 139 of the Rules of 1950.

5. Learned counsel submits that on a bare reading of Rule 139 of the Rules of 1950 it would appear that it applies in a case where the pension has been first sanctioned. In this case, the pension was never sanctioned and there was no question of reduction in the amount of pension. It is submitted that no show cause against the action proposed to be taken in this regard was ever served upon the petitioner. His submission is that the impugned order has been passed showing it under Rule 139 of Rules of 1950 but in fact it is not in tune with the mandate of the said Rule and the said Rule would have no application in the facts of the present case.

6. Extending his argument, learned counsel for the petitioner submits that even the alternative provision under Rule 43(b) of the Rules of 1950 would not be applicable as the allegations relate to the period 2013-14 which was much beyond the period of four years and in this case no departmental proceeding has been instituted by the respondents.

7. Learned counsel for the State as well as the Corporation do not dispute that the charges are relating to the period 2013-14 and in this case during his service period the petitioner was never served with any show cause. No departmental proceeding was ever initiated against him and after three years of his retirement the show cause in form of Annexure- '1' was issued for the first time.

8. At this stage, this Court would reproduce Rule 139 of the Rules of 1950 hereunder:-

> "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, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

9. On a bare reading of Rule 139 and the entire scheme of the said Rule, it would appear that action under Rule 139 cannot be taken after expiry of three years from the date of the order sanctioning the pension was first passed. The Rule talks of a final order regarding reduction in the amount of pension or gratuity. It further talks of giving a reasonable opportunity of show cause against the action proposed to be taken.

10. In the light of the aforementioned provision if the communication as contained in letter no.2348 dated 22.02.2022 (Annexure- '1' to the writ application) is considered, it would appear that by this letter the petitioner was served with a chargesheet and he was informed that the decision has been taken to take action under Rule 139 of the Rules of 1950. This is not a show cause giving an opportunity to the petitioner to defend himself against an action proposed to be taken in regard to his pension. It was not a case in which the competent authority had fixed the pension earlier and it was sought to be reduced in exercise of power under Rule 139.

11. At this stage, this Court would also take note of Rule 43(b) of the Rules of 1950. This Rule falls under Chapter III of the Rules of 1950 which deals with the general provision relating to grant of pension. The Rule 43(b) of the Rules of 1950 is reproduced hereunder for a ready reference:-

> "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:
>
> Provided that-
>
> (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;
>
> (i) shall not be instituted save with the sanction of the State Government;
>
> (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
>
> (iii) shall be conducted by such authority and at such place or places as the State Government may

direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation.- For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court."

12. A perusal of the impugned order as contained in Annexure- '3' to the writ application would show that it has been passed after holding that the petitioner had caused a monetary loss of Rs.2,76,27,702.60. The impugned order says that after serving of the charge-sheet the petitioner vide his letter dated 09.03.2022 called for the detail information relating to the outstanding against the millers and recovery thereof. The impugned order, as contained in Annexure- ‘3’, however, nowhere says that the letter dated 09.03.2022 was ever responded to or that a departmental proceeding was conducted by following the established procedure of law. The impugned order nowhere talks of any enquiry report. It is, therefore, evident that a decision to forfeit 100% pension of the petitioner has been taken by the competent authority without following the established procedure of law.

13. This Court further finds an uncontroverted document on the record in form of Annexure- ‘7’ series. From these documents, it would appear that in the case of Md. Amanul Haque Siddiqui, Manager, State Food Corporation, Bhojpur and in the case of the then District Manager Sri Harendra Nath Dubey, the General Administration Department, Government of Bihar took a view that no action may be taken against them because the charges relate to the period 2012-13. In paragraph ‘11’ of the writ application the petitioner is categorically stating that in the similar matter, same allegations were framed against Md. Amanul Haque Siddiqui, proceeding was initiated but since allegation year was 4 years back of his retirement, so his proceeding under Rule 43 B read with Rule 139 (g) of the Bihar Pension Rules, 1950 has been dropped as time barred. Similar view was taken in the matter of Sri Harendra Nath Dubey.

14. In the counter affidavit filed on behalf of the State there is no averment that the case of the petitioner stands on a different footing. All that is stated is that a man is responsible for his own act. This Court fails to understand why an employer would adopt a different approach in respect of one employee who is similarly situated with others against whom the proceeding was dropped as time barred. There is no answer to this in the counter affidavit.

15. In course of argument, learned counsel for the State submitted that the allegations are of causing huge monetary loss to the government but at the same time learned counsel for the State does not dispute that in such circumstance a departmental proceeding or an action in terms of the provisions of the Rules of 1950 was required to be taken within the prescribed period.

16. Be that as it may, this Court finds that by no stretch of imagination the impugned order as contained in Annexure- '3' may sustain the test of law. It is hereby set aside.

The matter is remitted to the competent authority to take a fresh view of the matter in accordance with law. It is expected that the respondents shall be consistent and shall maintain uniformity in their decision making.

17. At this stage, the respondents should consider grant of consequential benefits, if so admissible to the petitioner by virtue of setting aside of the impugned order, as contained in Annexure- ‘3’, which will be subject to the final outcome and decision of the competent authority.

18. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

U			