

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.509 of 2019

=====

Shashi Bhushan Prasad Singh, Son of Late Yogendra Prasad Singh Resident of Mohalla-Laxmi Colony, Kanhauli, P.O. R.K. Ashram Bela, P.S. Mithanpura, Distt.-Muzaffarpur, the retired Incharge Head Clerk, Block Office, Mashahari, Distt.-Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The District Magistrate, Muzaffarpur, Distt.-Muzaffarpur
4. The Block Development Officer, Mushahari, Distt.-MuZaffarpur
5. The Accountant General, Bihar, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar -Manglam, Adv.
For the Respondent/s : Mr. Saroj Kumar Sharma, (AC to AAG-3)

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 22-11-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. Learned counsel for the petitioner has challenged the order dated 08.05.2018 passed by the respondent No. 3 District Magistrate, Muzaffarpur and communicated to the petitioner issued vide his memo No. 431 dated 08.05.2018 annexed as Annexure-P/7 by which 10% of the pension of the petitioner was directed to be withheld in exercise of power as mentioned in Rule 43(b) of the Bihar Pension Rules, 1950.



Counsel for the petitioner also submits that the petitioner was appointed on the post of Lower Division Clerk in the year 1982 and in the year 2011 when he was posted in the establishment section of Muzaffarpur Collectorate, a file concerning the departmental proceeding was returned by the then District Magistrate with certain queries for discussion and subsequently, the petitioner was transferred from Muzaffarpur Collectorate to Mushahari Block in June 2013 then a suspension order dated 28.12.2015 was issued and departmental proceeding issued vide memo No. 591 dated 25.05.2016 annexed as Annexure-P/2 was initiated against the petitioner and the departmental proceeding was initiated in which the petitioner appeared and in the inquiry report, he was not found guilty. Counsel also submits that the petitioner was superannuated on 31.01.2018 and till the date of his retirement, he was completely unknown about the result of his departmental proceeding, but after his retirement, he got knowledge that the said departmental proceeding has been converted in a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 in which he was served memo No. 147 dated 12.02.2018 annexed as Annexure-P/6 and subsequently, punishment order was passed which has been served upon him vide memo No. 431 dated 08.05.2018 annexed as Annexure-P/7



in which order for withholding of his 10% pension has been made against which the petitioner has preferred the writ petition before this Court basically on two basic grounds. The first is the order passed by the District Magistrate is a non jurisdictional order and secondly that there is gross violation of Rule 17 and 18 of the Bihar CCA Rules, 2005 in passing the final order.

3. Learned counsel for the petitioner specifically submits on the points of law that upon going through the disciplinary order, the order passed by the disciplinary authority it becomes crystal clear that inquiry officer found nothing against him and differing from the said order, the disciplinary authority has passed order of punishment and from the order itself it transpires that no second show cause has been issued against him. Counsel also submits that the second point is absolutely technical and tested by Division Bench of this Hon'ble Court in case of ***Uday Sharma Vs. The State of Bihar and Others passed in Letters Patent Appeal No. 1473 of 2019 in Civil Writ Jurisdiction Case No. 17311 of 2019 dated 10.02.2023*** in which it has been held that the word used under Rule 43(b) of the Bihar Pension Rules, 1950 is as follows:-

“43(b): The State Government further reserve to themselves the right of withholding or withdrawing a pension or



any part or it, whether permanently or for a specified period, and the right or 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-

(underline supplied)

(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 as 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.”

4. Learned counsel for the petitioner submits that here in the present case, the order imposing penalty under Rule 43(b) of the Bihar Pension Rules, 1950 has been passed by the District Magistrate and according to him, the State Government is different personality from the District Magistrate and therefore, the order passed by the District Magistrate related to pension is absolutely non jurisdictional and hence, the order should be set aside.

5. Learned counsel for the State fairly submits that in the case of the petitioner, the proceeding was initiated when he was in service, but the final order has been passed when he was superannuated, but prior to that, a decision under section 43(b) a punishment order has been passed which is well within the power of the District Magistrate because he was the disciplinary authority for the petitioner, but on the points of issuance of second show cause, counsel for the State submits



that from the order under challenge it transpires that second show cause has not been issued.

6. Upon perusal of the documents and hearing the parties and particularly in the light of the decision made in the case of **Uday Sharma (supra)** whose para 10 and 11 which states as follows:

“para-10. Further, we notice that the District Magistrate is not the competent authority to impose the penalty while invoking Rule 43(b) of the Bihar Pension Rules, 1950. Rule 43 (b) of the Bihar Pension Rules, reads as under:-

"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-

(underline supplied)



(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 as 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 (i) of clause (a); and

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

“para-11. Reading of the aforementioned provision, it is evident that State alone is the competent authority to impose the penalty under Rule 43(b) of Bihar Pension Rules, 1950 for the reasons that there is no



delegation/sub-delegation of power is vested with any other authorities so as to District Magistrate stepping into shoe of the disciplinary authority insofar as invoking Rule 43(b) of Bihar Pension Rules, 1950, even on this count, impugned order of the District Magistrate is liable to be set aside. These two issues would go to the root of the matter so as to interfere with the District Magistrate order dated 26.02.2019 insofar as imposition of penalty. The learned Single Judge has not taken note of the provision of Rule 43(b) of Bihar Pension Rules, 1950, explanation of the appellant on the Inquiry Officer's report read with show cause notice and it is not a speaking order. Moreover, Bihar Public Service Commission has not been consulted in the light of the aforementioned provision, as it is mandatory.”

7. After perusal of the order impugned, it transpires to this Court that deduction of pension is basically a major penalty and therefore, issuance of second show cause is mandatory which are lacking in the present case and therefore, in view of this matter which are absolutely legal in accordance with law that there is failure of non issuance of second show cause and disagreement memo as well as in the light of the



observations made in the case of *Uday Sharma (supra)*, the order dated 08.05.2018 passed by the respondent No. 3 District Magistrate, Muzaffarpur communicated to the petitioner issued vide memo No. 431 dated 08.05.2018 annexed as Annexure-P/7 and suspension order dated 28.12.2015 issued vide memo No. 591 dated 25.05.2016 annexed as Annexure-P/2 are hereby set aside.

8. With the above observations and directions, this writ petition stands allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2023
Transmission Date	

