

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6625 of 2021

Rizwan Ahmad Son of Late Md. Shoaib Resident of village - Banori, P.s. -
Simri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Principal Secretary,
Commercial Tax Department, Government of Bihar, Patna.
2. The Additional Secretary, Commercial Tax Department, Government of
Bihar, Patna.
3. The Additional Commissioner, Commercial Taxes Department, Government
of Bihar, Patna.
4. The Joint Commissioner, Commercial Taxes Department, Government of
Bihar, Patna.
5. The Joint Commissioner, Commercial Taxes (Adm.), Darbhanga Division,
Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar Singha, Adv Mr.Mohammad Sufyan, Adv
For the State	:	Mr.Akash Chaturvedi, AC to SC 11

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-08-2023

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

2. From pleadings on record, it appears that the
petitioner was proceeded against on the basis of a charge memo
dated 30.04.2010. The charge is in relation to a period when he



was posted as a 'Clerk' in the Begusarai Circle Office. The substance of charges was that he has embezzled an amount of Rs. 53,318/-, being an amount withdrawn by him allegedly for office expenses. There is another amount alleged to have been embezzled, Rs. 3,574/-, which it is alleged that he had withdrawn by putting a forged signature of one driver 'Naresh Paswan'. The third allegation is regarding insubordination that he has got complains lodged for pressurizing the higher officials. After issuance of charge memo, the inquiry was conducted and inquiry report was submitted on 27.09.2010. The conclusion of the Inquiry Officer reads as follows:-

"अनुलग्नक क्रमांक 2 के विस्तृत विवेचन से आरोप प्रत्यक्षरूप से सही प्रतीत होता है।"

3. The one line conclusion of the Inquiry Officer, to say the least, is unsustainable. It does not show consideration of any material or witnesses in the course of inquiry. It also does not show consideration of the petitioner's defence. The findings are not definite, not based on any material, and show total non-application of mind.

4. On basis of such inquiry report, the petitioner was directed to deposit the amount alleged to have been misappropriated (Rs. 53,318 + Rs. 3,574 = Rs. 56,892). This amount, admittedly, had been deposited by the petitioner, which



is apparent from the communication dated 18.05.2012 (Annexure 3) from the Office of the Commercial Taxes Joint Commissioner to the Commercial Taxes Additional Commissioner, Bihar.

5. The petitioner having suffered the consequences of a perverse and baseless finding of the Inquiry Officer, the issue could have been given a quietus. Authorities, however, proceeded in their relentless efforts to visit the petitioner with further penal consequence of termination. A show cause for the proposed punishment of termination was, thus, issued to him on 30.07.2013 (Annexure 4), whereafter there appears to be no proceedings whatsoever. In the meanwhile, however, the petitioner had approached this Court for payment of his retrial dues as he was under the impression that having discharged his liabilities after deposit of the amount alleged to have been misappropriated, he should be paid his retrial dues.

6. While the writ proceedings was pending an order dated 08.04.2016 (Annexure 6) was passed by the authorities and placed on the records of the writ proceedings. Since other retrial dues had been paid, writ application was disposed of to enable the petitioner to pursue his remedy with regard to the order of punishment dated 08.04.2016 (Annexure 6) which is



assailed in the instant proceedings. The same is preceded by a decision to convert the proceedings under Rule 43 (b) of the Bihar Pension Rules, 1950. The decision to convert the proceedings is dated 12.02.2015 (Annexure 5). Thereafter without any further steps, straight away the order of punishment dated 18.04.2016 (Annexure 6) has been passed.

7. In between the decision to convert the proceedings and passing of the impugned order, there is nothing on record to suggest that any proceedings whatsoever was conducted against the petitioner. The order dated 08.04.2016 (Annexure 6) though passed under Rule 43 (b) of the Bihar Pension Rules, 1950, purports to inflict the petitioner with the punishment of withholding of two annual increments with non-cumulative effect and the consequence of depriving the petitioner of all other dues except subsistence allowance.

8. The learned counsel for the petitioner submits that the order is unsustainable. After the proceedings were converted into Rule 43 (b) of the Bihar Pension Rules, 1950, no opportunity was granted to the petitioner before arriving at the conclusion, based on which the impugned punishment has been awarded.

9. He further submits that the nature of punishment



sought to be awarded by the impugned order, post retirement of the petitioner is unsustainable. Penalty sought to be imposed, could have been imposed, while petitioner was still in service and while the provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short "Bihar (CCA) Rules, 2005") were applicable to him. After retirement, the only provision which enables the authority to proceed against the petitioner for the limited scope of withholding part or whole of his pensionary dues is Rule 43(b) of the Bihar Pension Rules, 1950. The authorities being conscious of this fact have converted the proceeding into one under Rule 43(b) Bihar Pension Rules, 1950, on 12.02.2015 (Annexure 5). However, punishment has been awarded by the order dated 08.04.2016 (Annexure 6) which is beyond the jurisdiction of the Bihar Pension Rules, 1950, and at the same time could not have been inflicted on the petitioner post retirement as the Bihar (CCA) Rules, 2005 seized to apply.

10. The petitioner in support of this contention has relied upon two judgments one in the case of ***Shambhu Saran vs. The State of Bihar & Ors*** reported in ***2000 (1) PLJR 665 (FB)*** and ***Rizwan Ahmed vs. State of Bihar & Ors*** reported in ***2017 (3) PLJR 76***.



11. The learned counsel for the State, on the other hand, submits that the inquiry report had already been submitted, and the petitioner had deposited the amounts which the inquiry officer had found to be embezzled. The authorities after taking these factors into consideration came to a definite decision to inflict punishment of withholding of two annual increments without cumulative effect and not to pay any amount except subsistence allowance during suspension period.

12. After going through all the relevant aspects, this Court would find that there is no assertion in the counter affidavit that after conversion of the proceedings into a proceeding under Rule 43(b) of Bihar Pension Rules, 1950, any proceeding was conducted. There is also no denial of the fact that the punishment of withholding of two annual increments is a penalty prescribed under the Bihar (CCA) Rules, 2005.

13. In the facts and circumstances noted above, this Court would find that the order of punishment dated 08.06.2014 (Annexure 6) is unsustainable. Withholding of two annual increments without cumulative effect is a penalty specified in Rule 14 of the Bihar (CCA) Rules, 2005. Applicability of the said Rules is apparent from the bare perusal of the Rule itself.



Rule 2, makes it clear that it is to govern all classes of Civil Services of the State and all other similar cadre or extra cadre existing posts under the State of Bihar. The content and intention of the rule is clear that it applies to Government Servant.

14. Upon attaining the age of superannuation and post retirement, the petitioner seized to be a Government Servant, as master-servant relationship had snapped. The Rules, therefore, became inapplicable to the petitioner, and therefore, infliction of a punishment prescribed under the rule is unsustainable.

15. The punishment of withholding of two annual increments, sought to be inflicted upon the petitioner is a penalty specified in Rule 14 of the Bihar (CCA) Rules, 2005. Rule 14 begins as follows:

"14. Minor and Major Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-..."

16. Simple reading of the provision clarifies scope and applicability of the penal clause. The penalties specified in Rule 14, as apparent from the Rule, extracted above, can only be imposed on a "Government Servant".



17. The petitioner seized to be a government servant on attaining age of superannuation. The authorities thereafter could not have inflicted any punishment, much less the punishment of withholding of increment against the petitioner. Since Rule 14 was not applicable to the petitioner, the punishment of withholding of increment and consequential deprivation are wholly without jurisdiction.

18. The only procedure available was under Rule 43 (b) of the Bihar Pension Rules, 1950, which has limited scope for passing penal orders with reference to the pensionary benefits of a retired Government Servant that also in compliance with the procedure prescribed, as per decision of the full Bench of this Court in the case of ***Shambhu Saran*** (*supra*) relied upon by the petitioner.

19. In the instant case even the procedure prescribed under Rule 43(b) of the Bihar Pension Rules, 1950, has not been followed and there is no punishment awarded as contemplated under the Bihar Pension Rules, 1950. The order dated 08.04.2016 (Annexure 6), therefore, is found to be unsustainable, and is hereby quashed.

20. The petitioner is entitled to all consequential benefits on account of revision of his pensionary benefits and



grant of arrears which the authorities are obliged to calculate and pay along with a chart showing details of calculation, within a period of three (3) months from the date of receipt/production of a copy of this order.

21. Accordingly, writ petition is allowed.

(Madhuresh Prasad, J)

uttam/-

AFR/NAFR	AFR
CAV DATE	N/A
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