

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16648 of 2014

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Satya Ranjan Bose, S/o Late Man Mohan Bose, Residence of 151 - M.B.
Road Part Nimtalla Kolkata, P.S. Nimka Distt. - Kolkata, West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary-cum-Commissioner, Revenue & Land Reforms Department, Government of Bihar, Patna.
2. The Commissioner, Purnia Division, Distt. Purnia.
3. The Collector, Purnia, Distt. Purnia
4. Circle officer, Dagaruwa, Distt. - Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brij Bihari Tiwary, Advocate
For the Respondent/s : Mr. Sanjay Parasmani, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 27-07-2023

1. The present writ petition has been filed for setting aside the order dated 26.04.2012, passed by the District Magistrate, Purnea, whereby and whereunder 5% pension of the petitioner had been directed to be deducted by way of punishment under ***Rule 43(b) of the Bihar Pension Rules, 1950***. The petitioner has also prayed for quashing of the appellate order dated 13.11.2013, passed by the Divisional Commissioner, Purnia Division, Purnia, whereby and whereunder the appeal filed by the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as Mohrim in



Revenue Department (Settlement Office) at Purnia and had retired on 31.01.2008.

3. The learned counsel for the petitioner has submitted that while the petitioner was posted at Karim Nagar Anchal, a charge-sheet dated 18.08.2004 was issued to the petitioner levelling 04 charges and a department proceeding was initiated against him. The department inquiry was held and the Inquiry Officer submitted an inquiry report, however, it is submitted that there is no finding regarding the petitioner having indulged in any sort of gross misconduct or having caused any pecuniary loss to the Government. In fact, the entire matter was also evaluated by the Deputy Collector (Establishment), whose note can be found at page no. 20 of the writ petition, wherein he has also come to a conclusion that the present case is not a case of gross misconduct, hence, the department proceeding can be put to an end.

4. The learned counsel for the petitioner has further submitted that despite the aforesaid findings of the Deputy Collector (Establishment) dated 02.12.2009, the District Magistrate, Purnia, by a non-speaking and a cryptic order, has directed for reduction of pension of the petitioner by 5% by an order dated 24.04.2012, contained in Memo dated 26.04.2012.



The said order dated 24.04.2012 was assailed by the petitioner by filing an appeal bearing Appeal no. 45 of 2012, which has also been rejected by the Divisional Commissioner, Purnia Division, Purnia.

5. The learned counsel for the petitioner has contended that since the Deputy Collector (Establishment), in his note dated 02.12.2009 as also the Inquiry Officer have come to the conclusion that the present case is not a case of gross misconduct and no pecuniary loss has been caused, the petitioner could not have been punished ***Rule 43(b) of the Bihar Pension Rules, 1950***. In this connection, the learned counsel for the petitioner has relied on a judgment ***dated 21.06.2018***, passed by this Court in ***C.W.J.C. no. 18055 of 2010 (Kumar Ajit Singh vs. The State of Bihar and others)***, relevant paragraphs whereof, are being reproduced hereinbelow :-

“ The learned counsel for the petitioner submits that the impugned order of punishment dated 17.09.2009 would show that firstly, the same has not furnished any reason for inflicting punishment on the petitioner herein and has merely narrated the series of events which have taken place in the present case and secondly, there is no finding of any grave misconduct as against the petitioner or of having caused



pecuniary loss to the Government on account of the said misconduct so as to warrant infliction of punishment in terms of Rule 43 (b) of Bihar Pension Rules, 1950.

Having heard the parties and upon going through the materials on record, I am of the view that the impugned order of punishment dated 17.09.2009 suffers from total non-application of mind and does not furnish any reason so as to warrant infliction of punishment on the petitioner herein. Moreover, the impugned order dated 17.09.2009 also does not comply with the provisions of Rule 43 (b) of Bihar Pension Rules, 1950 to the effect that for inflicting punishment under Rule 43(b) of Bihar Pension Rules, it is necessary to come to a conclusion of grave misconduct on the part of the delinquent or pecuniary loss having been caused to the Government on account of the misdeeds of the delinquent, however in the present case, there is no such finding, hence the order of punishment dated 17.09.2009 is not sustainable in the eyes of law and is accordingly, quashed. Since the original order of punishment dated 17.09.2009 has been set aside, consequently the appellate order dated 08.06.2010 is bound to fall and is accordingly, quashed.”



6. It is further submitted that the aforesaid judgement dated 21.06.2018 has been upheld by the learned Division Bench of this Court vide judgment ***dated 06.02.2023***, passed in ***L.P.A. no. 1682 of 2018***, paragraphs no. 4 to 12 whereof, are reproduced hereinbelow :-

“ 4. Rule 43(b) of Bihar Pension Rules, 1950 reads as under:-

“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.”

(Underline Supplied)

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) Bihar Public Service Commission, shall be consulted before final orders are passed.”

5. Perusal of the disciplinary authority's order, it is crystal clear that disciplinary authority's order is not in consonance with the aforementioned provision. Accordingly, learned Single Judge has set aside the order of punishment dated 17.09.2009 and appellate authority's order dated 08.06.2010. Feeling aggrieved by the learned Single Judge's order, State has preferred the present L.P.A.



6. *Learned Counsel for the appellant vehemently contended that having regard to the alleged charges levelled against the respondent, it is a case for imposition of penalty. Financial irregularities would fall under the definition of grave misconduct. Therefore, order of the learned Single Judge is liable to be set aside.*

7. *Learned counsel for the appellant on instruction submitted that during pendency of the present L.P.A., the State has withdrawn the order of penalty on 03.02.2020 in the light of M.J.C. No. 5317 of 2018 proceedings, such withdrawal is subject to L.P.A. decision.*

8. *Per contra, learned counsel for the respondent resisted the aforesaid contentions and supported the order of the learned Single Judge to the extent of disciplinary authority's order is not in consonance with Rule 43(b) of Bihar Pension Rules, 1950. Hence, no interference is invited from the L.P.A. bench.*

9. *Heard learned Counsels for the respective parties.*

10. *Core issue involved in the present lis is whether order of the disciplinary authority is in order or not and further whether L.P.A. bench could interfere with the order*



of the learned Single Judge or not? From perusal of the disciplinary authority's order, it is evident that there is no discussion relating to grave misconduct by the disciplinary authority to the extent that there is a non-application of mind and so also in consonance with spirit of Rule 43(b) of Bihar Pension Rules, 1950. Further, we noticed that there is no determination about amount of loss caused to the State Exchequer by the acts of respondent. Unless and until loss of any financial nature is caused by a particular employee and such determination is not forthcoming in the preliminary inquiry or in the departmental inquiry, one cannot draw inference that concerned employee caused financial loss to the State Exchequer. It is only on presumption that there is loss to the tune of Rs. 3.5 Lakhs as is evident from the records. Therefore, in the absence of any finding that respondent has caused financial loss to the State Exchequer and it has been proved in the departmental inquiry.

One cannot draw inference that it is a grave misconduct. Moreover, disciplinary authority has not analyzed whether proved charge amounts to grave misconduct or not?



11. Question of withdrawing the punishment on 03.02.2020 vide Memo No. 1700 was not warranted for the simple reason that learned Single Judge has already set aside the order of penalty dated 17.09.2009 read with 08.06.2010. Orders which were set aside by this Court cannot be withdrawn by the State Government, since penalty orders were not existing in the eye of law as on 03.02.2020.

12. In the light of these facts and circumstances, the appellants have not made out a case so as to interfere with the order of the learned Single Judge dated 21.06.2018 passed in C.W.J.C. No. 18055 of 2010.”

7. *Per contra*, the learned counsel for the respondent-State has referred to the impugned order dated 26.04.2012 to contend that serious irregularities were committed by the petitioner while he was working as revenue employee at the Circle Office, Dagaruwa, Dist- Purnia, hence, punishment of reduction of 5% pension has been rightly imposed and moreover, there is no irregularity in conduct of the departmental proceeding in question.

8. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that



the District Magistrate, Purnia has summed up the entire matter in few lines in the following words :-

“ उपरोक्त तथ्यों, अंचल अधिकारी, डगरुआ का मंतव्य, आरोपी का द्वितीय कारण पृच्छा एवं संचिका में पोषित कागजातों के अवलोकन से स्पष्ट है की आरोपी श्री बोस द्वारा बिना सक्षम पदाधिकारी के आदेश के जमाबंदी कायम कर, सरकारी नियमों का अनदेखी करते हुए गंभीर अनियमितता बरती गयी है । ”

9. Thus, it is apparent from the aforesaid order dated 26.04.2012 that first of all, there is no finding of any grave misconduct as against the petitioner and secondly, the disciplinary authority has also not found the petitioner to have caused any pecuniary loss to the Government so as to warrant infliction of punishment in terms of **Rule 43(b) of the Bihar Pension Rules, 1950**, apart from the fact that the impugned order dated 26.04.2012 suffers from a total non-consideration of the defense put forth by the petitioner, resulting in the same being cryptic, non speaking and an unreasoned order, containing no reasons whatsoever for inflicting the punishment of reduction of 5% pension.

10. This Court further finds that the present case is squarely covered by the judgments rendered by this Court as also by the learned Division Bench of this Court in the case of **Kumar Ajit Singh (supra)**.



11. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the impugned order dated 24.04.2012, as contained in Memo dated 26.04.2012, passed by the District Magistrate, Purnia, whereby and whereunder punishment of reduction of 5% pension has been inflicted upon the petitioner, does not fulfill the requirements of the provisions contained in ***Rule 43(b) of the Bihar Pension Rules, 1950***, hence is set aside. Consequently, the appellate order dated 13.11.2013, passed by the Divisional Commissioner, Purnia Division, Purnia has got no legs to stand, hence, is also quashed.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.08.2023
Transmission Date	NA

