

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.147 of 2021

=====

Murari Mohan Sharma Son of Madan Mohan Resident of Mohalla-Mahendru,
Opposite Harijan School, Ashok Rajpath, P.S. Mahendru, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the principal Secretary, Department of Food and Consumer Protection, Government of India, Patna-1
2. The Additional Secretary, Department of Food and Consumer Protection, Government of India, Patna-1
3. The Joint Secretary, Department of Food and Consumer Protection, Government of India, Patna-1
4. The Accountant General, Bihar
5. The Collector, Patna.
6. The District Treasury Officer, Patna.
7. The Additional District Magistrate (Supply), Patna.
8. The Sub Divisional Officer, Danapur, Patna.
9. The Officer-In-Charge, Danapur Police Station, Danapur, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Amarendra Nath Verma, Advocate
For the State	:	Mr.Arvind Ujjwal, SC 4
		Mr.S.K. Mallick, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-07-2023

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

2. The short point arising for consideration is whether
the petitioner was served with the second show cause notice
dated 20.06.2017, proposing to differ with findings of the
Enquiry Officer favourable to the petitioner, or any subsequent
reminder dated 22.08.2017.



3. From the pleadings, it is apparent that the Enquiry Officer had not found the petitioner liable for the charges. The department, however, claims that only after second show cause, the impugned order proposing to withhold 10 per cent of the petitioner's pension has been passed. The order records that second show cause notice was issued and reminder was also issued.

4. In view of the dispute, the authorities were directed to produce the dispatch register so as to verify the facts stated in paragraph no. 8 of the counter affidavit. Before proceeding to consider the dispatch register, this Court would take notice of the fact the authorities have referred to second show cause notice dated 20.06.2017 as well as a reminder dated 22.08.2017. Copy of the alleged reminder dated 22.08.2017, has not been annexed.

5. The instant proceedings being a writ proceeding under Article 226 of the Constitution of India. The law is well-settled that the pleadings are required to be supported by Annexures, as the issue is to be decided on affidavits. If the facts are not pleaded and evidence in support of the facts are not annexed then the Court may not entertain such plea. The Annexure, however, in respect of the alleged reminder dated



22.08.2017, is not on record.

6. This Court would consider it useful to reproduce paragraph 15 of judgment of the Apex Court in the case of ***Rajasthan Pradesh Vaidya Samiti & Anr vs. Union of India & Ors*** reported in ***(2010) 12 SCC 609***, relying on earlier decision of the Apex Court in the case of ***Bharat Singh & Ors. vs. State of Haryana & Ors*** reported in ***(1988) 4 SCC 534*** which reads as follows:-

“15. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the court is under no obligation to entertain the pleas. In Bharat Singh v. State of Haryana [(1988) 4 SCC 534 : AIR 1988 SC 2181] this Court has observed as under : (SCC pp. 542-43, para 13)

“13. ... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. ... there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading i.e. a plaint or a written



statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.”

7. This Court, therefore, is not inclined to accept the bald assertion in paragraph no. 8 regarding a reminder dated 22.08.2017. Even otherwise, there is no details showing service of the same. The law is well-settled that mere issuance of show cause or second show cause will not suffice. The authorities are required to show that it was actually served by one mode or the other and that the noticee had knowledge of the same so as to sub-serve the principles of natural justice.

8. Insofar as the second show cause dated 20.06.2017, learned State counsel has produced the dispatch register, and upon perusal of the same, fairly submits that it does not show dispatch of show cause notice dated 20.06.2017.

9. It is, thus, apparent that there is no material to show service of either the show cause notice dated 20.06.2017, or the reminder dated 22.08.2017.

10. The facts being so, the order of punishment purporting to withhold 10 per cent of the petitioner's pensionary benefits, under order dated 24.09.2018 (Annexure P/5), without



complying with principles of natural justice is unsustainable.
The same is quashed.

11. The writ petition stands allowed, the petitioner shall
be paid all his consequential benefits.

(Madhuresh Prasad, J)

uttam/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.08.2023
Transmission Date	

