

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1786 of 2021

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Dinesh Prasad Singh Son of Late Anurag Singh, Resident of Village-
Bariarpur Bujurg, P.S.- Raja Pakar, District- Vaishali.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Home (Police) Department, Govt. of Bihar, Patna.
3. The Under Secretary, Home (Police) Department, Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police (Budget/Appeal/Welfare) in the office of the
Director General of Police, Bihar, Patna.
6. The Inspector General of Police, Patna Zone, Patna.
7. The Deputy Inspector General of Police, Central Range, Patna.
8. The Senior Superintendent of Police, Patna.
9. The Commandant, Bihar Military Police- 02, Dehri, Rohtas.
10. The Treasury Officer, Patna.
11. The Treasury Officer, Rohtas.
12. The Accountant General, Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate
For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 18-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner in the present case is seeking the
following reliefs:-

- “(i) For issuance of writ in the nature of certiorari
for quashing of the order contained in memo no.
8951 dated 25.10.2019 passed by the Under
Secretary to the Govt., Home (Police) Department
whereby the Govt. has decided to withhold full
pension of the petitioner.
(ii) For issuance of writ in the nature of certiorari



for quashing of memo no. 1065/447692 dated 20.11.2019 issued from the office of the Director General of Police, Bihar, Patna under the signature of the Inspector General of Police (Budget/Appeal/Welfare) whereby he has directed to ensure compliance of the order issued by the Govt. Further for quashing of other consequential order as contained in memo no. 524 dated 22.11.2019 issued by the Inspector General of Police, Central Range, Patna, memo no. 16731 dated 16.12.2019 issued by the Senior Superintendent of Police, Patna and letter no. 1025 dated 14.03.2020 issued by the Commandant, BMP-2, Dehri in compliance to the order issued by the Govt. of Bihar and the Police Headquarters.

(iii) For issuance of writ in the nature of certiorari for quashing of the Inquiry Report dated 09.02.2016 whereby the Inquiry Officer has proved the charges against the petitioner in most arbitrary and illegal manner and in violation of Principle of natural justice.

(iv) For issuance of writ in the nature of certiorari for quashing of the memo of charge as contained in memo no. 10816 dated 14.10.2014 issued by the Senior Superintendent of Police, Patna as he was not competent to frame the memo of charge and somebody else has put his signature on his behalf on the memo of charge. Further the memo of charge is also in violation of Rule-17 (3) of the Bihar CCA Rules.

(v) For necessary direction upon the respondent authorities to grant all consequential benefits including pension, arrears of pension, gratuity, leave encasement and the due salary for the period the petitioner remained under suspension.

(vi) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. For purpose of setting aside of the impugned orders, learned counsel for the petitioner has drawn the attention



of this Court towards the specific statements made in paragraphs '11' to '14' of the writ application. It is stated that the entire departmental proceeding was conducted in violation of principle of natural justice. The Inquiry Officer himself examined three witnesses in absence of the petitioner and when the petitioner submitted an application requesting the Conducting Officer to recall the witnesses and allow him to cross-examine the witnesses, the Conducting Officer directed the petitioner to submit his last defence statement even without cross-examining the witnesses.

4. It is submitted that when the petitioner appeared in the office of the Conducting Officer on 05.01.2016 and submitted his explanation that he may be allowed to cross-examine the witnesses and thereafter he would submit his last defence statement, the petitioner was not allowed to cross-examine the witnesses inasmuch as no witness was present on the said date in the office of the Inquiry Officer. Thereafter, all of a sudden, the petitioner got a communication vide Memo No. 6326 dated 06.06.2016 from the office of Senior Superintendent of Police, Patna whereby the petitioner was communicated that the charges levelled against him have been proved in the inquiry. He was called upon to submit a second show cause



explanation against the punishment of dismissal.

5. Learned counsel submits that initially the complete inquiry report was not made available to the petitioner but later on, on the request of the petitioner the complete inquiry report was made available which was duly responded to by the petitioner.

6. Learned counsel submits that while the disciplinary proceeding remained pending, the petitioner superannuated from service on 31.08.2016. After his superannuation, no order was passed converting the disciplinary proceeding in a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Pension Rules'). The Deputy Inspector General of Police, Central Range, Patna awarded a punishment of withholding of 50% of the pension of the petitioner for a period of ten years vide Memo No. 07 dated 12.01.2017 (Annexure '10' to the writ application).

7. Learned counsel submits that the punishment of withholding of 50% of the pension was challenged by the petitioner before the Inspector General of Police, Patna Zone, Patna on 24.05.2017 vide Annexure '11' to the writ application. It is submitted that the Inspector General of Police (Budget, Appeal & Welfare) vide Memo No. 247/329985 dated



22.09.2017 set aside the order of punishment passed by the Deputy Inspector General of Police but at the same time, he directed the department to submit a proposal for forfeiture of pension of the petitioner.

8. Learned counsel submits that on a bare perusal of Annexures '12' and '12A' of the writ application, it would appear that the Appellate Authority acted like a representative of the Department and took interest in punishing the petitioner to the extent of withholding of his 100% pension. It is submitted that the Appellate Authority exceeded his jurisdiction.

9. Learned counsel has further submitted that in view of the direction of the Appellate Authority, the file was again moved and the impugned order as contained in Annexure '15A' was passed whereby and whereunder the entire pension of the petitioner has been forfeited. Pursuant to Annexure '15A', consequential order has been passed by the Senior Superintendent of Police, Patna vide Memo No. 16731 dated 16.12.2019 as contained in Annexure '15D' to the writ application.

10. Learned counsel submits that the petitioner preferred an appeal vide Annexure '17' to the writ application but that has also been dismissed without going into the



contentions of the petitioner vide Annexure '18' of the writ application saying that there is no provision for appeal against the order passed under the Pension Rules.

11. Learned counsel submits that in this case, the impugned orders are liable to be quashed and cancelled firstly on the ground that the entire inquiry proceeding was conducted without appointing any Presenting Officer and the Inquiry Officer himself acted like a representative of the Department. He has relied upon the judgment of this Court in the case of **Uday Pratap Singh versus the State of Bihar** reported in **2017 (4) PLJR 195** wherein it has been held that non-appointment of the Presenting Officer and assumption of his role by the Inquiry Officer would prove fatal to the inquiry report.

12. Learned counsel has further submitted that the role of the Appellate Authority in directing for submission of a fresh proposal for forfeiture of the pension of the petitioner would render the entire subsequent exercise illegal and influenced by the order of the Appellate Authority.

13. Yesterday, when the matter was heard, this Court called upon learned counsel for the State to respond to the submissions advanced on behalf of the petitioner. Today, Mr. Ajay Kumar, learned AC to GP-4 for the State submits that in



his counter affidavit at least there is no explanation to the aforesaid submissions. It is, however, submitted that the order of forfeiture of pension has been passed against the petitioner in case of proved charges in the departmental proceeding and no fault may be found with the same. So far as the statement made in paragraphs '11' to '14' to the writ application are concerned, learned counsel for the State submits that in paragraph '9' of the counter affidavit those paragraphs of the writ application have been answered, however, there is no specific denial of the fact that three witnesses were examined by the Inquiry Officer himself in absence of the petitioner.

14. Having heard learned counsel for the petitioner and the State as also on perusal of the materials on record, this Court is of the considered opinion that the impugned orders as contained in Annexure '15A' and the consequential orders passed by different authorities which are contained in Annexures '15B', '15C' and '15D' cannot sustain the test of law and fair play in action. The enquiry officer has acted in violation of principles of natural justice. He usurped the role of Presenting Officer. Witnesses were examined by him in absence of the petitioner. The Appellate Authority also exceeded his jurisdiction while passing order on the appeal of the petitioner.



15. Thus, the orders contained in Annexures '15A', '15B', '15C' and '15D' as also the appellate order as contained in Annexure '18' are liable to be quashed and cancelled on the grounds raised on behalf of the petitioner which have been duly taken note of hereinabove.

16. Those orders are accordingly quashed.

17. The disciplinary authority is directed to proceed from the stage of inquiry in accordance with law and conclude the disciplinary proceeding within a period of six months from the date of receipt/production of a copy of this order.

18. In the meantime, the petitioner may apply for his provisional pension and he would be entitled for the same as he was getting earlier prior to passing of the order.

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

(Rajeev Ranjan Prasad, J)

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