

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17101 of 2014

Abhay Kumar Sinha S/o Late Lakshmishwar Prasad Sinha, Retired Assistant Engineer at Present residing in the House of Late Girija Roy, Bandh Gate Number 32 A, Rajapur Mainpur, Patna P.S. Sri Krishnapuri, Distt. - Patna
... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna
2. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhavan, Government of Bihar, Patna.
3. The Secretary, Water Resources Department, Sinchai Bhavan, Government of Bihar, Patna
4. The Deputy Secretary, Water Resources Department, Sinchai Bhavan, Government of Bihar, Patna
5. The Superintending Engineer - Cum - Conducting Officer, Flood Control Design Circle, Anishabad Patna
6. The Under Secretary, Water Resources Department, Sinchai Bhavan Government of Bihar, Patna

... .. Respondents

Appearance :

For the Petitioner/s : Dr. Anjani Pd. Singh, Advocate
For the Respondent/s : Mr. Satyavrat, AC to GP-10

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 14-03-2023 Heard learned counsel for the petitioner and Mr. Satyavrat, learned AC to GP-10 for the State.

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

- “i. For setting aside the Notification vide memo no. 10 dated 03.01.2014 issued by the officer on special duty department of Water Resources Department Bihar, Patna, by which he passed the order ex-party and deducted 90% of the Petitioner’s Pension as penalty.
- ii. For other relief/s the petitioner is legally entitled for.
- iii. For the petitioner after having completed pensionable period of service as an Assistant Engineer under respondent State, is entitled to his



post retiral benefits forthwith.”

Brief Facts of the Case

3. The petitioner claims that he was appointed as Junior Engineer (Civil) at Command Area, Agricultural Department at Patna on 02.02.1979. He was posted as Assistant Engineer (Mech.), Western Kosi Canal Circle, Madhubani from 23.10.1989 till 03.03.1991 whereafter he applied for study leave on 16.07.1991 for the period 01.11.1991 to 31.10.1993. It is his case that after obtaining ‘No Objection Certificate’ from the Department, he went United States of America (USA) for higher studies from where he sent another application on 05.11.1993 to the Department for extension of his leave from 01.11.1993 to 31.10.1995. He has relied upon a letter dated 27th April, 1991 (Annexure ‘1’) written by the Under Secretary to the Government in Water Resources Department to the Passport Officer, Passport Directorate, Government of India. It is his submission that by the Letter as contained in Annexure ‘1’, the Water Resources Department had issued no objection to his application for issuance of a passport in his favour.

Submissions on behalf of the Petitioner

4. Learned counsel for the petitioner submits that the petitioner never received any information regarding his leave application and he attained the age of superannuation on



31.05.2011. During this period, the Department never asked for any show cause, the petitioner was neither suspended nor any departmental proceeding was initiated against him till his retirement.

5. It is further submitted that the petitioner remained in USA due to unavoidable circumstances for about 18-19 years. He returned back to his country and submitted his joining letter with Department on 16.03.2011 vide Annexure '2' to the writ application. It is his submission that the petitioner was not allowed to join, instead for the first time the petitioner received a Letter dated 23.05.2011 issued by respondent no. 5 through registered post intimating therein that the authorities would consider acceptance of his joining if certain information were provided by the petitioner. It is stated that the petitioner submitted a reply and explained everything in detail on 30.05.2011 but thereafter instead of accepting his joining, the Department issued a Resolution vide Memo No. 636 dated 31.05.2011 initiating a departmental proceeding on the allegation that the petitioner did not reply to their Letter dated 23.05.2011 and was guilty of dereliction of duty. The petitioner is said to have received the Resolution dated 31.05.2011 on 11.06.2011.



6. Learned counsel submits that since the petitioner has served the Department continuously from 02.02.1979 till 30.10.1991, he is entitled for his post retiral benefits including pension, gratuity, leave encashment, provident fund, etc. till 31.05.2011.

7. The petitioner has challenged the order dated 03.01.2014 issued vide Notification No. 22/ नि०सि०(यॉ०)-04-01-/2011/10 as contained in Annexure '5' to the writ application on the ground inter alia that the proceeding under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Service Rules') was antedated and that the conversion of the proceeding under Section 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules') is also bad in law because the petitioner had not caused any pecuniary loss to the Government and the petitioner was not found guilty of grave misconduct during the service period. It is his submission that the decision of the competent authority to deduct 90% of the pensionary benefit as punishment is bad in law and in fact this order was served upon the petitioner for the first time on 02.07.2014 with the counter affidavit filed in CWJC No. 1044 of 2014.



Submissions on behalf of the State

8. Learned counsel for the State has drawn the attention of this Court towards the stand of the respondents as disclosed in the counter affidavit. It is submitted that the petitioner left his office without obtaining permission of the competent authority. He never requested the competent authority during the long gap of 19 years any permission to continue in USA and in fact his continuance in USA for more than 19 years without any authorised leave would go a long way to demonstrate lack of discipline on the part of a government servant. It is stated in the counter affidavit that a copy of Memo No. 636 dated 31.05.2011 along with memo of charges and evidences was communicated to the petitioner and he was permitted to submit his written defence before the Enquiry Officer but in the meantime, the petitioner superannuated on 31.05.2011 whereafter the proceeding was converted into a proceeding under Rule 43(b) of the Pension Rules. The Enquiry Officer submitted the Enquiry Report holding the charges proved against the petitioner. The petitioner was offered an opportunity to defend himself but despite all efforts taken by the Department including one by paper publication of notice inviting him to submit his reply to the second show cause, he



did not submit his reply. It is submitted that the petitioner never cooperated in course of proceeding which ultimately resulted in passing of the impugned order as contained in Annexure '5' to the writ application.

9. Learned counsel for the State submits that the fact that the petitioner remained in USA for 19 and half years without any permission from the Government is an admitted fact. So far as Annexure '1' is concerned, it was issued only by way of no objection for making of a passport and this alone cannot be construed as any permission to the petitioner to go to USA on study leave.

Considerations

10. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds that the facts of the case are not in dispute. The petitioner is unable to demonstrate from any material on record that he was granted study leave by the competent authority. Admittedly, he had left the country to USA where he stayed for 19 and half years. He returned and submitted a letter of joining in the Department only two and half months before his due date of retirement. The fact that the petitioner was served with Letter dated 23.05.2011 issued by respondent no. 5 and then issuance



of Resolution vide Memo No. 636 dated 31.05.2011 and conversion of the same in a proceeding under the Pension Rules are admitted on the records.

11. This Court further finds that even as the petitioner has challenged Annexure '5' to the writ application, he has not questioned the correctness of the statements made in the impugned order wherein it is stated that several efforts were taken by the Department to serve upon the petitioner and lastly even a Press communication was made requesting him to appear in the departmental proceeding and submit his reply to the second show cause notice.

12. This Court, therefore, finds that the impugned order as contained in Annexure '5' to the writ application cannot be found fault with on the ground that it is an ex-parte order. The conduct of the petitioner is such that no relief may be granted to the petitioner on the ground either that it is an ex parte order or that there is anything wrong with the order deducting 90% of his pension.

13. In the writ application, he has vaguely stated that due to unavoidable circumstances he had to remain in USA which is not believable. He is also not coming with clean hands in this Court. In an appropriate case, the Court would have



directed for an Inquiry into the genuineness of his statement but considering that this is a service matter and the Court is not required to go into the issue to decide the genuineness, no order is being passed.

14. This writ application has no merit. It is dismissed with a cost of Rs.10,000/- (Rupees Ten Thousand Only/-). The petitioner shall deposit the cost with the Patna High Court, Legal Services Authority within a period of four weeks from today.

(Rajeev Ranjan Prasad, J)

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