

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1902 of 2011

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Lal Bihari Lal, Son of late Saryug Lal, Resident of Mainpura, P.S.-Danapur Cantt.
District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Cooperative, Bihar, Patna.
 2. The Secretary, Cooperative Department, Bihar, Patna.
 3. The Registrar, Cooperative Societies, Bihar, Patna.
 4. The District Cooperative Office, Cooperative Societies, Patna.
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
For the State	:	Mr. P. K. Shahi, A.G. Bihar
		Mr. R. K. Chandram, A.C. to G.P 19

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 12-07-2023

Pursuant to order dated 26.06.2023, Mr. Deepak Kumar Singh, Additional Chief Secretary, Cooperative Department, Govt. of Bihar is present in Court.

2. In the instant petition, petitioner has prayed for the following reliefs:-

"(I) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order dated 3.9.2009 contained in memo no. 4697 issued by the Registrar, Cooperative Societies, Bihar, Patna whereby and whereunder the punishment of withholding of 50% of the pension has been inflicted upon the petitioner in absence of any provision prescribing the said punishment to be inflicted upon a delinquent government servant under the Bihar Government Servants (Conduct, Control & Appeal) Rules, 2005 (hereinafter referred to as "the Rules");



(ii) Issuance of a direction, order or writ including writ in the nature of certiorary quashing the order dated 11.12.2009 passed by the Secretary, Co-operative Societies, Bihar, Patna whereby the appeal filed by the petitioner against the aforesaid order dated 3.9.2009 has been rejected;

(iii) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order dated 17.9.2010 contained in memo no. 4021 passed by the Principal Secretary, Cooperative Department, Bihar, Patna whereby and whereunder, the subsequent appeal filed by the petitioner against the aforesaid orders dated 3.9.2009 and 11.12.2009 has been rejected;

(iv) Issuance of a declaration to the effect that the punishment of withholding of 50% pension of the petitioner is untenable in the eyes of law as under Rule 14 of the said CCA Rules no such punishment of withholding of pension has been prescribed;

(v) Issuance of a direction, order or writ including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards payment of the entire pension to the petitioner in accordance with law.

(vi) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

3. Petitioner while he was in service, he was subjected to disciplinary proceedings and it was concluded in imposition of penalty of withholding of 50% pension. Such order has been



passed by the Head of the Department, Registrar Co-operative Society.

4. Learned Counsel for the petitioner submitted that Registrar Co-operative Society is not competent authority; Rule 43(b) requires an order of the competent authority to impose penalty for conversion of departmental inquiry from Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "CCA Rules") to that of Bihar Pension Rules, 1950 and such other contentions have been raised. Having regard to the language employed under Rule 43(b) of Bihar Pension Rules, the Competent Authority to impose penalty of withholding of Pension under Bihar Pension Rules is vested with the Government. Registrar Co-operative Society is not a Government, he is holder of the post of Head of the Department. On this short ground, petitioner has made out a case.

5. The other contention of the Petitioner is that there is no order converting the departmental inquiry under CCA Rules to pension Rules with reference to Rule 43(b). Rule 43(b) reads as under:-

"43 (b) The State Government further reserve to themselves the right of withholding of 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 mis conduct or negligence, during his service including service rendered on re-employment after retirement.

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 while the Government servant was on duty either before retirement or during re-employment;

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

Explanation. - For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the



Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court.

(underline supplied)

6. Reading with Rule 43(b) read with Explanation (a) under (c) of proviso suffice to hold that there is a deeming provision insofar as conducting of departmental inquiry against petitioner. In other words, if a Government servant was subjected to departmental inquiry, while he was in service and attained age of superannuation and retired from service during pendency of the inquiry in such an event such retired employee is subjected to condition of departmental inquiry in the light of the aforementioned provision.

7. In view of these facts and circumstances, impugned orders dated 03.09.2009, 11.12.2009 and 17.09.2010 (Annexure-15, 17 and 19) stands set aside only on competency. The matter is remanded to competent authority to proceed in accordance with



law. Before passing any order, the petitioner shall be heard by issuance of show cause notice read with proposed penalty, if any. Such notice shall be served on the petitioner within a period of two months from the date of receipt of this order. The petitioner is hereby directed to furnish his explanation to the show cause within one month from the date of issuance of show cause notice. The competent authority is hereby directed to complete the proceedings by passing a detailed speaking order after considering each of the contentions to be raised by the petitioners to the show cause notice and proceed to pass order within a period of two months from the date of receipt of petitioner's explanation. The difference of pension from the date of withholding of 50% pension dated 03.09.2009 shall be calculated and disbursed in favour of the petitioner within a period of six weeks from the date of receipt of this order. If difference of pension is not settled within the time limit in that event the petitioner is entitled to interest @ of 8% per annum.

8. Accordingly, the present petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

