

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.751 of 2019

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Ram Binay Tiwary, Son of Late Sukhdeo Tiwary Resident of Village- Paroo Mathiya, P.O.- Paroo, P.S.- Paroo, District- Muzaffarpur, the retired Panchayat Secretary Gram Panchayat Raj, Belahi Lachhi, Block- Minapur, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur
5. The Block Development Officer, Minapur, District- Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Anita Kumari, Adv.
For the Respondent/s : Mr. Raj Kishore Roy, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 16-01-2024

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

2. The present writ petition has been filed for quashing of the order dated 13.06.2018 passed by the District Magistrate, Muzaffarpur (respondent no.4) and communicated to the petitioner under Memo No. 1184 dated 14.06.2018 annexed as Annexure-8 issued under the signature of the respondent no.4, whereby and where under, the punishment of withholding 40% pension of the petitioner for five years has



been awarded. Further prayer has also been made to quash the aforesaid impugned order dated 13/14.06.2018 passed by the respondent no.4.

3. Learned counsel for the petitioner submits that the order under challenge dated 13.06.2018 has been passed on 13.06.2018 contained in Memo No. 1184 dated 14.06.2018 which has been passed by the District Magistrate, Muzaffarpur. Counsel also submits that the petitioner was admittedly retired on 31.03.2016 and the punishment order has been passed on 13/14.06.2018 i.e. after petitioner's retirement. Counsel further submits that for passing order in the departmental proceeding after retirement, it is necessary to convert the departmental proceeding under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005) into proceeding under Rule 43(b) of the Bihar Pension Rules, 1950.

4. Learned counsel for the petitioner submits that from the said order dated 14.06.2018, there is no whisper by which it transpires that the said order has been passed under Rule 43(b) of the Bihar Pensions Rules, 1950. Counsel further submits that the provision of Rule 139 of the Bihar Pension Rules, 1950 has been quoted in the said order. Counsel also



submits that even it has been assumed that the said order has been passed under Rule 43(b) of Bihar Pension Rules, 1950, then also this order passed by the District Magistrate, Muzaffarpur is not sustainable due to the reason that under Rule 43(b) of the Bihar Pension Rules, 1950, the order has to be passed by the State Government and not by the Collector. Counsel for the petitioner relied on the judgment of this Hon'ble Court in case of *Uday Sharma Vs. The State of Bihar & Ors. passed in Letters Patent Appeal No. 1473 of 2019 arising out of Civil Writ Jurisdiction Case No. 17311 of 2019.*

5. Learned counsel for the State on the other hand submits that the punishment order has been passed *vide* Memo No.08 dated 06.01.2017 annexed as Annexure-3 by the Collector against which the petitioner has preferred service appeal which was remanded back *vide* order dated 30.03.2017 by the Commissioner and upon remand, the collector passed the order on 14.06.2018 which has been challenged before this Hon'ble Court. Counsel also submits that the petitioner ought to prefer appeal before the Commissioner again and due to this reason alone, the writ petition may not be entertained.

6. In the light of the submissions made above and upon perusal of the case record, it transpires to this Court that



contention of the State is correct up to that extent that the present order under challenge has been passed by the Collector and therefore, appeal has to be preferred, but this is not a normal circumstance, rather, there is a jurisdictional error in passing the said order due to the reason that District Magistrate has passed the order of punishment after retirement under CCA Rules, 2005 which is not permissible. Rather, after retirement, the disciplinary proceeding must have to switch over according to Bihar Pension Rules, 1950 whose Rule 43(b) categorically states that order ought to be passed by the State Government, but here, there is a lacking of that.

7. As such, this Court is of the opinion that there is jurisdictional error in passing the order dated 14.06.2018 which is challenged here in the present case.

8. The order passed in the case of **Uday Sharma (supra)**, it is relevant to quote paragraph nos. 10 and 11 which are quoted here as under:-

“10. Further, we notice that the District Magistrate is not the competent authority to impose the penalty while invoking Rule 43(b) of the Bihar Pension Rules, 1950. Rule 43(b) of the Bihar Pension Rules, reads as under:-

"43(b): 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:

Provided that -

(underline supplied)

(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 as 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.

(underline supplied)

“11. Reading of the aforementioned provision, it is evident that State alone is the competent authority to impose the penalty under Rule 43(b) of Bihar Pension Rules, 1950 for the reasons that there is no delegation/sub-delegation of power is vested with any other authorities so as to District Magistrate stepping into shoe of the disciplinary authority insofar as invoking Rule 43(b) of Bihar Pension Rules, 1950, even on this count, impugned order of the District Magistrate is liable to be set aside. These two issues would go to the root of the matter so as to interfere with the District Magistrate order dated 26.02.2019 insofar as imposition of penalty. The learned Single Judge has not taken note of the provision of Rule 43(b) of Bihar Pension Rules, 1950, explanation of the appellant on the Inquiry Officer’s report read with show cause notice and it is not a speaking order. Moreover, Bihar Public Service Commission has not been consulted in the light of the aforementioned provision, as it is mandatory.”



9. In this view of the matter that the order passed by the District Magistrate suffers from defect of jurisdiction and hence, this Court set aside the Memo No. 1184 dated 14.06.2018 annexed as Annexure-8 passed by the District Magistrate, Muzaffarpur (respondent no.4) with liberty to the respondent to take fresh decision in the light of the law of the land within 90 days from the date of production of the order.

10. With the aforesaid observations, this writ petition is hereby disposed off.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18 /01/2024
Transmission Date	NA

