

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2400 of 2019

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Pawan Kumar, Son of late Parmanand Lakhotia, Resident of 85, Saraswati
Apartment, S.P. Verma Road, P.S. Kotwali, Distt Patna, Pin 800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes
Department, Bihar, Patna
2. Commissioner, Commercial Taxes Department, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
For the Respondent/s : Mr. Rajan, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 19-11-2024

This Court has heard Mr. Abhinav Srivastava, learned
Advocate for the petitioner and Mr. Rajan, learned Advocate
representing the State.

2. The petitioner, who superannuated on 30.11.2015
from the post of Joint Commissioner, Commercial Taxes of the
State Government, has preferred the present writ petition
seeking quashing of the notification contained in Memo No.
6061 dated 28.11.2018 issued by the Deputy Secretary to the
Government in the Department of Commercial Taxes, Bihar,
Patna by which 25% of the 90% of the provisional pension for



the period of five years has been deducted in terms of Rule 139 of the Bihar Pension Rules, 1950, as the services of the petitioner have not been found to be satisfactory. The petitioner also sought a direction upon the respondent authorities to ensure the payment of gratuity and leave encashment along with other admissible benefits, upon his being superannuated on 30.11.2015, as there was neither any departmental proceeding/judicial proceeding pending against him nor there is any other valid reason for not making payment of the said retirement benefit. The petitioner further seeks a direction upon the concerned respondents to ensure payment of 100% current pension and also arrears of pension that had been denied to the petitioner for the period 30.11.2015 till date.

3. The facts, which have material bearing over the issue, in short are that the petitioner was initially appointed against the post of Commercial Taxes Officer in the services of the State Government way back in the year 1981. Having worked in different capacity at different places under the Commercial Taxes Department, the petitioner on being found eligible was granted promotion to the post of Assistant Commissioner vide notification dated 09.09.1997. Subsequently, the petitioner was granted promotion for the post



of Deputy Commissioner, Commercial Taxes by notification dated 05.01.2006 issued by the Finance (Commercial Taxes) Department of the State Government in the prescribed pay scale. While the petitioner was continuing on the post of Deputy Commissioner, Commercial Taxes, on the basis of the recommendation made by the Departmental Promotion Committee, the petitioner along with other similarly situated persons was granted promotion against the post of Joint Commissioner, Commercial Taxes vide notification as contained in Memo No.880 dated 25.02.2010.

4. In the meantime, while the petitioner was continuing in the capacity of Joint Commissioner, Commercial Taxes and when he became entitled for promotion to the post of Additional Commissioner, Commercial Taxes on account of fulfillment of eligibility and his position in the seniority list, his case along with others were considered for promotion and an information has been sought for by the Vigilance Department. In response thereto the Vigilance Department submitted information with respect to altogether 10 persons against whom the Vigilance cases were pending. The name of the petitioner did not find place in the list of such officers, against whom cases were pending. Nonetheless, the petitioner was denied the said



promotion. In the meantime, the petitioner attained the age of 60 years on 30.11.2015 and thus superannuated from the post of Joint Commissioner, Commercial Taxes.

5. Mr. Abhinav Srivastava, learned Advocate for the petitioner adverting to the aforesaid facts urged before this Court that in the manner as aforesaid, it is manifest that on the basis of the satisfactory services and on account of fulfillment of all the eligibility criteria the petitioner was granted promotion against the higher post from time to time, on the basis of clearance received from the Vigilance Department of the State Government. The aforesaid facts clearly demonstrate that there was nothing adverse pending against the petitioner and in fact on the basis of such clearance alone the petitioner was granted promotion against the said higher post.

6. Referring to the copies of the letter containing the reference received in relation to the petitioner, as contained in Annexure-2 Series, learned Advocate for the petitioner thus contended that it would clearly demonstrate that the petitioner had been cleared from the Vigilance angle and it was established beyond all reasonable doubt that there was no Vigilance/Criminal case pending against the petitioner, but surprisingly the pension payment order in favour of the



petitioner was issued by the concerned authority in the office of the Accountant General, Bihar in February, 2016 by which only 90% of the pension was sanctioned and no action was taken with respect to making payment of gratuity and leave encashment, without there being any communication with respect to the reason behind the same.

7. The petitioner sought information under Right to Information Act with respect to the reason on account of which only 90% of the pension payable in favour of the petitioner. In response thereto, the petitioner was furnished a copy of noting dated 26.11.2015 wherein it has been stated that in view of Begusarai Town P.S. Case No. 125 of 1985 dated 25.05.1985 registered for the offences under Sections 120B, 409, 467, 468, 471 of the Indian Penal Code and Sections 5(2)/5(1) (CD) of the Prevention of Corruption Act, it was decided to make payment of provisional pension in favour of the petitioner at the rate of 90% of the actual admissible pension. It was also noted that the petitioner would also not be entitled for payment of gratuity during the pendency of the said criminal case against him. The petitioner upon making enquiries got to learn that the aforesaid Begusarai Town P.S. Case No. 125 of 1985 purportedly pending against the petitioner had already come to an end on account of



insufficiency of evidence. In support of the aforesaid contention, learned Advocate for the petitioner brought on record letter dated 17.06.2015 issued by the Chief Judicial Magistrate, Begusarai-cum-Public Information Officer of Civil Court, Begusarai in favour of the petitioner that the case, in question, has already been disposed of, as the investigating officer had already submitted a final report that there was insufficiency of the evidence to prove the case.

8. The fact regarding the disposal of the criminal case has also been verified by the Commercial Taxes Department from the Registrar of the Civil Court, Begusarai, who in turn informed that the letter dated 17.06.2015 issued by the Chief Judicial Magistrate, Begusarai-cum-Public Information Officer of Civil Court, Begusarai was correct and accordingly, the same was confirmed. The aforesaid fact clearly demonstrate beyond all reasonable doubt that Begusarai Town P.S. Case No. 125 of 1985 had already come to an end long time ago on account of final report submitted by the investigating officer, which was duly accepted by the learned court.

9. Mr. Abhinav Srivastava, learned Advocate for the petitioner further contended that the purported grounds based on which the petitioner was being denied the promotion against the



post of Additional Commissioner, Commercial Taxes was also factually incorrect, but despite the information having been received, the petitioner has not been accorded the admissible retiral benefits, including the pension, gratuity and leave encashment without there being any just and valid reason and solely on account of high handedness and illegal disposition on the part of the concerned authorities. The sanctioning of only 90% of the admissible pension to be paid in favour of the petitioner was clearly devoid of any sanction in the eyes of law and furthermore, apathy on the part of the concerned authorities so far the gratuity and leave encashment in favour of the petitioner is concerned also demonstrate high-handedness and malice on their part against the petitioner.

10. The vindictive attitude of the respondent authorities do not come to an end and in the meantime the authorities under the Commercial Taxes Department issued a letter dated 18.08.2017 along with a memorandum dated 22.07.2016 issued by the Intelligence Bureau, Ministry of Home Affairs, Government of India with a direction to submit its explanation as to why disciplinary action be not taken against the petitioner for information having not been furnished by him prior to undertaking those foreign trips for the period



01.01.2003 to 20.07.2016. In response to the show-cause notice contained under the aforesaid letter, the petitioner submitted his detailed explanation by letter dated 30.09.2017 that the foreign trips which had been undertaken by the petitioner and his wife were duly sponsored by Amway India Enterprises Pvt. Ltd., as an incentive to the wife of the petitioner, for which the petitioner has neither claimed any LTC benefits nor his official duty has been compromised in any manner. Thus, the action on the part of the concerned authorities under the Commercial Taxes Department of the State Government in issuing the aforesaid letter by which while alleging that the services of the petitioner could not be stated to be satisfactory clearly indicate the malafide and ill will on their part.

11. Mr. Srivastava further contended that on account of the aforesaid foreign trips, no detriment much less any financial loss or loss of reputation had been caused to the concerned authorities, moreover the action on the part of the concerned authorities nearly one year or nine months, since the petitioner had already retired, clearly demonstrate the ulterior motive on the part of the respondent authorities. The petitioner had clarified the fact that prior to undertaking of trip to United States in July, 2012, necessary prior information had also been



furnished to the concerned authorities and thus seeking information from the petitioner with respect to said trip clearly appears to be a mistake of fact. On submission of explanation, the petitioner also requested the concerned authorities to take step towards making payment of pension, gratuity as well as leave encashment that had been unlawfully withheld for about two years and all of a sudden vide letter dated 02.02.2018, the petitioner was informed that on account of different foreign trips having been taken by him for the period between 10.11.2003 to 26.07.2012, his services could not be considered to be satisfactory and, as such, the petitioner was directed to submit explanations as to why his pension be not deducted/revised in terms of the provisions contained under Rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950').

12. The petitioner having been found no way out submitted his further explanation by a letter dated 20.03.2018, as mentioned above, and while stating the various facts also highlighted the performance as an officer of the Bihar Finance Service for the period, in question, and also requested the concerned officer to accept his explanation and dropped the proposal for taking action. However, the explanation of the



petitioner did not find favour and the impugned notification dated 28.11.2018 came to be passed by the concerned authorities by which in terms of Rule 139 of the Rules, 1950, the services of the petitioner held to be not satisfactory and directed that 25% of the 90% of the provisional pension of the petitioner be deducted for a period of five years. The impugned notification is put to challenge in the present writ petition.

13. Per contra, learned Advocate for the State countering the submissions advanced on behalf of the learned Advocate for the petitioner vehemently contended that the petitioner filed a false affidavit that there is no criminal case pending against them and in case it is found true, he will be responsible for that whereas vide letter no.5827 dated 23.10.2013 and letter no. 583 dated 03.02.2014 of Vigilance Department has informed that a criminal case is pending against the petitioner. It is also contended that for the purpose of foreign trip permission is necessary from competent authority as per Rule 21(K)(6)(vii) of the Rules of Executive Business. The petitioner without obtaining prior permission from the competent authority and without giving “No Objection” from the Department for issuance of passport, made several foreign trips. Before passing the impugned order, the petitioner was



issued show-cause notice; however, on being found his explanation unsatisfactory, on the advice of Law Department, the impugned order came to be passed directing for deduction from the provisional pension of the petitioner. The respondent authorities have adopted all the procedure and obtained sanction from all the competent authority before passing the impugned order is the contention of the learned Advocate for the State.

14. This Court has anxiously heard the learned Advocates for the respective parties and also perused the materials available on record. Facts are not in dispute that the petitioner has been extended promotion from time to time on the post of Commercial Taxes Officer to the post of Assistant Commissioner, Commercial Taxes and subsequently to the post of Deputy Commissioner and lastly to the post of Joint Commissioner, Commercial Taxes from which post the petitioner superannuated. All the promotions were given, based upon the performance of the petitioner, duly evaluated and accredited by the concerned authorities of the Commercial Taxes Department. The aforesaid facts have also been fortified by the relevant letters, duly obtained by the petitioner under Right to Information Act. The report contained in those letters would clearly demonstrate that there was nothing adverse



pending against the petitioner and in fact on the basis of internal vigilance clearance alone, promotions were granted against the said higher posts. The letter dated 20.02.2015 issued by the Deputy Secretary, Vigilance Department, Government of Bihar does not contain the name of the petitioner is of suggestive of the fact that there was no department or judicial proceeding pending against him.

15. The report submitted by the Chief Judicial Magistrate, Begusarai, as also the information given by the incharge Administration, Civil Court, Begusarai, the copies of which are marked as Annexure-5 and 7, clearly reveal that Begusarai Town P.S. Case No. 125 of 1985 dated 25.05.1985 had already come to an end way back in the year 1987 itself, as there was insufficiency of evidence to prove the case and accordingly the final report has been duly submitted by the investigating officer, which had also been accepted by the learned Court. The aforesaid fact clearly shows that on 30.11.2015, the date on which the petitioner was superannuated, there was neither any departmental proceeding/judicial proceeding pending against him, thus there was no reason or occasion to withhold gratuity and leave encashment and sanctioning of only 90% of the pension.



16. The Hon'ble Supreme Court, time and again, held that the gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. It is thus a hard earned benefit which accrues to an employee and is in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.

17. In the case of **State of Jharkhand & Ors Vs. Jitendra Kumar Srivastava & Anr.**, reported in (2013) 12 SCC 210, the Hon'ble Supreme Court held that a person cannot be deprived of his pension without the authority of law, which is the Constitutional mandate enshrined under Article 300 A of the Constitution. Any attempt of the State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. The Hon'ble Supreme Court further held that though the administration can issue administrative instructions for the smooth administrative function, such administrative instructions cannot supplant the rules. The executive instructions do not have the statutory character and, therefore, cannot be termed as "law" within the



meaning of Article 300A. On the basis of such a circular, which does not have the force of law.

18. In the case in hand, the reliance of the respondent State authorities that 10% of the pension and gratuity and leave encashment have been withheld in view of letter no. 9144 dated 22.08.1974, letter no. 3014 dated 31.07.1980 and letter no. 4564 dated 06.07.1993, the copies of which are marked as Annexure-G series to the counter affidavit, are not sustainable in law, as has been held by the Hon'ble Supreme Court that Executive Instruction do not have the statutory character and thus on the basis thereof the State Government cannot withhold even a part of the pension or gratuity. Moreover, as it was noticed so far statutory rules are concerned, there was no provision for withholding pension or gratuity in the given situation.

19. Now coming to the impugned order, as contained in Annexue-17 to the writ petition issued in terms of Rule 139 of the Rules, 1950 is concerned, it would be apt and proper to quote Rule 139 of the Rules, 1950.

“139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been



thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.”

20. Bare perusal of the aforementioned Rule it is axiomatic that it empowers the authorities to examine the case of a retired Government Servant that if the services of the Government Servant is not found to be thoroughly satisfactory or if it is found that there is a proof of grave misconduct on the part of the Government Servant concerned while in service, the State Government in exercise of the power may interfere with the fixation of the pension. The Rule also makes it clear that no



such power, however, shall exercise after the expiry of three years from the date of the order sanctioning the pension was first passed and without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension.

21. The Hon'ble Supreme Court in the case of **State of Bihar & Ors. Vs. Mohd. Idris Ansari**, reported in **AIR 1995 SC 1853** while highlighting the prescriptions of Rule 43(b) and Rule 139(a) of the Rules, 1950 has held that "a conjoint reading of Rule 43(b) and Rule 139 projects the following picture :

(i). A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

(ii). Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be



exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

22. It would be worth noticing para. 10 of the said decision wherein the Hon'ble Supreme Court held that "in case of grave misconduct on the part of the concerned Government servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases.

23. The impugned order of punishment is clearly based upon the fact that prior to undertaking foreign trips for the period 01.01.2003 to 20.07.2016 neither information has been furnished by the petitioner and nor permission has been taken by the competent authority, beside the passport has procured without "No Objection" as required under Rule 21(K)(6)(vii) of the Rules of Executive Business, the copy of which is appended as Annexure-E to the counter affidavit.

24. From perusal of the relevant rules thereof, this Court is of the opinion that it only reveal that in case of attending any training or workshop of an officer of Indian



Administrative Service, necessary permission is required to be obtained by the Chief Minister through the Chief Secretary of the State; and in case of foreign trip on own expense from the Minister. Rule 7 further stipulates that to secure the passport, “No Objection” is required to be issued by the Secretary of the Controlling Department. There is no Rules, Regulations nor any executive instruction has been brought on record to support the impugned order that an officer, who is undertaking foreign trips in relation to his family affairs, the necessary permission is required by the competent authority, failing which it shall be termed as “misconduct” or his services shall be found to be unsatisfactory. The very issuance of passport in favour of the petitioner clearly demonstrate that the same would have been certainly issued upon getting “No Objection” from competent authority. The facts also reveal that prior to undertaking trip to United State in July 2012, information was duly furnished to the Department, but at that point of time neither any complaint nor any action has been taken. It is the contention of the petitioner that the foreign trips were duly sponsored to his wife with the spouse by Amway Company and thus the same was not on his own expenses; moreover, this fact has not been refuted or controverted by the State respondents.



25. Once the authority concerned has unable to prove that undertaking a foreign trip in service without the permission of the competent authority termed as “grave mistake” there is no reason or occasion to hold that the service of the petitioner was not thoroughly satisfactory when in the case in hand, the petitioner has been granted promotion by considering his efficiency and eligibility, apart from Vigilance clearance.

26. The malafide in the case in hand is also writ large that initially the gratuity and leave encashment and the 10% of the pension were withheld on account of the pendency of the criminal case, which ground was no more available to the department in view of the submission of the Final Report by the investigating officer not sending the petitioner for trial and its acceptance by the learned jurisdictional court way back in the year 1987 itself. The petitioner superannuated on 30.11.2015 and it is the admitted position that the date on which he superannuated there was neither any departmental proceeding nor judicial proceeding pending against him, thus, the petitioner was entitled to get all the retiral benefits, the date on which he superannuated. The respondent authorities in order to justify their action in withholding the leave encashment and gratuity and withholding of 10% of the pension. Further proceeding



against the petitioner on the basis of a memorandum submitted by the Vigilance Bureau, Ministry of Home Affairs, Government of India disclosing the list of trips undertaken by the petitioner to different foreign locations for the period 01.01.2003 to 20.07.2016. However, the respondent authorities have not been able to make out a case that on account of undertaking this foreign trips by the petitioner, his official discharge of duty had been compromised or the same was found to be detriment to the reputation of the department or cause any financial loss. The entire exercise of initiation of proceeding under Rule 139(a) of the Rules, 1950 belatedly after one year and nine months of the retirement of the petitioner, in the premise of the facts of this case clearly speaks about the malafide on the part of the respondent authorities.

27. In view of the discussion made, hereinabove, as also in absence of any Rules, Regulation and the instructions to support the impugned order of punishment, this Court has no hesitation to hold it unsustainable and thus the notification dated 28.11.2018, contained in Memo No. 6061 is hereby set aside. The concerned respondent is hereby directed to ensure the payment of all the admissible amount of gratuity, leave encashment as well as remaining 10% of pension and arrears



thereof preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

28. The writ petition stands allowed. There shall be no order as to costs.

(Harish Kumar, J)

uday/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.11.2024
Transmission Date	NA

