

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1726 of 2023

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Lalan Ram S/o Saryu Ram, R/o Village- Rahathua, Raghunathpur, P.O.-
Raghunathpur, P.S.- Raghunathpur, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Bihar, Patna.
2. The District Magistrate, Buxar.
3. The District Development Commissioner, Buxar.
4. The Sub Divisional Officer, Buxar, District- Buxar.
5. The Sub Divisional Officer, Dumraon, District- Buxar.
6. The Land Reforms Deputy Collector, Buxar.
7. The District Panchayati Raj Officer, Buxar, District- Buxar.
8. The Block Development Officer Rajpur, District- Buxar.
9. The Block Development Officer, District- Buxar.
10. The Block Development Officer, Itarhi, District- Buxar.
11. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhash, Advocate.
For the State	:	Mr. Prem Ranjan Raj, AC to SC-7.
For the AG Bihar	:	Mr. Ram Yash Singh, Advocate.
		Mr. Utkarsh Bhushan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 13-11-2024

Heard Mr. Abhash, learned counsel appearing on behalf of the petitioner; Mr. Prem Ranjan Raj, learned AC to SC-7 for the State and Mr. Ram Yash Singh, learned counsel along with Mr. Utkarsh Bhushan, learned counsel for the Accountant General, Bihar.

2. The petitioner in paragraph no. 1 of the present writ petition has sought, inter alia, following relief(s), which are



reproduced hereinafter:-

“(1) To issue an appropriate order/s, direction/s including a writ preferably in nature of Certiorari for quashing the order dated 05-05-2021 vide Memo No. 16-0904 passed by D.M., Buxar whereby and where under he ordered for deduction of 40% of the pension amount and also ordered B.D.O. Simri to recover the amount of 11,16,834/- from the arrears of salary/ post retiral benefit of the petitioner.

(II) To issue an appropriate order/s, direction/s for quashing the order dated 19-03-2012 vide Memo No. 160249 passed by D.M., Buxar whereby and where under he ordered for holding of 5 annual increments and payment of subsistence allowance during suspension period shall be paid by the concerned office on the basis of absentee details.

(III) To direct the respondents to make the payment of Post-retiral benefits as such Pension, gratuity, leave encashment, Provident Fund, Group Insurance etc.

(IV) To direct the respondents to make the monetary benefit of First Assured career progression scheme (A.C.), Second Assured Career Progression scheme (A.C.P.).

(V) To direct the respondents to make the payment of salary and other allowance from September 2003.

(VI) To direct the respondents to make the payment of statutory or penal interest with respect to the aforementioned dues whichever is applicable in the case of petitioner on account of delay and laches on the part of respondents.

(VII) To any other relief/s to which the petitioner is entitled in the facts and circumstances of the case.”

Brief facts :

3. The brief facts of the case are that the petitioner was appointed on 23.08.1995 on the post of Panchayat Secretary and retired on 31.03.2020. On the basis of inquiry held as per the direction passed in C.W.J.C. No. 21443 of 2012, a criminal case was also lodged against the petitioner and he was suspended vide order dated 13.12.2011. The District Magistrate directed to hold an inquiry into the matter and thereafter the petitioner was served with a charge memo dated 25.03.2015. The Inquiry Officer recommended for reduction of 40% of pension and to recover an amount of Rs.11,16,834. The Disciplinary Authority accepted the



recommendation of the Inquiry Officer after giving opportunity to the petitioner and passed penalty order dated 05.05.2021. Aggrieved by the order of penalty, the petitioner has filed the present writ petition.

Submissions on behalf of parties:

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed on 23.08.1995 on the post of Panchayat Secretary and retired on 31.03.2020 while he was posted at Simri Block, District – Buxar. Learned counsel submitted that the petitioner has unblemished service record and on the basis of inquiry held as per the direction passed in C.W.J.C. No. 21443 of 2012, a criminal case was also lodged against the petitioner and all the other accused persons. Pursuant to which, the petitioner was suspended vide order dated 13.12.2011 contained in Memo No. 161533 in contemplation of initiation of departmental proceeding. The petitioner was served with charge memo dated 25.03.2015 contained in Memo No. 160209 issued by the District Magistrate in accordance with the Bihar CCA Rules, 2005. It is contended on behalf of the petitioner that the allegation has been leveled and charge memo was issued against the petitioner for committing irregularities in installation of Solar Light project on the basis of the report submitted by the B.D.O., Rajpur, which is contrary to



the Rule 17 of the Bihar CCA Rules, 2005. Learned counsel further submitted that the case of the petitioner is that no evidence was supported in so far as the allegation leveled against the petitioner contained in respect of charge nos. 1 and 2. The inquiry has been an empty formality calling for interference of this Court, which vitiates the entire disciplinary action taken against him and as such the penalty order being against the procedure prescribed under CCA Rules, 2005 is fit to be set aside and quashed. Learned counsel in support of his submission has relied on the judgment passed by a co-ordinate Bench of this Court in the case of *Sipahi Ram Vs. The State of Bihar & Ors. (C.W.J.C. No. 7714 of 2020)* to contend that in similar circumstances, the disciplinary authority relying on the report submitted by the different agency and not on the inquiry report has committed failure of justice. Learned counsel further submitted that the petitioner was not issued any show cause in continuation of the disciplinary proceeding as per the provision of Rule 43(b) of the Bihar Pension Rules.

5. *Per contra*, learned counsel appearing on behalf of the State submits that the petitioner was provided with ample opportunity along with the charge memo contained in *Prapatra 'ka'*. He was supplied with all the required evidences and the petitioner never chose to examine those evidences nor demanded



any document on which he wanted to rely. The reply of the petitioner was duly considered by the inquiry officer and the presenting officer had also proved the evidence brought on record to which the petitioner had not objected at any point of time. Learned counsel for the State further submitted that considering every material facts in accordance with Rule 3 of Bihar Government Servant Conduct Rules, 1976, the charges leveled against the petitioner constitute misconduct and as such a decision was taken after the retirement of the petitioner to continue proceeding as per the provision of Rules 43(b) and 139 of the Bihar Pension Rules vide Memo No. 16-0904-(P) Buxar dated 05.05.2021 issued under the signature of the District Magistrate, Buxar and thereafter, penalty order was passed for reduction of 40% of the pension and a sum of Rs.11,16,834/- was directed to be recovered from the retiral benefits of the petitioner.

Analysis & Conclusion:

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the petitioner has nowhere pleaded whether after his retirement he was served with show cause notice in terms of Rule 43 (b) nor I find, any such statement has been made in the counter affidavit. However, it appears from the statement made in Para-16 of the counter



affidavit it has been informed that the provision of Rules 43(b) and 139 were resorted as it would be evident from the Memo No. 16-0904-(P) Buxar dated 05.05.2021 issued under the signature of the District Magistrate, Buxar. In absence of any information to the effect that the petitioner was served with notice as per the provision of Rule 43(b) and he was given opportunity to participate in accordance with the provision of Rules 43(b) and 139 of the Bihar Pension Rules, I find it apt to reproduce Rules 43(b) and 139 of Bihar Pension Rules:

"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-

- (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.”

“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, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.”

8. In view of the law laid down by this court in the case of ***Shambhu Saran Vs. The State of Bihar, in CWJC No. 3025 of 1993***, wherein it has been held that “*once a departmental proceeding is started, even if the person concerned retires from service, such proceeding can be continued and it is not required that there must be any Government order to that effect before it can be allowed to continue.*”

9. Reliance can also be placed on the law laid down by this court in the case of ***Sipahi Ram Vs. The State of Bihar & Ors. (C.W.J.C. No. 7714 of 2020***, has made the following observation, in para 17, which is, *inter alia*, reproduced



hereinafter:

“17. ... the jurisdiction which is exercised by an authority of taking disciplinary action against a Government servant is a quasi-judicial function, which is supposed to be discharged with utmost care and caution strictly adhering to mandatory statutory prescriptions and principles of the natural justice. Failure on the part of such functionaries to comply with and follow such provisions and the principles of natural justice renders a disciplinary action taken against a delinquent vulnerable and results into an errant Government servant going unpunished even for the most serious of the misconduct, of the functionaries exercising power of disciplinary control fail to or refuse to give due regard to the mandatory statutory provisions governing and regulating disciplinary action, consequence can be grave and against public interest.”

10. In view of the above facts and the law laid down by this Court and the fact that in absence of any pleading made by the petitioner to the extent that whether petitioner was given any opportunity in accordance with the procedure laid down under Rule 43(b) by the Disciplinary Authority after his retirement, I do not find to entertain the writ petition.

11. The petitioner has retired from service, and therefore, this Court is constrained to remand back the matter to the disciplinary authority to examine the facts whether the petitioner was given any opportunity of hearing and in case same has not been provided, the disciplinary authority must hold the disciplinary proceeding in accordance with law as per the procedure prescribed under Rules 43(b) and 139 of the Bihar Pension Rules.



12. Writ petition stands disposed of. There shall be
no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.11.2024
Transmission Date	N.A.

