IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5638 of 2023

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Mangnu Yadav Son of Late Janki Yadav, Resident of Village- Ward No. 6, Bhagwatipur Mahta, P.S. Ladaniya, District- Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Social Welfare Department Govt. of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The District Programme Officer, Madhepur Madhubani.
4. The Block Education Officer, Madhepur Madhubani.
5. The Child Development Project Officer, Madhepur Madhubani.
6. The Accountant General, Bihar Patna.
7. The Treasury Officer, Madhubani.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinay Raj, Advocate Mr. Gagandeo Yadav, Advocate Mr. Udeshya Kumar Yadav, Advocate Mr. Anil Kumar Saxena, Advocate Mr. Ravi Prakash, Advocate Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Prashant Pratap (Gp2)
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 30-10-2024

Heard the parties.

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

> *"That this is an application for issuance of an appropriate writ(s), order(s), direction(s) for quashing the order contained in Memo No. 14-1764 dated 10.01.2023 issued by the Accountant General, Bihar, Patna and its consequential order bearing Memo No. 89 dated 17.01.2023 as well as order bearing memo no. 101 dated 18.01.2023 whereby and whereunder the pension of the petitioner has been stopped and its has been directed to recover the amount of Rs. 12,54,852/- (Twelve Lac fifty four Thousand and eight hundred fifty two rupees only) from*

the petitioner and after quashing the abovesaid orders petitioner further prays for direction to the respondents to pay full pension on the basis of last pay drawn to the petitioner and to grant any other consequential benefits for which petitioner may found entitled in accordance with law."

3. The petitioner was employee of the erstwhile Bihar State Agriculture Marketing Board and was taken into government establishment vide Memo No. 2550 dated 22.09.2009. The petitioner had retired from service on 31.10.2018 from the post of peon from the office of Child Development Programme Officer, Madhepur, District, Madhubani. The Child Development Programme Officer sanctioned the Pension Payment Order for fixation of pension and the same was sent to the Accountant General, Bihar. The objection was raised by the office of the Accountant General, Bihar to the effect that petitioner was not entitled for pension and wrongly or illegally, he was paid an amount of Rs. 12,54,852/-. The decision of the Accountant General, Bihar was communicated to Treasury Officer, Madhubani, and a copy of same was forwarded to the Senior Treasury Officer and the petitioner to the effect that petitioner was wrongly credited a sum of Rs. 12,54,852/-. As a consequence of same, the Senior Treasury Officer, Madhubani directed the District Programme Officer (I.C.D.S.) Madhubani for recovery an amount of Rs. 12,54,852 from the petitioner. Aggrieved by the said order of

recovery, the petitioner has filed the present writ petition.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner is a Group-D employee. He had retired from the post of peon while posted in the office of the Child Development Programme Officer, Madhepur, Madhubani. The pension papers were directed to be filled up by the petitioner as per the direction of the C.D.P.O. concerned, who was posted at the relevant point of time and, accordingly, the same was sanctioned for fixation by the Accountant General, Bihar. The petitioner was credited the pension regularly and all of a sudden, the office of the Accountant General, Bihar issued Memo No. 14-1764 dated 10.01.2023 that incorrectly, fixation of pension has been made and an amount of Rs. 12,54,852/- is required to be realised from the petitioner and the same be refunded back. Learned counsel further submitted that petitioner has not committed any misappropriation or misrepresented, rather, it is the C.D.P.O. concerned, who has wrongly sanctioned the pension of the petitioner and same was also duly fixed by the office of the Accountant General, Bihar. The petitioner had retired on 31.10.2018 and after lapse of nearly four years, petitioner has been served with an order of recovery of Rs.12,54,852/- to be made from him. Pension of the petitioner

has been stopped from the date of issuance of the order communicated by the office of the Accountant General, Bihar on 10.01.2023. Learned counsel further submitted that the petitioner for no fault of his own and being a Group-D employee was not aware the manner in which the pension was/is required to be fixed and the **recovery order** as per the suggestion of the office of the Accountant General cannot sustain and same is required to be interfered by this Court.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner has been paid pension though it was taken into employment in the year 2009. The old Pension Scheme was effective till the year 2005 and, thereafter, in terms of appointment as contained in Sub-Clause Aanga of Clause-2 of the appointment letter by which altogether 153 employees, who had become redundant as a result of the dissolution of the Marketing Board, the recovery has been suggested by the Accountant General, Bihar, which is in accordance with law and the recovery order was made for recovery of excess amount, which has incorrectly been paid to the petitioner. Learned counsel further submitted that the government should not be put at loss and public at large must not suffer because pension is paid from the pocket of the tax

payers. On these grounds, learned counsel submitted that there is no error committed by the office of the Accountant General, Biahr, who has communicated the recovery order vide Memo No. 14-1764 dated 10.01.2023 and Senior Treasury Officer vide Memo No. 89 dated 17.01.2023 as well as order contained in Memo No. 101 dated 18.01.2023. The writ petition has no merit.

6. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the erstwhile Bihar State Agriculture Marketing Board was a creature of the State Government and it was substantially funded by the State Government and its Managing Director has to be the Senior I.A.S. Officer being the employee of the State Government and its employee were having protection of Article 12 of the Constitution of India. Recently, the Apex Court in case of ***St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.***, reported in **(*2023*) 4 SCC 498** has carved out certain exception in respect to exercise jurisdiction in peculiar circumstances of the case, I find that the employees of the erstwhile Marketing Board were taken into government service on certain terms and conditions and considering the long length of their services in Marketing Board applying the mandate of

Rule 58 and 59 of the Bihar Pension Rules, 1950 from the date of initial appointment of the petitioner in the Marketing Board for the purpose of calculation of pension, no error was committed by the office of the Accountant General, Bihar, while fixing the pension of the petitioner after his retirement on 31.10.2018.

7. The counter affidavit is devoid of any background in respect of the facts as to in which circumstances, the petitioner was paid pension and that could have been only fixed by the office of the Accountant General, Bihar and subsequent to that only without letting know to the petitioner, as to under what circumstances, the recovery order was suggested by the office of the Accountant General, Bihar vide Memo No. 14-1764 dated 10.01.2023. In the present case, there has been violation of principle of natural justice, as well as, at the same time, the authority has not taken note of Rule 58 and 59 of the Bihar Pension Rules, 1950 and the clarification made by the State Government vide Resolution Memo No. Pen1024/69/11779 F., dated 12.8.1969. I find proper to reproduce the law laid down by the Division Bench of this Court in case of ***L.P.A. No. 198 of 2016 (Registrar General, Patna High Court Vs. Ram Vyas Dubey and Ors)*** which is

quoted hereinbelow for ready reference:

"9. Having heard learned counsel for the parties and having perused the material on record, the facts not in dispute are that the writ petitioner was appointed as Daily Wage (Literate) Mazdoor on 18.4.1985 and was regularized on 1.5.1988. In view of the order dated 7.6.1994 he was designated as Assistant on ad-hoc basis; however, the said order being recalled subsequently, the writ petitioner reverted back as a Daily Wage Employee of the Court. He was later selected and appointed as Ex-Cadre Assistant vide memo no. 2675 dated 18.3.2004 and finally retired from service on 31.10.2010.

10. It is the categorical case of respondent no. 2- appellant that a minimum of 10 years of service as a regular employee is required to qualify for pension and the same has been fixed by the Government of Bihar. At this stage Rule 58 of the Bihar Pension Rules, 1950 which deals with the conditions of the service of a Government servant to qualify for pension may be referred to and the same is quoted hereinbelow:

"58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions :-

First- The service must be under Government.

Second -The employment must be substantive and permanent.

Third -The service must be paid by Government.

These three conditions are fully explained in the following sub-sections.

11. Rule 59 of the Bihar Pension Rules, 1950 provides that in certain cases even though the conditions are not fulfilled, the Government may provide that the service rendered by a Government servant shall count for pension. Under this provision the Government came out with Memo No. Pen1024/69/11779 F., dated 12.8.1969 which is quoted hereinbelow for ready reference:

"Regarding:-Declaration of temporary service of a Government servant who is not confirmed as pensionable.

Under the existing pension rules, a temporary Government servant if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under rule 59 of the Bihar Pension Rules.

2. There are a large number of temporary Government servants employed under different schemes which are in existence for the last 15-20 years and it will cause hardship to them, if they are not allowed pension after their retirement.

3. The State Government after careful consideration have, therefore, been pleased to decide that, if the service of the temporary or officiating Government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under rule 59 of the Bihar Pension Rules.

4. These orders will be applicable to Government servants retiring on or after 12 August, 1969. [Vide Memo No. Pen 1024/69/11779 F., dated 12-8-1969.]"*

12. Reading of the above provisions clearly provide that even if a person has worked in a temporary capacity and has not been confirmed, if his service on any post is continuous and is for more than 15 years, then it may be considered as pensionable under Rule 59 of the Bihar Pension Rules, 1950.

13. Taking into consideration the material on record, Rules 58 and 59 of the Bihar Pension Rules, 1950 and the Memo dated 12.8.1969 which has also been extracted in full by the learned Single Judge in the order impugned, the learned Single Judge was rightly pleased to allow the prayer sought for in the writ application.

14. The Court finds no illegality in the order of the learned Single Judge nor any merit in the instant appeal.

15. The appeal is dismissed."

8. That apart, it is admitted fact that the petitioner was taken into government establishment on the post of peon on certain terms and conditions of the absorption of some of the employees of the dissolved Marketing Board as contained in Memo No. 2500 dated 22.09.2009. The petitioner is binded by the said terms and conditions, which also provides that as new pension has come with effect from the year 2005, the petitioner is entitled for retirement benefits in accordance with the terms and conditions of the New Pension Scheme and such condition is contained in Sub-Clause- ङ. of Clause-2 of the appointment letter.

9. The procedure in respect of fixation of pension is only followed by the office of the Accountant General, Bihar after the sanctioning authority sanctions the pension. From the perusal of paragraph no. 7 of the counter affidavit filed on behalf of the respondents no. 2, 3, 4 and 5, it appears that the

petitioner was never recommended for pension by answering respondents. The said statement can only be verified from the service particulars of the petitioner and other similarly situated employees from the office of the District Programme Officer (I.C.D.S.) concerned, who had earlier sanctioned the pension papers and communicated the same to the office of the Accountant General, Bihar for fixation of pension. Even assuming that a very casual approach is of the then District Programme Officer (I.C.D.S.), the office of the Accountant General having fixed the pension of the petitioner, which was paid to the petitioner till it was detected subsequently by the office of the Accountant General, Bihar on 10.01.2023 and for this reason also, I find that no misappropriation or misrepresentation has been committed by the petitioner, who is the Group-D employee. Law in respect of the recovery as on date is well settled in case of **S*tate of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer) etc.,*** reported in ***2015(4) SSC 334*** and ***Thomas Daniel Vrs. State of Kerala & Ors. (Civil Appeal No. 7115 of 2010) reported in 2022 Live Law (SC) 438.***

10. I find that the order of recovery as suggested by the office of the Accountant General, Bihar contained in memo No. 14-1764 dated 10.01.2023 and consequential order communicated by the Senior Treasury Officer, Madhubani as contained in Memo No. 89 dated 17.01.2023, by which it has been directed to recover a sum of Rs. 12,54,852/- from the petitioner has been passed without giving opportunity of hearing to the petitioner and the same is hereby set aside and quashed.

11. Accordingly, the present writ petition is disposed of.

Sanjay/-
Niraj/-

(Purnendu Singh, J)

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	30.10.2024
Transmission Date	N/A