IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19069 of 2015

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Bidyanand Paswan Son of Late Dwarika Prasad Paswan, Resident of Sati Chitrakut Apartment, Flat No.302, Ganga Path Patel Nagar, P.S. Shastrinagar, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
3. The Special Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Pat
4. The Under Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna
5. The Accountant General Bihar, Birchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh, Sr. Advocate
		Mr. Janmejay Giridhar, Advocate
		Ms. Smriti Singh, Advocate
For the Respondent/s	:	Mr. S.K. Jha- Gp3

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 22-01-2024

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs :-

> *(i) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the resolution Issued under the signature of Special Secretary, Department of Registration, Excise & Prohibition, Government of Bihar contained in memo no 1911 dated 28.04.2015, by which petitioner has been subjected to punishment of*

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deducting/reducing pension by 5% under the power conferred in Rule 139 (c) of Bihar Pension Rule 1950.

(ii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the Inquiry 5230 Report dated 12.01.2015, prepared by the conducting officer in the departmental proceeding conducted against the petitioner wherein both charges were found proved against the petitioner.

(iii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the resolution contained in memo no. 4509 dated 16.10.2014, issued from the Department of Registration, Excise & Prohibition, Government of Bihar, Patna, whereby a decision was taken to initiate a departmental proceeding for the memo charge 'Prapatra Ka' against the petitioner under the provisions of Rule 43(B) of the Bihar Pension Rule, 1950.

(iv) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the letter dated 20.05.2015, contained in memo no. 2331, issued under signature of Special Secretary, Department of Registration, Excise & Prohibition, Government of Bihar, Patna, by which a request was made to the Accountant General Bihar, for deducting/reducing pension of the petitioner by 5 percent in pursuance of notification no. 1911 dated 28.04.2015 for punishment.

(v) For issuance of any other appropriate writ or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

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3. Learned counsel for the petitioner submits that initially the petitioner was appointed on the post of Sub Registrar, District Sub Registry Office, Saharsa on 04.06.1982 and voluntarily retired from service on 31.05.2012 from the post of Deputy Inspector General, Registration. After his retirement the respondent authority has sanctioned full pension to the petitioner and the petitioner is getting full pension w.e.f. 01.06.2012 vide PPO No. 201212111299 dated 30.11.2012 issued by the Accountant General, Bihar.

4. Learned counsel for the petitioner further submits that all of a sudden a decision was taken by the respondent to initiate a departmental proceeding under the provisions of the Rule 43(b) of the Bihar Pension Rule, 1950 and accordingly a "Prapatra Ka" was issued from the department of Registration, Excise & Prohibition, Government of Bihar, Patna vide memo no. 4509 dated 16.10.2014 and from perusal of the "Prapatra Ka" it appears that in total two charges were framed against the petitioner. Charge no. 1 is that the petitioner has disposed of 20 cases under Rule 47(A) of the Indian Stamp Act without any place verification and as such caused revenue loss of total Rs. 6,03,880/- according to audit report. Charge no. 2 is that the petitioner had passed order in 10 cases out of 22 cases under

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Rule 47(A) of the Indian Stamp Act and as a result caused revenue loss of total Rs. 10.20 lacs to the Government. Accordingly, a notice was issued to the petitioner vide letter no. 4535 dated 20.10.2014 for submission of his reply. In pursuant to the notice dated 20.10.2014 the petitioner has filed his reply to the charges before the Enquiry Officer on 05.12.2014 with a prayer to exonerate him from the charges levelled against him. Departmental enquiry was carried out against the petitioner and the petitioner has chargesheeted in the same and the Enquiry Officer after examining all the relevant documents and evidence of prosecution, written and oral defense. The Enquiry Officer opined that the charge nos. 1 and 2 were found proved against the petitioner and second show cause notice was issued to the petitioner vide letter no. 768 dated 12.01.2015 on the proposed punishment but from perusal of the Annexure-6 it appears that the second show cause notice issued only for major punishments but in the letter dated 19.02.2015 (Annexure-6) the major punishment was not disclosed by the authority concerned. The petitioner had submitted his reply dated 11.03.2015 to the second show cause notice with a prayer to not except the recommendation of Enquiry Officer and exonerate him from all the charges. By resolution contained in memo no. 1911 dated

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28.04.2015 issued under the signature of the respondent no. 3 the petitioner has been subjected to punishment of reducing pension by 5% under the power conferred in Rule 139(C) of Bihar Pension Rule, 1950.

5. Learned counsel for the petitioner submits that the proceeding was initiated against the petitioner under Rule 43(b) of the Bihar Pension Rule and from perusal of the resolution contained in memo no. 1911 dated 28.04.2015 it appears that the respondents had punished the petitioner under the power conferred in Rule 139(C) of the Bihar Pension Rule, 1950. He further submits that the petitioner has chargesheeted in the proceeding which was initiated under Rule 43(b) of the Bihar Pension Rule and petitioner has never received any notice from the authority under Rule 139(C) of the Bihar Pension Rule, 1950. He submits that the petitioner has been proceeded on the basis of the report of the Accountant General from the period 2006 to 2011 and no notice was given to the petitioner while the petitioner was in service.

6. Learned counsel for the petitioner further submits that the matter relates to Section 47 A of the Indian Stamp Act is a quasi judicial work and the Registration Officer shall refer the instrument before the Collector for fixation of the market value

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and for recovery of difference amount of stamp and it is not binding upon the collector to accept the price or grade the land expressed in Market Value Register. However, the power of the Collector under Section 47 A of the Indian Stamp Act was vested in the Inspector of the Registration Offices vide letter dated 20.05.2006 issued under signature of Inspector General, Registration Department, Government of Bihar. As such the authority who disposed the matter related to Section 47 A of the Indian Stamp Act cannot be subjected to departmental proceeding and the respondent authority has invoked the Rule 139(C) of Bihar Pension Rule, 1950 while awarding punishment of reducing pension by 5% to the petitioner but the respondent authority has not given any show cause against the petitioner on proposed punishment under Rule 139(C) of Bihar Pension Rules.

7. Learned counsel for the petitioner referred to Rule 43(b) of the Bihar Pension Rules which is quoted as herein below :-

> *"[1][(b) The [2][Appointment authority of the post held at the time of retirement] 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*

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> *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:"*

8. He further submits that the act of negligence is not a misconduct and there is no evidence in the present case and no consideration was given to the reply of the show cause notice filed on behalf of the petitioner and no evidence is lead according to the CCA Rules.

9. He further submits that if the proceeding was initiated under Rule 43(b) then why the punishment order has been passed under 139(C) of the Bihar Pension Rules which is not permissible under the Rule.

10. He further relied upon the paragraph no. 4 of the Full Bench judgment reported in **2001 (1) PLJR 665** which is quoted as herein below:-

> *"4. In our opinion, the scope of Rule 43(b) and Rule 139 are quite different. There is no question of applicability of Rule 139 if Rule 43 is attracted. Rule 139 deals with a different kind of situation."*

11. Learned counsel appearing on behalf of the State on the hand submits that the order impugned was passed in accordance with law and there is no infirmity in the order. He further relied upon the paragraph no. 22 of the judgment reported in **2011 2 SCC 591** which is quoted as herein below:-

> *"22. The notification no doubt does not refer to*

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> *Regulations 24 and 25(3). But it is now well settled that the omission to refer to the provisions of law which is the source of power, or the mentioning of wrong provision, will not by itself render an order of the government invalid or illegal, if the Government had the power under an appropriate provision of law (vide K.K. Parmar v. High Court of Gujarat and Kedar Shashikant Deshpande v. Bhor Municipal Council).”*

12. He further referred to paragraph no. 17 of the judgment reported in **2020 (1) PLJR 95** which reads as following:-

> *“17. In Roop Singh Negi (supra), emphasis has been laid on the proof of the material before the Enquiry Officer as the Enquiry Officer performs a quasi-judicial function. For proving charge, it is not necessary that any evidence be compulsorily led. If the materials are available which could be the basis for coming to a definite conclusion, then only because witnesses were not examined, the entire enquiry report could not be thrown out as being bad in facts and law.”*

13. He also referred to paragraph no. 6 of the judgment reported in **2008 (1) PLJR 542** which is as follows:-

> *“6. Learned counsel for the petitioner however has rightly contended that even if the issuance of show cause notice under the proviso of Rule 43(b) was permissible in view of the event taking place within four years of the institution of the proceeding, the impugned order as passed on 19.2.1997 cannot be sustained because the procedure as contemplated under Rule 43(b) has not been followed. In this regard his submission is that the proviso to Rule 43(b) of the Bihar Pension Rules which alone can be the source of power for issuance of show cause notice dated 21.9.1995 itself envisages if a proceeding had not been initiated during the provisional period of*

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service of the State Government employee, same can be initiated and concluded only in terms of the proviso of Rule 43(b). There appears to be force in the aforementioned submission as Rule 43(b) envisages that not only the proceeding be initiated in respect of an event which took place within a period of four years but even the procedure for inflicting the punishment being one of the major penalty proceeding .e. for inflicting major punishment should be strictly followed. It is however clear from the records that the petitioner was only given a show cause notice dated 21.9.1995 and thereafter the impugned order of withholding of 10% of pension had been passed. Thus, the procedure for inflicting an order of punishment of dismissal from the service against the petitioner was not at all fol- lowed which as per the provision of Rule 55 of Civil Service (Classification, Control and Appeal) Rules require framing of charge, appointment of enquiry officer and holding of a regular departmental proceeding by adducing both oral and documentary evidence by the two sides. Consequently, it has to be held that the safeguard and mandatory conditions as prescribed under proviso of Rule 43(b) were not followed by the respondents while passing the impugned order dated 19.2.1997."

14. In view of the settled legal position as reported in 2000 (1) PLJR 65 (FB) (supra) and no notice under Rule 139(C) of the Bihar Pension Rule, 1950 has been given to the petitioner, and as such the order dated 16.10.2014, enquiry report dated 12.01.2015, order of disciplinary authority dated 28.04.2015 and letter dated 20.05.2015 are neither sustainable in law nor on fact and are accordingly set aside and the petitioner is entitled for all consequential benefits.

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15. For the reasons stated above, the writ petition stands allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
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