

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.298 of 2024
In
Civil Writ Jurisdiction Case No.3480 of 2018

1. The State of Bihar
2. The Principal Secretary, Department of Planning and Development, Government of Bihar, Patna.
3. The Director, Department of Planning and Development Economics and Statistics Directorate, Government of Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Statistical Officer, Gaya.

... .. Appellants

Versus

Bishwanath Prasad Gupta, S/o Late Sita Ram Prasad Gupta, Resident of Bakarganj, P.O.-Bankipur, P.S. Pirabhore, District-Patna.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Vivek Prasad, GP-7 Mrs. Roona, AC to GP-7
For the Respondent/s	:	Mr. Shashi Bhushan Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-05-2024

Though, the appeal has been posted under the heading “For Admission”, we took up the matter for hearing with consent of the parties, especially since it was pointed out that the writ petitioner/respondent herein was an aged man and he



has retired in the year 2014 and has not been paid a single penny as pension.

2. The allegation was of accepting bribe and a criminal case was registered on a trap sprung on the writ petitioner.

3. We will not deal with the facts of the issue; but parallelly a disciplinary proceeding was also initiated. The criminal case is said to be still pending. The Disciplinary Authority ordered an inquiry in which the Enquiry Officer submitted a report exonerating the writ petitioner. The Disciplinary Authority then set aside the inquiry report and sent it back for de novo inquiry. The writ petitioner challenged the same in C.W.J.C. No. 5974 of 2014, the judgment in which is produced as Annexure-7 to the writ petition.

4. We extract the following paragraph from Annexure-7 judgment:

“There is no dispute that the Disciplinary Authority can disagree with the enquiry report submitted by the Inquiring Officer/Conducting Officer, but then he is required to record reasons for such disagreement. However, while passing the impugned order, reasons for such disagreement have not been recorded by the Disciplinary Authority. As per Rule 18(1) of



Rules, 2005, the Disciplinary Authority, by recording reasons in writing could have remitted the matter back for further inquiry by the Inquiry Officer, but that has not been done and instead, he directed for de novo departmental enquiry. Apparently, impugned order is contrary to law and the provisions of Rules, 2005, therefore, it cannot be sustained.”

5. The learned Single Judge found that there can be no question of a further inquiry to be conducted. But, however, the Disciplinary Authority could disagree with the inquiry report which disagreement has to be informed to the writ petitioner specifically showing the grounds on which such disagreement has been entered into. The learned Single Judge allowed the inquiry to be resumed from the stage of the submission of inquiry report. The order of de novo inquiry was set aside and the Disciplinary Authority was directed to give a disagreement memo.

6. Subsequent to that, in compliance with the order of this Court, disagreement memo (Annexure-9) was furnished to the writ petitioner. An objection was also filed by the writ petitioner as per Annexure-10. However, no personal hearing was granted. Annexure-11 order was passed imposing the punishment of withholding of 100% pension under Section



43(a) of the Bihar Pension Rules.

7. The learned Single Judge set aside the order finding that under Rule 139(b) of the Bihar Pension Rules, personal hearing is mandatory. The order was found to be illegal and the same set aside. The appellants were also directed to grant consequential benefits to the writ petitioner.

8. The learned Counsel for the writ petitioner argued before us that the writ petitioner is bed ridden and unable to move and he has not got a pie despite ten years of his retirement. The criminal case also is pending and the learned Single Judge was perfectly right in having set aside the order and directed payment of pension. It is also pointed out that the punishment order passed under Section 43(a) of the Bihar Pension Rules cannot survive since it only can be invoked with respect to future misdemeanours.

9. The learned Counsel for the appellants, on the other hand, points out that the disagreement memo has specifically noted the fact that on the trap sprung, the writ petitioner's hand turned pink when it was immersed in sodium carbonate solution, which is a clear indication of cash having been accepted. The disagreement memo has specifically pointed out these aspects.

10. The learned Counsel for the writ petitioner,



however, submits that he did not have the cash with him and it was put in his hands and then immersed in sodium carbonate solution.

11. The learned Counsel for the appellants counters on the ground that, in fact, the writ petitioner had accepted the defalcation to the trap team and also handed over the cash.

12. We will not go into the merits of the matter since we are not called upon to decide as to whether the writ petitioner is guilty of the misconduct alleged or not and if we say anything on merits, it would affect a proper determination by the Disciplinary Authority. However, we are concerned with the fact that having noticed a defect of no personal hearing having been granted as mandated under Rule 139 (b) of the Bihar Pension Rules, the learned Single Judge ought to have remanded the matter for fresh consideration from the stage when the defect occurred. The fact that ten years have gone by cannot be a reason to bypass the legal principles as applicable to domestic inquires. If a defect has been occasioned, which can be cured, definitely it has to be sent back for resuming the proceedings from the stage at which the defect occurred.

13. In the above circumstances, we interfere with the order of the learned Single Judge only to the extent of directing



grant of consequential benefits to the writ petitioner. We agree with the learned Single Judge only insofar as the impugned order having been set aside. We also notice that the impugned order has been passed under Rule 43(a) of the Bihar Pension Rules, which obviously is a mistake since if based on disciplinary inquiry initiated on the ground of misconduct alleged while in service, the inquiry proceeding has to culminate with a punishment, if found guilty, by invoking Rule 43(b) of the Bihar Pension Rules and not Rule 43(a) of the Bihar Pension Rules.

14. It is trite law that non quoting of a provision or misquoting of it will not vitiate an order. However, in any event the order is vitiated for reason of no personal hearing having been afforded; though according to us Rule 139(b) of the Bihar Pension Rules does not say so in so many words. We, hence, direct the disciplinary enquiry to resume the proceedings from the stage of Annexure-9. Annexure-9 disagreement memo has now been sent to the writ petitioner. The writ petitioner has also filed objection at Annexure-10. We direct the writ petitioner or his authorized representative; which we specify, since the learned Counsel for the writ petitioner submits that the writ petitioner is laid up, to appear before respondent no. 3



(Disciplinary Authority) for personal hearing.

15. The writ petitioner or his authorized representative will be issued with notice and he by himself or the authorized representative shall appear for personal hearing. After conducting personal hearing, a speaking order shall be passed by the Disciplinary Authority. If none appears on the hearing date, then the Appellate Authority shall consider the objections and pass an order.

16. We make it clear that the entire proceedings should be finished within two months from today.

17. **Ram Das Ram v. State of Bihar [2022 (1) BLJ 618]**, was in the context of the punishment of withholding of 100% pension having been set aside since the enquiry did not substantiate the petitioner having accepted a bribe, with due evidence led at the enquiry; though a criminal proceeding on the same set of facts was pending. Here we have not reached the said stage. The petitioner's contention would be left open.

18. At this juncture, the learned Counsel for the writ petitioner has also raised a contention that the disciplinary inquiry initiated, is also incompetent. We are of the opinion that the said contention can be left open to be considered if the Disciplinary Authority's order prejudices the writ petitioner.



19. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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