IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17177 of 2015

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Surendra Kumar Yadav Son of Late Jhaman Singh Yadav resident of village - Hat Pokhar, Police Station Piro, District - Bhojpur at Ara

... ... Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary to Government of Bihar, Water Resources, Sinchai Building, Patna-15.
2. The Principal Secretary to Government, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna-15.
3. The Additional Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna-800001.
4. The Deputy Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna-800001.
5. The Under Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna-800001.
6. The Accountant General, Bihar, Birchand Patel Path, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Lalan Kumar Singh, Advocate

For the Respondent/s : Mr.Vivek Prasad, G.P.-18

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 05-02-2024

Heard Mr. Lalan Kumar Singh, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P.-7 is appearing on behalf of the State.

2. The present writ application has been filed for quashing the order contained in Memo No.5400 dated 21.09.2015 passed by the respondent No.4 whereby and whereunder 5% of the pension deducted in the pension of the petitioner.

3. Learned counsel for the petitioner submits that while the petitioner was posted as an Assistant Engineer, Minor

Irrigation Division, Bhagalpur. Under the N.R.E.P. scheme, the petitioner alongwith Executive Engineer, served a Memo of charge vide Resolution No.83 dated 29.04.2010 regarding certain illegalities and irregularities in procedure for preparation for estimate in which the Vigilance Inquiry was set up and inquiry report submitted vide Memo No. 270 dated 07.05.2008, and from a bare perusal of the inquiry report dated 07.05.2008, it appears that there is no financial losses caused to the Government and entire amount was intact in back account. Learned counsel for the petitioner submits that the departmental proceeding was also initiated against the petitioner alongwith the then Executive Engineer and Memo of Charge was served to the petitioner on 29.04.2010 and the petitioner has filed reply of the aforesaid allegations on 08.06.2010 before the Inquiry Officer.

4. Learned counsel for the petitioner submits that despite the specific finding given by the Vigilance Inquiry, there is no requirement for lodging a criminal case against the concerned employee including the petitioner but the authority concerned with malafide intention instituted a criminal case against the petitioner alongwith Executive Engineer and Junior Engineer in which the petitioner alongwith others fully exonerated and discharged from the criminal liabilities by the order passed by this Hon'ble High

Court in Cr. Misc. No. 14545 of 2012 on 17.10.2014 and pursuant to the order of this Court the criminal proceeding has been dropped by the competent court of Bhagalpur. Learned counsel for the petitioner submits that without giving full opportunity regarding personal hearing, cross examination and relevant documents has not been supplied to the petitioner during inquiry to defend his allegation, which is complete violation of principle of natural justice and after completing the inquiry, Inquiry Officer submitted inquiry report before the respondent No.4 on 15.04.2011 in which charge No.1 has not been proved and charge Nos.2 to 8 were partly proved.

5. Learned counsel for the petitioner submits that the petitioner superannuated from service w.e.f. 31.01.2012 and said departmental proceeding without any notice to the petitioner, converted the said proceeding under Section 43(B) of Bihar Pension Rules. Learned counsel for the petitioner submits that after lapses of three years from the date of submission of the inquiry report, the respondent No.3 issued second show cause on 26.11.2014 and the petitioner has given detailed reply to the second show cause notice on 04.12.2014 in which the petitioner prayed for exonerating from the charges. Learned counsel for the petitioner submits that the same allegation and same set of

evidence and facts , a departmental proceeding was also initiated against the then Executive Engineer, namely, Shri Jairam Mishra the Inquiry Officer submitted the inquiry report on 14.11.2014 in which the Inquiry Officer fully exonerated the said Executive Engineer, namely, Shri Jairam Mishra from 1 to 8 similar charges by the Inquiry Officer and the competent authority closed the departmental proceeding with respect to the then Executive Engineer, namely, Shri Jairam Mishra and granted full pension to the concerned Executive Engineer, vide Memo No.1640 dated 27.08.2015 and from the same set of evidence and facts, the respondent No.4 has issued punishment order and deducted 5% of the pension from the pension of the petitioner vide Memo No.5400 dated 21.09.2015 which is impugned in the present writ petition. Learned counsel for the petitioner has filed an application before the respondent No.2 for reconsideration of the said punishment order on the basis of the baseless and meaningless allegation and from a bare perusal of Rule 43(b) of the Bihar Pension Rules, which reads as follows:-

> "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 of1any 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 at 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.

Explanation*-For the purposes of the Rule-*

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted;

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court."

6. In the present case, no financial loss of the Government and without any financial losses, the petitioner has been inflicted the present punishment under Rule 43(B) of the Bihar Pension Rule which is bad in law and on the same allegations based upon the same set of evidence and same fact, the authority concerned has passed the punishment order against the petitioner when Executive Engineer, namely, Shri Jairam Mishra has been exonerated from all the allegations and passed order for full pension.

7. Learned counsel for the petitioner submits that it is well established law that two equal cannot be treated unequal and the deduction of 5 % of pension is complete violation of Constitutional right.

8. Learned counsel for the petitioner has relied upon the judgment in the case of **Ram Krit Sah Vs. The State of Bihar & Or**s, reported in **2010(2)PLJR 726,** paragraph Nos.-10,11 and 21 of the said judgment is reproduced hereinbelow:

> “10. *There can be no uniform yardstick to hold that exoneration in a criminal trial ipso facto leads to exoneration in the departmental proceedings also. The purpose and scope of the two are different. Acquittal in a criminal trial can still justify pendency*

and continuance of a departmental proceeding and an order of punishment. But, the matters shall become entirely different when the charges are common and the evidence is common. If in a criminal trial where full evidence is led, cross-examination is permitted, exhibits are to be produced, the charges have not been proved so much so that the allegedly illegally seized money and the bag in which it was allegedly kept could not be proved, much less marked as an exhibit, the respondents have much to answer. The finding of the enquiry officer that the realities of life in a regional office, the handicaps in the Vigilance Department, the limitations of the office of the District Magistrate, are nothing else but an effort to shield those who may have allowed the judgment to come. If proper evidence was not led, exhibits not produced, when the charges were the same, this Court finds it difficult to give advantage to the respondents for their own misconduct in the criminal trial to indict the petitioner in the departmental proceeding. The enquiry officer therefore arrived at a conclusion on what he terms as "an aggregate *evaluation" to hold a preponderance of probability. He records no finding of guilt on the charge of his having been apprehended red handed which obviously became non est in the findings of the criminal court. The charge therefore remained in the realm of suspicion or speculation".*

"11. *The failure of the respondents to produce the money as an exhibit, which was allegedly seized from the petitioner, the bag in which it was kept or to lead evidence of the person who made such alleged seizure during trial makes it legally unacceptable to uphold the finding of the enquiry officer on the euphemism of "preponderance of probabilities". If in the criminal trial, on similar allegations, materials exhibits were not produced, witnesses not forthcoming, this Court finds it difficult to hold that notwithstanding his acquittal on merits thereunder, the petitioner can still be subjected to punishment in the departmental proceedings".*

"21. *The interim order dated 28.4.2004 is therefore made absolute. The respondents are precluded permanently from taking any further action on the* *charge against the petitioner in view of his acquittal in the criminal case on the same charges. This Court has arrived at this conclusion after adequate consideration of the case of the respondents when they have been unable to demonstrate any distinguishing feature during the departmental proceeding from that in the criminal trial to persuade this Court to direct that notwithstanding his acquittal in the criminal trial the departmental proceedings must be allowed to go to its logical conclusion".*

9. Learned counsel for the petitioner has relied upon another judgment in the case of **Girija Nand Jha Vs. The State of Bihar & Ors**, reported in **2012 (4) PLJR 412**, paragraph No.7 of the said judgment is reproduced hereinbelow:

"7. *The sine qua non for a proceeding under Rule 43(b) is the commission of a gross misconduct which causes pecuniary loss to the Government. The matter is considered serious enough to warrant that mere superannuation can be no reason to allow the offender the go away. If pecuniary loss is not caused to the Government it shall not be construed as gross misconduct, generally speaking under the Rules.*

There can be examples where without pecuniary loss the act was grossly unbecoming of a Government servant. Such cases may involve moral turpitude, an act bordering on wanton conduct with full knowledge of the bad consequences virtually tantamounting to a mens rea to commit the act. There has to be distinction between it and misconduct. The latter may be conduct which may not be of the approved standard and can be the outcome of various reasons but a deliberate wanton behaviour. Failure to abide by departmental procedures without further more cannot amount to gross misconduct ipso facto. In ***(2002) 7 SCC 168 (Regional Manager & Disciplinary Authority, State Bank of India, Hyderabad v. S. Mohammed Gaffar)*** *the distinction was noticed holding:*

> *"9. In contrast, the instances enumerated to define the expression `` minor misconduct`` would indicate that they are routine lapses or lapses or acts with no direct adverse financial implications or loss to the assets or pecuniary interests of the Bank. Claiming and availing of*

increments to which the respondent was held to be not entitled to and that too without the sanction or approval of the competent authority when he was the dealing person in the section, cannot be simply glossed over to be viewed not as a gross misconduct without doing violence to the meaning ascribed to the said expression….."

10. Learned counsel for the petitioner submits that in the present case, there is no pecuniary loss to the Government so proceeding under Section 43(b) of the Bihar Pension Rule is bad.

11. Learned counsel for the State submits that during the period 2007-08 the petitioner has committed certain irregularities in recommending estimate for construction of a rural road of District Board, Bhagalpur under NREP scheme for which departmental proceeding was initiated against the petitioner. The petitioner participated in the departmental proceeding and submitted his written defence. The Inquiry Officer submitted his inquiry report on 15.04.2011 exonerating the petitioner from the charge No.1 and held the charge No.7 fully proved and charge Nos. 2 to 6 and 8 partly proved and the Disciplinary Authority agreed with the findings of the Inquiry Officer. In the meantime,

the petitioner superannuated from his service w.e.f. 31.01.2012 and in the aforesaid circumstances, the present departmental proceeding was converted into a proceeding under Rule 43(b) of the Bihar Pension Rules vide order No.235 as contained in Memo No.5246 dated 19.09.2014. The second show cause notice was issued to the petitioner on 26.11.2014. The petitioner submitted his reply on 11.12.2014 which has been examined by the disciplinary authority but the reply was found not satisfactory and the charges against the petitioner stood proved. Thereafter, concurrence of the Bihar Public Service Commission was obtained on the proposed punishment and the petitioner was awarded punishment of withholding 5% pension which is impugned in the present writ petition. The order of punishment has been passed after exhausting due process of departmental proceeding and observance of the principles of natural justice. As such, the impugned order does not suffer from any infirmity and does not require any interference.

12. I have gone thorough the entire records and it was found that no pecuniary loss to the Government and the same allegation and same set of evidence, the Inquiry Officer has fully exonerated the then Executive Engineer and the competent authority closed the proceeding against the then Executive

Engineer. The petitioner has been exonerated from the criminal liabilities in Criminal Misc. No.14545 of 2012.

13. The order dated 21.09.2015 (Annexure-9) is, accordingly, set aside. The petitioner is held to be entitled to all consequential reliefs alongwith interest @ 7% from the date that the deduction has been made till the date of payment. No financial loss is caused to the State Government by the act of the petitioner and similarly situated persons have been exonerated by the authority concerned in the proceeding and without any basis the impugned order has been passed.

14. The respondent No.3 is directed to pay all the consequential benefits to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

15. The writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2024
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