

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22425 of 2014

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Indra Devi Wife of Late Chandrika Ojha Resident of village- Panchmahala,
P.O. and Police Station- Sahajitpur, District- Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Revenue & Land Reforms Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Saran Division, Chapra.
3. The District Magistrate, Chapra.
4. The Sub Divisional Officer, Marhaura, Chapra.
5. The Establishment Deputy Collector, Saran Collectorate, Chapra.
6. The Block Development Officer, Revelganj, Chapra.
7. The Director, Account Administration and Self Employment, District Rural Development Agency, Chapra

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gyan Prakash, Advocate
	:	Ms. Parul Priya, Advocate
For the Respondent/s	:	Mr. Anil Kumar Singh, G.P. 26

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 11-01-2024

During the pendency of the writ petition the original writ petitioner has died, therefore, the wife of the petitioner has been substituted vide order dated 16.08.2023.

2. Heard Mr. Gyan Prakash, learned counsel for the petitioner and Mr. Anil Kumar Singh, learned counsel appearing on behalf of the State.

3. The present writ petition has been filed for quashing the order dated 14.03.2014 (*Annexure-12*) passed in Service Appeal No. 81 of 2011 by the respondent no.2 and the



order dated 08.09.2005 (*Annexure-9*) issued by the respondent no.3 by which it has been directed that the husband of the petitioner will not get part of the salary of his suspension period from 06.07.1984 to 07.06.1994 and his 25% pension will stand curtailed and further for quashing the aforesaid order the respondents-authority may be directed to pay the salary of the suspension period from 06.07.1984 to 07.06.1994 and his pension which was curtailed by the authority be released in favour of the husband of the petitioner.

4. Learned counsel for the petitioner further submits that when the husband of the petitioner was posted as Nazir in Revelganj Block in Chhapra, he was suspended w.e.f. 06.01.1984 with the charge of defalcation. On the basis of the charge of defalcation, a criminal case was instituted and after trial, learned Court has convicted the husband of the petitioner for a term of three years and to pay a fine of Rs. 3,000/- and to rigorous imprisonment for a term of six months and in default of payment, the husband of the petitioner filed a Criminal Appeal No. 20 of 1991 which was allowed in favour of the husband of the petitioner and the order of the learned Trial Court was set aside. Thereafter, the State Government filed a Government Appeal No. 23 of 1992 before this Hon'ble Court and the same



was dismissed vide order dated 01.04.1994. After the dismissal of the Government Appeal No. 23 of 1992, the respondent no.3 has reinstated the husband of the petitioner w.e.f. 08.06.1994.

5. He further submits that during the service period of the husband of the petitioner, the husband of the petitioner had repeatedly requested the competent authority to release the payment of the part salary of the period from 06.07.1984 to 07.06.1994 and, in the meantime, the husband of the petitioner was retired w.e.f. 30.11.1997. The Accountant General has fixed the final pension in favour of the husband of the petitioner and he is getting full pension and he has also received the full amount and gratuity in the year 1998 itself.

6. Learned counsel for the petitioner is referring the Rule-97(2) of the Bihar Service Code.

“where the authority mentioned in Sub-rule (1) is of the opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant would be given full pay and allowance to which he would have been entitled, had he not been dismissed, removed or



suspended, as the case may be.”

7. He further submits that in terms of the Rule 97(2) of the Bihar Service Code, the authority is required to pay the full salary of the husband of the petitioner from 06.07.1984 to 07.06.1994 but the husband of the petitioner has not been paid the same and when the husband of the petitioner filed a representation before the respondent no.3, the respondent no.3 initiated a proceeding under Rule 43(B) of the Bihar Pension Rule vide Memo no. 30 dated 18.01.2005 or for the Memo of Charge dated 23.07.1986 enclosed with the Memo No. 30 and the respondent no.5 asking the husband of the petitioner to submit his reply to the Memo No.30 dated 18.01.2005.

8. Learned counsel for the petitioner submits that the enquiry officer never called the husband of the petitioner officially to place his case and to participate in the proceeding. Thereafter, the husband of the petitioner filed his reply and sought some documents from the authority concerned but the same was not handed over to the husband of the petitioner and the enquiry was conducted and thereafter the husband of the petitioner approached this Hon'ble Court in C.W.J.C. No. 13572 of 2008 which was disposed of on 21.06.2011 with the direction to the husband of the petitioner to avail the remedy of appeal within the provision of the Bihar CCA Rule, 2005 before the



respondent no.2. Thereafter, the husband of the petitioner filed an appeal before the respondent no.2 and the respondent no.2 passed the order which is impugned in the present writ petition.

9. Learned counsel for the petitioner submits that it is admitted fact that the husband of the petitioner was retired from the service w.e.f. 30.11.1997 and the present fresh proceeding was initiated by the respondent no.3 vide order dated 18.01.2005 under the teeth of the Rule 43(B) of the Bihar Pension Rules. Learned counsel for the petitioner referring the Rule 43(B) of the Bihar Pension Rules, which reads as follows;

“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 specific 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 or 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 any 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 Governments 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 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. “

10. From a plain reading of the Rule 43(B), it reflects that the authority has wrongly initiated the proceeding against the husband of the petitioner under Rule 43(B).

11. Learned counsel for the petitioner further submits that it is admitted fact that the allegation of misappropriation of fund is of the year, 1984 and the petitioner had already retired on 30.11.1997 and even after his retirement of more than four years, the present proceeding was initiated on



18.01.2005 which is more than the four years of the husband of the petitioner's retirement. Learned counsel for the petitioner relying upon the judgment in the case of *Union of India & Ors. Versus Mohd. Ramzan Khan* reported in AIR 1991 SC 471 of which para-13, 17 & 18 are quoted hereinbelow;

13. *several pronouncements of this Court dealing with ART 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the enquiry contemplated under Art. 311(2) prior to the 42nd amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case (AIR 1969 SC 1294), the disciplinary authority is of very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording the evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his*



conclusions. It case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of nature justice would be affected. Prof. Wade has pointed out:

“The concept of natural justice has existed for many centuries and it has crystallised into two rules : that no man should be judge in his own-cause; and that no man should suffer without first being given a fair hearing. They (the Courts) have been developing and extending the principles of nature justice so as to build up a kind of code of fair administrative procedure to be obeyed by authorities of all kinds. They have done this once again by assuming that Parliament always intends powers to be exercised fairly.”

17. “There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a



copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.”

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilt of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

12. Learned counsel for the petitioner further relied upon a judgment in the case of *Government of Andhra Pradesh and others Versus A Venakata Raidy* reported in 2007(1) SCC



338 of which para-9 is quote hereinbelow;

“We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge 1, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO, etc. but that was not done. Copies of the said Gos or directions of the Government were not even place before the enquiry officer. Hence, charge 1 want not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.”

13. Learned counsel for the State, on the other hand, vehemently opposes the prayer of the writ petition on the ground that the husband of the petitioner has faced the criminal proceeding and in the criminal proceeding he has been convicted by the competent Trial Court. So, the authority has rightly



passed the impugned order in accordance with law and husband of the petitioner is not entitled to the arrears of salary w.e.f. 06.07.1984 to 07.06.1994.

14. He further submits that the husband of the petitioner has participated in the proceeding and the respondent no.3 has rightly reduced the pension of the husband of the petitioner of 25%.

15. In view of the settled legal position on the issue of punishment aforesaid, the orders dated 08.09.2005 & 14.03.2014 (Annexure- 9 & 12) are set aside and this writ petition is allowed and the State authority is directed to release the arrears of salary in terms of Rule 97 of the Bihar Service Code in favour of the petitioner who is widow of the original writ petitioner and also release the 25% of the pension in favour of the petitioner and also to pay the arrears of pension within a period of three months from the date of the receipt/production of a copy of this order.

16. Accordingly, writ petition is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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