IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11512 of 2012

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Sukhdeo Lal Son of Late Ragho Lal, Resident of Saketpuri, South of Ambedkar Chowk, Hanuman Nagar, P.S - Patrakarnagar, District - Patna.

... ... Petitioner

Versus

1. The State of Bihar.
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Deputy Secretary Vigilance, Road Construction Department, Govt. of Bihar, Patna.

... ... Respondents

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Appearance:

For the Petitioner	:	Mr. D.N. Pathak, Advocate
For the Respondents	:	Mr. Raghwanand, GA-11
		Mr. Sanjay Kr. Tiwari, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date: 29-01-2024

Heard Mr. D.N. Pathak, the learned counsel for the petitioner and Mr. Raghwanand, the learned GA-11 appearing on behalf of the State.

2. The present writ petition has been filed for quashing the Notification contained in Memo No. 4552 (S) dated 26.04.2012 issued by the respondent no. 3, whereby reduction of 5% of pension for five years has been awarded in the departmental proceeding initiated under Rule 43 (b) of Bihar Pension Rules vide departmental resolution contained in Memo No. 6727 (S) dated 23.06.2009.

3. Learned counsel for the petitioner submits that the petitioner retired from service on 30.11.2008 from the post of

Superintending Engineer, NH Circle, Road Construction Department, Patna. After seven months from retirement, the respondent no. 3 issued a resolution contained in Memo No. 6727 (S) dated 23.06.2009 and departmental proceeding was initiated under Rule 43 (b) of Bihar Pension Rules, whereby Chief Engineer, South Bihar Road Construction Department was appointed as Enquiry Officer in the said departmental proceeding.

4. From bare perusal of the Memo of charge dated 17.06.2009 that all charges are baseless and non-application of mind, since charge no. 1 speaks for non-institution of FIR against unknown person, who tampered the rate inserted in tender register. The charge no. 2 relates with recommendation of the contractor, who quoted minimum rate on the basis of the comparative state of the tender. The charge no. 3 for misrepresentation of fact regarding declaration of non-pending of criminal case or departmental proceeding at the time of filing of pension paper on 04.02.2009, which was absolutely contrary to the fact as the departmental proceeding was initiated on 26.09.2009, whereas, the petitioner retired from service w.e.f., from 30.11.2008 and declaration was made for the pension at the time of filing of pension papers on 04.02.2009, much prior to the initiation of the departmental proceeding. The departmental proceeding was initiated and the petitioner filed show-cause against Memo of charge on 29.07.2009

before the enquiry officer. The enquiry officer has submitted his report to his department on 07.09.2009, whereby he exonerated the petitioner from all charges on the basis of evidence adduced by the presenting officer against the charge and show-cause filed by the petitioner. The enquiry officer did not find the petitioner guilty with respect to the charges levelled against the petitioner in the departmental proceeding and as such he has exonerated the petitioner from all charges on the basis of facts and evidence adduced before him in the proceeding.

5. The enquiry report dated 07.09.2009 was examined by the Secretary, Road Construction Department, Patna and he did not find guilt against the charges and hence he proposed to exonerate the petitioner from all charges on 14.12.2009 and the same was accepted by the departmental Minister on 16.12.2009. The said proposal of the Secretary and departmental Minister was turned down by the Chief Secretary after some queries, which were answered by the departmental Secretary on 03.03.2010 and sent it for approval to the Chief Secretary, which was accepted and approved by the Chief Secretary on 04.03.2010 and again on 20.03.2010 for exoneration to the petitioner. The Secretary of Hon’ble Chief Minister made query without any substantive fact and beyond the Memo of charge and concerned file was returned down to the department for necessary action.

6. The Secretary of the department again proposed on 10.04.2010 for exoneration of the petitioner in the departmental proceeding and sent it to the Chief Secretary for approval, but the Chief Secretary deferred with the proposal of the departmental Secretary and asked the Secretary to issue a second show-cause notice to the petitioner for those charges which were not in the departmental proceeding, as is evident from the noting of the Chief Secretary dated 13.04.2010. The Chief Secretary had already approved the proposal of the departmental Secretary of exoneration of the petitioner, but the second show-cause notice was issued by the department on 30.04.2010 for the different charges, which was not the subject matter in the departmental proceeding. Initially under the resolution contained in Memo No. 6727 (S) dated 23.06.2009 without differing with the enquiry report.

7. Learned counsel for the petitioner submits that the well settled principle laid down by the Hon'ble Supreme Court in the case of ***Punjab National Bank v. Kunj Behari Misra*** reported in ***1998(VII) SCC 84*** that in case where the enquiry officer had exonerated the delinquent from the charges and if the disciplinary authority differs with the enquiry report, the disciplinary must disclose the reason with evidence on the basis of which the disciplinary authority proposed to differ with the finding of the

enquiry officer.

8. Learned counsel for the petitioner submits that from bare perusal of the second show-cause notice dated 30.04.2010 issued by the department without assigning any reason of the differences with the final enquiry officer and without evidence which is contrary to the proposal laid down in Rule 18(2) of the CCA Rules, 2005, but the petitioner had replied to the second show-cause notice on 14.05.2010 and he reverted the allegation made in the second show-cause notice and the charges which were not part and parcel of the departmental proceeding and after receiving the reply to the second show-cause notice of the petitioner, the respondent no. 2 proposed for exoneration to the petitioner, which was accepted by the Hon'ble departmental Minister and the same was sent to the Chief Secretary for approval.

9. Learned counsel for the petitioner submits that the petitioner was proceeded under Rule 43 (b) of the Bihar Pension Rules, which is wholly illegal and without jurisdiction since the proceeding under Rule 43 (b) can be initiated only if the petitioner is found to have been guilty for grave misconduct or caused pecuniary loss to the Government, but upon perusal of the Memo of charge no grave misconduct is attached with the charge and no pecuniary loss to the Government is found.

10. Learned counsel for the petitioner has relied upon the Judgment and order dated 12.09.2011 passed in CWJC No. 5296 of 2010, which is as under:

> *"The power under Rule 43 (b) is not absolute to be exercised in cases of any misconduct during service. It must be grave misconduct causing pecuniary loss to the Government, which may also be occasioned by negligence. The connotation of the word grave misconduct cannot be ignored. The conduct must not be a routine misconduct but something out of the ordinary of a seriousness, which simply cannot be ignored, a standard of conduct which any reasonable person under normal circumstances would not have expected from any reasonable Government servant as detrimental to the interest of the Government."*

and apart from that, the department without differing with the final enquiry officer said that the second show-cause notice is contrary to the provisions laid down under Rule 18(2) of the CCA Rules, 2005.

11. Learned counsel for the petitioner submits that there is no financial loss to the Government and as such the Bihar Public Service Commission (Hereinafter referred to as 'BPSC') has not recommended for any punishment in proceeding under Rule 43 (b) of the Bihar Pension Rules to the petitioner, but the department awarded the punishment of reduction of 5% of pension for five

years without assigning any reason of differences of opinion from BPSC and the same is contrary to the provision laid down under Rule 21 of the CCA Rule, 2005 and the departmental proceeding was initiated under Rule 43 (b) of the Bihar Pension Rules and the same was bad in the eye of law as no financial loss to the Government was involved in proceeding charge levelled against the petitioner, and petitioner was fully exonerated from all charges from the enquiry officer.

12. Learned counsel for the petitioner has relied upon the order and judgment dated 12.09.2011 passed in CWJC No. 5296 of 2010, which is as under:

> *"The power under Rule 43 (b) is a serious power. The consequences for a superannuated person in the evening of his life is deleterious but that can be no consideration if the charges on the fact of it do reflect gross misconduct causing pecuniary loss to the State Government. In that event, larger public interest shall prevail and the delinquent shall have to face the proceedings in accordance with law. Conversely, the power being serious, the same level of caution has to be exercised by the respondents while resorting to this extra ordinary power. The Court while examining the nature of the charge shall have to balance the protection of the public interest with the right of the individual. This Court is CWJC No. 11 of 2010 has already held by a detailed discussion that before resorting to this extra ordinary power, the respondents are expected to first carry out an in house assessment and study with regard to the nature of the allegations, the materials against the delinquent, the likelihood of the outcome by a cost*

benefit analysis of the entire issue before resorting to this extra ordinary power. Government funds cannot be frittered to the trustee in whom the Government entrusted the power.

"A proceeding under the Pension Rules is an extremely serious matter and is not to be lightly resorted to. Equally, serious matters shall brook no delay. There has to be serious judicious exercise of the power when all aspects including the possibility of the punishment being ultimately upheld must all be considered at the very inception. A pensioner has to be contest the proceedings both before the authorities and then before the Court from his meager pensionary resources. At a time when he should be enjoying the peace and serenity after a hard life, it is a serious jolt to him mentally and socially. Proposals should not be routinely initiated at the lower level and vetted at the senior level only after due application of mind. The Government also should not incur wasteful expenditure in contesting a litigation which should never have seen the light of the day. The man hours lost and wasted in the office pursuing a lost cause is but a national loss. Every frivolous proceeding calls for introspection by the Government not only with regard to the man hours wasted, the wasteful expenditure incurred by the Government and the social and monetary humiliation caused to the pensioner. The question of answerability and accountability by those who initiate frivolous proposals must necessarily engage serious attention of the Government."

13. Having heard the parties and perused the materials available on record, it appears that in the present case, there is no pecuniary loss to the Government and the petitioner was not found of any misconduct in the proceeding and power under Rule 43 (b) is not available to exercise in case of any misconduct during

service, it must be grave misconduct or causing pecuniary loss to the Government, which may also be occasion to negligence and before the issuing of Memo of charge, the respondent authority must be vigilant about the proceeding and the notification contained in Memo No. 4552 (S) dated 26.04.2012 (Annexure-1) is set aside that the present order does not come under the purview of the Rule 43 (b) of the Bihar Pension Rules and respondents are directed to pay all the consequential benefits to the petitioner within a period of eight months from the date of production of copy of the order.

14. Accordingly, the present writ petition stands allowed.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	NA
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