

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23213 of 2011

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CHANDRA BILAS SHARMA S/O Late Ram Bal Sharma R/O Village-Supta,
P.S.-Tekari, Distt.-Gaya

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR through the Divisional Commissioner, Magadh Division, Gaya
2. The District Collector Gaya
3. The Sub Divisional Officer, Sherghati Under Gaya Collectorate, Gaya
4. The Sub Divisional Officer, Tekari Under Gaya Collectorate, Gaya
5. The Block Development Officer, Paraia, Distt.-Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Virendra Prasad, Advocate
For the Respondent/s : Mr.Dinesh Maharaj, A.c. to AAG-11

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 15-02-2024

Heard learned counsel appearing for the petitioner and
learned counsel appearing for the State.

2. This writ application has been filed for quashing the
punishment order vide memo No.1808/Est. Dated 30.09.2011
issued by the respondent No.2 by which the respondent No.2 has
awarded the punishment withholding one increment with
cumulative effect.

3. Learned counsel for the petitioner submits that when
the petitioner was in service, the respondent No.3 had issued a
letter vide Memo No.28 dated 12.04.2007 to produce all the
documents of the Alamganj Panchayat within 24 hours. The
petitioner has submitted his reply on 27.04.2007. Thereafter, the



petitioner was transferred vide memo No.1176 dated 10.07.2007 from Paraiya Block to Dumariya Block. Thereafter, the transfer of the petitioner was stayed by the competent authority. All of a sudden the petitioner had received Prapatra-'K' (charge memo) vide Memo No.2270 dated 28.12.2007 and thereafter the respondent No.2 had issued a charge memo against the petitioner and the petitioner has received the same on 16.01.2008. In the meantime, the petitioner has been superannuated from the service on 28.02.2009. Thereafter, the petitioner has received the letter from the conducting officer dated 03.12.2010 (which is after his retirement) which suggests that no date was fixed on 30.12.2010 and the respondent No.3 also directed the petitioner to file his reply to the show cause within the aforesaid period. The petitioner, after receiving the aforesaid letter, has submitted his reply on 28.12.2010.

4. Learned counsel for the petitioner submits that in view of the judgment in the case of **Shambhu Saran Vs. The State of Bihar and others** reported in **2000(1) PLJR 665**, the authority cannot inflict the punishment other than the prescribed under Rule 43B of the Bihar Pension Rules and from a bare perusal of the impugned order it appears that one increment was withheld by the respondent authority with non-cumulative effect



which is not in accordance with Rule 43B of the Bihar Pension Rules and he also relied upon the judgment of this Court in the case of **Rizwan Ahmad Vs. The State of Bihar & Ors**, reported in **2023(4)PLJR 878**, para-8 of the said judgment, which reads as follows;

“8. The learned counsel for the petitioner submits that the order is unsustainable. After the proceedings were converted into Rule 43 (b) of the Bihar Pension Rules, 1950, no opportunity was granted to the petitioner before arriving at the conclusion, based on which the impugned punishment has been awarded”.

5. Learned counsel for the petitioner further relied upon a judgment in the case of **Nawal Kishore Singh Vs. The State of Bihar & Ors**, reported in **2017(3) PLJR 76**, paragraphs-7 and 8 of the said judgment, which reads as follows:

“7. It is rather unfortunate that even when the law as to continuation of disciplinary proceedings post retirement as well as on the retrospectivity of a punishment order, stands settled under the various judgments of this



*Court and the Supreme Court yet the Disciplinary Authority has shown such utter ignorance or has turned a blind eye to the settled legal position. Law is well settled and no punishment order can be imposed with retrospective effect nor any punishment as envisaged under the '2005 Rules', can be imposed on a retired employee. Reference in this regard is made to the Full Bench judgment of this Court in **Shambhu Saran Vs. The State of Bihar and others** reported in **2000(1) PLJR 665**. The Full Bench has held that even though a proceeding initiated in service period can be continued post retirement but the nature of punishment is different and no penalties as envisaged under the Classification Control and Appeal rules, can be imposed.*

“8. In view of the settled legal position on the issue, the punishment imposed, cannot be upheld and consequently the order dated 8.9.2014 impugned at Annexure-1 is quashed and set aside. The increments withheld by the



*respondents is directed to be released forthwith
and not later within six weeks from the date of
receipt/production of a copy of this order”.*

6. Learned counsel for the State has filed counter affidavit as well as supplementary counter affidavit but he has not stated anywhere in his counter affidavit or supplementary counter affidavit that whether the authority has the power to pass an order which is contrary to Rule 43B of the Bihar Pension Rules.

7. In view of the aforesaid and the settled principles of law laid down by a Full Bench of this Court in the case **Shambhu Saran Vs. The State of Bihar and others** reported in **2000(1) PLJR 665**, the order dated 30.09.2011 is set aside and this writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2024
Transmission Date	NA

