IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4529 of 2018

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Kamal Kishor Prasad Singh S/o Late Siya Sharan Singh, resident of Mufti Muhala Nakhas, Hajipur, District- Vaishali.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Engineer-in- Chief, Road Construction Department, Government of Bihar, Patna.
3. The Deputy Secretary Vigilance, Road Construction Department, Government of Bihar, Patna.
4. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh
For the Respondent/s	:	Mr.M.K.Ambastha -Sc26

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 02-01-2024

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

2. The present writ petition has been filed for quashing the Notification No. 218 (S) dated 24.03.2017 and 54(S) dated 03.01.2018 by which the pension of the petitioner has been deducted to 5% per month in most arbitrary and illegal manner and in utter violation of natural justice. Further prayer has been

made to declare the order of the Departmental Inquiry passed in proceeding no. 42/15 dated 17.08.2015 as void and illegal and further for issuance of any other appropriate writ/order as this Court deems fit in fact and circumstances of the case.

3. Counsel submits that the petitioner joined as Research Assistant in Public Works Department, Government of Bihar on 07.07.1981, and superannuated with honesty and integrity on 30.11.2014. Counsel further submits that he was promoted on 05.10.2009 to the post of Assistant Director (National Highway under Sub-Division, Quality Control) at Kochas, Et, Mohaniya in Kaimur.

4. Counsel submits that after his retirement, vide departmental order 6001(S)WE dated 03.07.2015, he was sanctioned 90% provisional pension. Executive Engineer Sub-Division No. 2 inspected the road constructed during the tenure of the petitioner on 12.08.2013 and 13.08.2013 and forwarded the report vide his letter no. 131 dated 08.10.2013 to the Deputy Secretary Vigilance, containing the report of the collected sample of material used in the construction and accordingly made allegations through show-cause which is Annexure-2.

5. Counsel further submits that he has replied to show-cause with respect to all the allegations made against him vide

Annexure-3. Further, samples were collected and tested in the laboratory in which construction was found fit and proper as per Annexure-4.

6. Counsel further submits that five member committee including Engineer-in-Chief (Chairman) inspected the matter and upon re-verification found that road was under tolerance limit of “coal tar” and charges against the petitioner was not proved.

7. Counsel submits that the petitioner retired in the year 2014, particularly on 30.11.2014 then he received information that a departmental proceeding was initiated against him vide Resolution Bearing No. 4977 Dated 21.05.2015 passed by departmental enquiry under Rules 43(b) of the Bihar Pension Rules, 1950. Counsel submits that charge has been framed, petitioner had contested but punishment order not passed in which direction was made about the permanent deduction of 5% amount out of pension of the petitioner.

8. Counsel for the petitioner has raised three technical points. First point is that the charge memo issued is itself bad in law as it is in gross violation of Rule 17(3) of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. Second is that for applicability of initiation of proceeding under

Rule 43(b) of the Bihar pension Rule, 1950 there are two ingredients which are necessary to be present i.e. the grave misconduct or to have caused pecuniary loss to the Government by the said misconduct.

9. Counsel submits that Annexure-7 is the order by virtue of which Section 43(b) has been initiated and in the said letter there is no wishper of grave misconduct or pecuniary loss or negligence. Counsel further submits that not only the enquiry report but also the disciplinary report have no such findings.

10. Counsel further submits that Bihar Pension Rules 139(c) clearly indicates that the power of revising pension has to be exercised only after providing reasonable opportunity of the show-cause to the pensioner and in the present case, there is gross violation of this fact.

11. Counsel submits that all the three points raised by the petitioner are in favour of petitioner.

12. Counsel for State on the other hand vehemently opposes the prayer of the petitioner and submits that Vide Annexure-1 order has been passed under Rule 43(b) of the Bihar Pension Rules, 1950 and then only proceeding has been initiated which is absolutely lawful.

13. Counsel further submits that prior to passing final

order, opportunity has been granted to the petitioner. On the point of violation of Rule 17(3) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 there is no such violation.

14. After going through the pleading of the parties as well as the documents, it transpires that in charge memo, name of witnesses has not been mentioned in accordance with Rule 17(3) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 it also transpires to this Court that the basic ingredients for initiation of proceeding under Section 43(b) i.e. the presence of grave misconduct or pecuniary loss of negligence is also not present vide Annexure-7 or in the enquiry report or in the disciplinary order. It also transpires to this Court that prior to passing order on deduction of pension no opportunity has been granted to the petitioner to show-cause i.e. the pension is going to be deducted.

15. As such, the order under challenge i.e. notification No. 218 (S) dated 24.03.2017 and 54(S) dated 03.01.2018 and Departmental Inquiry passed in proceeding no. 42/15 dated 17.08.2015 is hereby set aside.

16. Counsel for State is directed to rectify the deduction of pension within 90 days from the date of production of the

order.

(Dr. Anshuman, J)

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AFR/NAFR	
Uploading Date	
Transmission Date	