

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9419 of 2016

Sayed Jamaluddin @ Jamaluddin Son of Late Saiyed Surpan Ali resident of village - Khushalpur, P.O. Kehunia, P.S. Pranpur, District - Katihar, Retired Panchayat Secretary, Gram Panchayat - North Amdabad, Block - Amdabad, District - Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Panchayati Raj, Government of Bihar, Patna
3. The Divisional Commissioner, Purnea Division, Purnea
4. The District Magistrate, Katihar
5. The Deputy Development Commissioner, Katihar
6. The Sub - Divisional Office, Manihari, District Katihar
7. The District Panchayati Raj Officer, Katihar
8. The Block Development officer, Amdabad, District Katihar
9. The Accountant General, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Adv.
For the Respondent/s : Mr. Sudhir Kumar Upadhyay, AC to GP7
Mr. Ram Kinker Choubey, A.G.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

7 24-06-2025 Heard Learned Counsel for the petitioner and

Learned Counsel for the State.

2. Learned Counsel for the petitioner submits that the
present writ petition has been filed with the following reliefs:-

*(i) A writ in the nature of certiorari
setting aside the office order bearing Memo
No.817 dated 04.12.2014 issued from the level of
Respondent District Magistrate, Katihar as
contained in Annexure-6, whereby and where-*



under in contemplation of Departmental Proceeding petitioner has been inflicted punishment of curtailment of 15% pension for 5 years under Rule 139 of Bihar Pension Rules as also though his suspension has been revoked but his suspension period has been restricted upto payment of only subsistence allowance and salary for suspension period has been denied in complete violation of Principle of Natural Justice in view of Rule 97(2) of the Bihar Service Code.

(ii) For setting aside the appellate order passed by Respondent Divisional Commissioner, Purnea in Service Appeal No. 03/2015 under which order of punishment passed by Disciplinary authority has been affirmed and appeal has been dismissed without proper consideration of materials available on record.

(iii) To pay the consequential monetary benefit to the period accrued out of impugned orders.

3. Counsel for the petitioner has raised one legal point in this case that the order passed by the Disciplinary Authority contained in Memo No.817 dated 04.12.2014, is completely in violation of law as compliance of Rule 139 of the Bihar Pension Rules, 1950 has not been made. He further submits that there are two provisions *i.e.*, Rule 97(2) of the Bihar Service Code and Rule 139 of the Bihar Pension Rules, 1950, which have not



been complied.

4. Counsel for the State on the other hand submits that there is no violation of Rule 97(2) of the Bihar Service Code. He further submits that the petitioner was subject to disciplinary proceeding and punishment order has been passed fully in accordance with Bihar CCA Rules, 2005. But he fairly submits that from the order *i.e.*, Annexure-6 (Memo No.817 dated 04.12.2014) of the writ petition, it transpires that compliance of Rule 139 of the Bihar Pension Rules, 1950 has not been made as reasonable opportunity of showing cause against the action proposed to be taken with regard to pension, has not been made.

5. After hearing the parties and with a view to decide this case, it is necessary to acknowledge the contents of Rule 139 of the Bihar Pension Rules, 1950 which states as follows:-

139. (a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The [Appointment authority of the post held at the time of retirement] reserve to themselves the powers of revising an order relating



to pension passed by subordinate authorities under the control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.

6. Upon bare perusal of Rule 139(c) of the Bihar Pension Rules, it transpires that it is well within the power of the Appointing Authority to take decision with regard to service of petitioner that no such power shall be exercised without giving a reasonable opportunity of showing cause against the action proposed to be taken with regard to pension of the delinquent. From the order contained in Memo No.817 dated 04.12.2014, it transpires that no such reasonable opportunity of showing cause against the action proposed to be taken, has made against the petitioner. In this view of the matter and on this ground alone, the order contained in Memo No.817 dated 04.12.2014 is hereby set aside. As such, the matter is remanded back before the Appointing Authority to pass order afresh.



7. It is made clear that when the original order itself is bad in law then, appellate order is automatically not sustainable in the eye of law. Therefore, both orders passed by Disciplinary Authority vide Memo No.817 dated 04.12.2014 and Appellate Authority vide Service Appeal No.03 of 2015 dated 15.12.2015 are hereby set aside.

8. With the aforesaid directions and observations, the present writ application stands allowed.

(Dr. Anshuman, J.)

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