IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9546 of 2024

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Rajendra Prasad Ram Son of Ram Dihal Ram, R/o Subhkamna Colony, East Laxmi Nagar, Khemnichak, Sampatchak, New Jaganpura, P.O.- Khemnichack, P.S.- Ramkrishna Nagar, District- Patna. ... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Work Department, Bihar, Patna.
3. The Special Secretary, Rural Works Department, Bihar, Patna.
4. The Officer on Special Duty, Rural Works Department, Bihar, Patna.
5. The Under Secretary, Rural Works Department, Bihar, Patna.
6. The Joint Secretary, Rural Works Department, Bihar, Patna.
7. The Chief Engineer, Rural Works Department, Bihar, Patna.
8. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhash, Adv.
		Mr. Pradhan Murli Manohar Prasad, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad, Addl. Advocate General (5)
For the Accountant General :		Mr. Ram Kinker Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL ORDER

5 23-04-2026 Heard Mr. Abhash, learned counsel for the petitioner and learned counsel for the Respondent/State.

2. The present writ petition has been preferred for quashing the order as contained in Memo No. 816 dated 19.03.2024 passed by Joint Secretary whereby the petitioner has been imposed penalty of deduction of 10% monthly pension for three years under Rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as ‘the Rules 1950’).

3. Learned counsel for the petitioner submits that the petitioner superannuated from his service as Technical Advisor,

Rural Works Department, Circle Bettiah on 31.01.2020. It is next submitted that after retirement 90% provisional pension and 90% provisional gratuity are said to have been sanctioned *vide* letter no. 3844 dated 21.08.2020 w.e.f. 01.02.2020, pursuant thereto, office of the Accountant General (A & E), Bihar *vide* PPO No.202011011158PO and GPO No. 202011011158 authorized the provisional pension and provisional gratuity.

4. Learned counsel for the petitioner submits that Officer On Special Duty, R.W.D *vide* letter no. 358 dated 08.06.2018 had issued show-cause to the petitioner, while the petitioner was in service for not following the provisions of Bitumen Price Neutralization and the petitioner was directed to submit his explanation within seven days. It is the case of the petitioner that there was no formal enquiry or disciplinary proceeding initiated during his service period rather various show-causes were issued but formal decision to institute departmental enquiry was never taken and even being confronted with such legal question, the State counsel has not produced any material to show that petitioner was ever placed under departmental enquiry by appointing Inquiring Officer, Presenting Officer as per Bihar CCA Rules, 2005, to carry out

fact finding enquiry, while the notices continued to be issued, even after his retirement, based on which the impugned decision been taken whereas, owing to pendency of such show-cause notices prior to passing of the impugned order, which is appended with the writ petition as Annexures P/4, P/5 & P/6 being letter no. 2460 dated 10.10.2018, letter no. 348 dated 17.01.2020 and letter no. 1326 dated 10.08.2022 as contained in letter no. 348 dated 17.01.2020, 10% of pension and pensionary benefit is said to have been withheld by the respondents, while no decision on his explanation to show was ever taken for initiation of formal departmental enquiry.

5. It is further case of the petitioner that the Special Secretary, Rural Works Department, Bihar, Patna *vide* Letter No. 1676 dated 03.08.2023 (Annexure P/7) by invoking the provisions of Rule 139 of 'the Rules' without there being any enquiry under Section 43(b) of the Bihar Pension Rules, 1950, which could form basis to make appropriate deduction from pension still issued a show-cause for making reasonable deduction in the pension, of the petitioner. The petitioner is said to have submitted his response dated 25.09.2023 to Special Secretary, R.W.D, Bihar, Patna and after submission of the show-cause, the impugned order as contained in Memo No. 816

dated 19.03.2024 is said to have been passed whereby 10% of monthly pension for three years has been directed to be deducted from the petitioner by invoking the provisions of Rules 139 of ‘the Rules 1950’.

6. It has next been submitted by the counsel for the petitioner that without resorting to any procedures prescribed under ‘the Rules 1950’ for an allegation of any misconduct of the year 2009, which is beyond four years, the authorities were estopped from taking any recourses under Rule 139 of Bihar Pension Rules, 1950 for reduction of pension without any final decision having been taken under 43(b) of the Bihar Pension Rules, 1950 and as such, the proceedings so drawn under Rule 139 of the Bihar Pension Rule, vitiates in law in view of the law laid down by the Hon’ble Apex Court in the case of ***State of Bihar & Others v. Mohd. Idris Ansari [1995 Supp (3) SCC 56]*** . The relevant paragraph of the said judgment are herein quoted below:-

> *“In the present case, the respondent retired on 31-1-1993 and the show-cause notice under Rule 139(a) & (b) was issued on 27-9-1993 on the ground of grave misconduct and not on the ground that*

service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up-to 31-1-1993 when the respondent retired. On a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it has to be held that proceedings under Rule 139 were wholly incompetent."

7. Admittedly, the allegation is of the year 2009 and

the show-cause issued under Rule 139 of ‘Bihar Pension Rules, 1950’ without aid of Rule 43(b) of ‘the Rules’ 1950 for making reduction after his retirement is statutorily barred and final order which is said to have been recorded in the year 2024, much after 15 years without any formal departmental enquiry which is contained in Memo No. 816 dated 19.03.2024, appears to be beyond justification.

8. Learned counsel by relying upon the judgment of this Court passed in the case of ***Kamla Sharan Singh v. The State of Bihar & Ors*** as reported in ***BLJ 2000(1) 688,*** submits that the authorities could not invoke Rule 139(b) without aid of Rule 43(b) of ‘the Rules’ 1950, which specifically provides for withholding and withdrawing the pension or any part of it only after a necessary finding in that regard is arrived at in a departmental or judicial proceeding of a nature permissible under Rule 43(b) of Bihar Pension Rules, 1950

9. In order to buttress his submission, learned counsel for the petitioner relied upon paragraphs 5, 6 and 7 of the aforesaid judgment which are as follows:-

> *“5. However, exercise of power under Rule 139(b) must be done care-fully and on the basis of entire service record of*

the pensioner. Such a power cannot be permitted to be exercised in a, case where particular charges have been levelled against the employee concerned of howsoever grave nature they may be but where no finding could be arrived at in accordance with permissible procedure of departmental or judicial proceeding to hold that there was no proofs of grave misconduct on his part while in service. In other words, the power under Rule 139(b) cannot replace the power to withhold or withdraw pension under Rule 43(b) of the Rules because the latter explicitly provides for withholding or withdrawing a pension or any part of it only after necessary finding in that regard is arrived at in a departmental or judicial proceeding of a nature permissible under Rule 43(b). To hold other-wise would render the protection given to a pensioner under Rule 43(b) meaningless and superfluous.

6. Rule 139 (c) no doubt gives

power to the State Government to reduce pension in case it is 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. But such power is only a revisional power and use of the word "satisfy" shows that there must be objective satisfaction on the basis of relevant and cogent materials. In exercise of such power by the State Government the same principle should be applicable as have been indicated above in connection with exercise of power under Rule 139(b) by the authority sanctioning pension, in all such cases where the reduction in pension is proposed on the ground that the service of the pensioner was not thoroughly satisfactory. So far as exercise of power under Rule 139 (c) on the ground of there being proof of grave misconduct against the pensioner is concerned, such proof must have been found in an appropriate *departmental or judicial proceeding in accordance with the service rules and Bihar pension rules.*

7. On the basis of aforesaid submissions and discussions it has to be held in this case that the order contained in Annexure-12 is against the law and fit to be quashed because the respondents failed to show that the service record of the petitioner was not thoroughly satisfactory. No such finding has been given in Annexure-12 nor such ground is mentioned in Annexure-10, the show-cause notice although Rule 139(b) has been mentioned therein. The submission on behalf of the petitioner that no adverse remarks were communicated to him during his service tenure is also not disputed. As a matter of fact the impugned action against the petitioner is based upon a presumption that there was proof of grave misconduct against the petitioner. However, no such finding arrived at in any departmental

> *proceeding was ever communicated to the petitioner nor there is any such finding in any judicial proceeding. Such a finding or proof, for taking action under the rules for the purpose of reduction of pension must be separately communicated to the pensioner so that he may, if aggrieved, prefer an appeal against such finding under Rule 56 (c) of the Civil Services (Classification, Control and Appeal) Rules wherever applicable."*

10. Learned counsel for the State, on the other hand, by referring to the show-cause which is appended with the writ petition as Annexure P/13, on being confronted with the legal issues, very fairly submits that the letter by which the petitioner was put to show-cause, is not a formal decision with regard to initiation of departmental enquiry, which is restored to the authorities under Rule 43(b) of 'the Rules 1950' to record a finding of grave misconduct and pecuniary loss caused to the State exchequer, which is a pre-requisite for taking any decision under Rule 139 of 'the Rules 1950', wherein the pensioner is required to be put to notice within a period of three years from the date of sanction of pension and after providing reasonable

opportunity of hearing to the delinquent, such modification or revision in pension can be made.

11. Insofar as the judgment, which covers the issues having been raised by this petitioner that without the aid of Rule 43(b) of 'the Rules 1950' which strictly bars the authorities from initiating any departmental enquiry for an allegation being beyond four years, which aspect of the matter has also not been confronted by the State counsel, rather learned counsel for the State fairly submits that in the instant case, admittedly, the allegation is of the year 2009 and, as such, keeping in row the dictum of the Hon'ble Apex Court in the case of ***Md. Idris Ansari (supra)*** and the judgment passed by this Court rendered in ***Kamla Sharan Singh (supra),*** the proceeding so initiated cannot be justified in law.

12. Considering the submissions of the parties, this Court finds that for an allegation of the year 2009, the petitioner was put to show-cause without any formal departmental enquiry under Rules 43(b) of Bihar Pension Rules, 1950, and after seeking his response to such show-cause, the order of reduction has been passed by invoking the powers under Rule 139 of 'the Rules' which is in the teeth of judgment rendered by Hon'ble Apex Court in the case of ***Md. Idris Ansari (supra)*** and the

judgment of this Court passed in ***Kamla Sharan Singh (supra)***.

13. The enquiry with regard to the allegation of the year 2009, which is strictly barred under 43(b) of ‘the Rules’, the authorities could not have initiated enquiry under Rule 139 of the Bihar Pension Rules, 1950 and even putting this petitioner to such show-cause was bad in law, and therefore, this Court has no hesitation in interfering with the impugned action which is contained in Memo No. 816 dated 19.03.2024, whereby the petitioner has been imposed penalty of deduction of 10% monthly pension for three years and accordingly, finding such action to be in the teeth of statutory provisions which governs the issues at hand and contrary to the law laid down by the Hon’ble Apex Court and by this Court as referred above, the order impugned as contained in Memo No. 816 dated 19.03.2024 is set aside and directs restoration of full pension of this petitioner within a period of six weeks from the date of receipt/production of a copy of this order.

14. The writ petition stands allowed.

(Ajit Kumar, J)

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