

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.894 of 2018

In

Civil Writ Jurisdiction Case No.9222 of 2017

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Sudarshan Ram, aged about 63 years, son of Late Ram
Nagina Ram, resident of C/5, Saket Bihar, Mitra Mandal
Colony, Anisabad, Police Station Anisabad, District- Patna

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Rural
Works Department, Vishwesharaiya Bhawan, Bailey Road,
Patna

2. The Joint Secretary, Rural Works Department,
Vishwesharaiya Bhawan, Bailey Road, Patna

3. The Deputy Secretary, Rural Works Department,
Vishwesharaiya Bhawan, Bailey Road, Patna

4. The Special Works Officer, Rural Works Department,
Vishwesharaiya Bhawan, Bailey Road, Patna

5. The Treasury Officer, Patna Nirman Bhawan, Patna

6. The Accountant General (Accounts and Entitlement),
Bihar, Patna Birchand Patel Path, Police Station Kotwali,
District- Patna

7. The Principal Secretary, Finance Department, Old
Secretariat, Police Station Sachivalaya, District- Patna

... ... Respondent/s

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Bihar Pension Rules, 1950—43(b)—Bihar Pension Rules, 2009—Rule 139—a departmental inquiry was initiated against appellant—Authority found appellant guilty and an Order of punishment was passed withholding one increment with non-cumulative effect—appellant retired on attaining the age of superannuation—after retirement a show-cause was issued by the Authority withholding 20% per cent of pension for the next ten years under Rule 139 Of Rules, 2009—appellant challenged the said Order in Writ—learned Single Judge dismissed his petition—earlier appellant was punished, of withholding of one increment without future effect, thereafter another order of withholding of 20 per cent pension for the next 10 years will be double jeopardy which is not permissible under the law—both the Rules are independent Rules and operate in different situation—authority sanctioning the pension may pass an order of reduction of the pension under Rules, 2009—order passed by the learned Single Judge was quashed and set aside —appeal allowed. (Paras 4.01, 5.02, 8.00, 8.01)

CWJC No. 9222 of 2017—Set Aside

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... .. Respondent/s

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Appearance :

- For the Appellant : Mr. Rupak Kumar, Advocate
- For Respondent No. 6 : Mr. Manikant Mishra, Advocate
- For the State : Mr. Lalit Kishore, Advocate General
Mrs. Prachi Pallavi, A.C. to Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-08-2018

1.00 There shall be a formal order of admission of the present appeal.

2.00 Ms. Prachi Pallavi, A.C. to Advocate General waives service of notice of admission on behalf of the respondent-State. In the facts and circumstances of the case and with the consent of learned counsel appearing on behalf of the respective parties, the present appeal is taken up for final hearing today.

3.00 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge on 29.06.2018 dismissing the Civil Writ Jurisdiction Case No. 9222 of 2017 preferred by the appellant herein (hereinafter referred to as the “original-petitioner”), by which the learned Single Judge has dismissed the said petition, the original petitioner has preferred the present Letters Patent Appeal.

4.00 The facts leading to the present appeal in nutshell are as under:

4.01 That a departmental inquiry was initiated against



the petitioner. On conclusion of the departmental inquiry, the petitioner was found guilty and the order of punishment dated 26.11.2014 was issued by the department withholding one increment of the petitioner with non-cumulative effect. That thereafter the petitioner retired on 30.06.2015 on attaining the age of superannuation. That thereafter a show-cause notice was issued by the respondents dated 26.12.2016, asking the petitioner to show-cause as to why the pension of the petitioner be not revised to the extent of withholding of 20 per cent of the same for the next 10 years. The petitioner submitted his reply. That thereafter vide order dated 15.06.2017 (impugned before the learned Single Judge) the respondent passed an order withholding of 20 per cent of pension for next 10 years. It appears that the said order was passed in exercise of the powers under Rule 139 of the Bihar Pension Rules. Feeling aggrieved and dissatisfied with the order withholding of 20 per cent pension for the next 10 years dated 15.06.2017, the petitioner preferred the present petition before the learned Single Judge being Civil Writ Jurisdiction Case No. 9222 of 2017. By the impugned judgment and order the learned Single Judge dismissed the said petition, which has given rise to the present Letters Patent Appeal.



5.00 Sri Rupak Kumar, learned advocate has appeared on behalf of the appellant-original petitioner and Sri Lalit Kishore learned Advocate General has appeared on behalf of the respondent-State.

5.01 Sri Rupak Kumar, learned advocate appearing for the appellant has vehemently submitted that the impugned order passed by the learned Single Judge dismissing the petition is not sustainable at law.

5.02 Learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, more particularly when for the same misconduct/irregularity, the petitioner was already earlier imposed the punishment of withholding of one increment without future effect, thereafter another order of withholding of 20 per cent pension and that too for the next 10 years will be double jeopardy which is not permissible under the law.

5.03 Sri Rupak Kumar, learned counsel appearing for the appellant has further submitted that even otherwise in the facts and circumstances of the case the respondent authorities ought not to have invoked Rule 139 of the Bihar Pension Rules.

5.04 It is further submitted by Sri Rupak Kumar, learned counsel appearing for the appellant that even otherwise



the order dated 15.06.2017 purported to be passed under Rule 139 of the Bihar Pension Rules is not sustainable at the law as there is no satisfaction recorded by the appropriate authority that looking to the entire service career, the same is found to be unsatisfactory which warranted withholding of 20 per cent of the pension and that too for 10 years.

5.05 Making above submission, it is requested to allow the present appeal and quash and set aside the impugned judgment and order passed by the learned Single Judge as well as the order dated 15.06.2017 passed by the respondent authority withholding of 20 per cent pension of the petitioner for next 10 years.

6.00 Sri Lalit Kishore, learned Advocate General appearing on behalf of the respondent-State while supporting the impugned judgment and order passed by the learned Single Judge has submitted that while passing the order under Rule 139 of the Bihar Pension Rules the authority after considering the fact that the original petitioner was inflicted the punishment of withholding of one increment without future effect under Rule 43(b) of the Pension Rules and thereby the authority rightly considered that his service was not found satisfactory and, therefore, the authority was justified in passing the order under



Rule 139 of the Bihar Pension Rules, which, as such, is an independent proceedings.

6.01 It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the respondent-State that there is no question of any double jeopardy, as contended on behalf of the appellant, for it is submitted that the powers under Rule 43(b) and the powers under Rule 139 of the Pension Rules both are different powers operating in different circumstances. It is submitted that even in a case where even no order has been passed under Rule 43(b) of the Pension Rules, in that case also the powers under Rule 139 of the Pension Rules can be exercised independently, if it is found that the services of the employee was not found satisfactory.

6.02 Making above submission, it is requested to dismiss the present appeal.

7.00 We have heard Sri Rupak Kumar, learned advocate appearing for the appellant-original petitioner and Sri Lalit Kishore, learned Advocate General appearing for the respondent-State. We have perused and considered the impugned order passed by learned Single Judge.

7.01 The short question which is posed for the



consideration of this Court is whether in the facts and circumstances of the case the authority was justified in withholding 20 per cent pension for a period of 10 years, in exercise of the powers under Rule 139 of the Bihar Pension Rules or not? The another question which is posed for the consideration of this Court is whether in a case where any order is passed under Rule 43(b) of the Bihar Pension Rules, thereafter any order passed under Rule 139 of the Pension Rules, 2009 can be said to be double jeopardy as contended on behalf of the appellant-original petitioner?

7.02 Now, so far as the submission on behalf of the appellant that as earlier the appellant was inflicted the punishment of withholding of one increment without future effect, subsequent order passed under Rule 139 of the Pension Rules can be said to be double jeopardy, has no substance. Considering Rule 139 of the Pension Rules vis-a-vis Rule 43(b) of the Bihar Pension Rules, we are of the opinion that both the Rules are independent rules and operate in different situation. Even in a case where no order is passed under Rule 43(b) of the Pension Rules, in that case also if the Government authority is satisfied and is of the opinion that the service of the concerned employee has not been thoroughly satisfactory, the authority



sanctioning the pension may pass an order of reduction of the pension, however, subject to following the procedure as required under Clause (c) of Rule 139 of the Pension Rules. Therefore, the submission on behalf of the appellant that the subsequent order passed under Rule 139 of the Pension Rules of reduction of pension can be said to be double jeopardy requires rejection.

8.00 However, considering the impugned order passed by the authority, impugned before the learned Single Judge, of withholding of 20 per cent of the pension, which was passed under Rule 139 of Pension Rules, we are of the opinion that the same deserves to be quashed and set aside on the ground that there is no specific finding recorded by the authority that the services of the petitioner was not found to be thoroughly satisfactory. Solely on the basis of the earlier order passed of withholding of one increment, which was found to be not capable of being implemented solely on that basis, the authority has come to the conclusion that the service of the petitioner has not been thoroughly satisfactory. If the aforesaid submission on behalf of the State is accepted, in that case in each and every case where earlier an order is passed imposing some penalty in a disciplinary proceedings, the powers under Rule 139 are to be taken automatically. We asked a specific question to the learned



Advocate General that whether in each and every case where any order is passed earlier in a disciplinary proceedings, in all such cases whether Rule 139 is invoked and any pension is ordered to be reduced, the learned Advocate General is not in a position to point out exercise of any such power. Under the circumstances, we are of the opinion that the conditions for invoking Rule 139 of the Bihar Pension Rules, more particularly Clause (b) of Section 139, are not satisfied. Under the circumstances, the learned Single Judge has erred in confirming the order dated 15.06.2017 passed under Rule 139 of the Bihar Pension Rules. Under the circumstances, on facts, the order passed by the learned Single Judge, confirming the order passed by the appropriate authority passed under Rule 139 of the Pension Rules, deserved to be quashed and set aside.

8.01 In view of the above, for the reasons hereinabove, present appeal succeeds. The impugned judgment and order dated 29.06.2018 passed by the learned Single Judge in C.W.J.C. No. 9222 of 2017 and consequently the order passed by the appropriate authority dated 15.06.2017 withholding 20 per cent of the pension for next 10 years, passed in exercise of the powers under Rule 139 of the Bihar Pension Rules are hereby quashed and set aside. The appellant-original petitioner



shall be entitled to all the benefits as if the order dated 15.06.2017 was not passed. Present appeal is allowed to the aforesaid extent. No cost.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

P.K.P./-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	16.08.2018
Transmission Date	

