IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13899 of 2017

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Dr. Ajay Pratap, Son of Late Ramashish Prasad, Resident of Shekhpura Bagicha, Near IGIMS, P.S.- Shastri Nagar, Town and District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna
2. The Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
3. The Additional Secretary, Health Department, Government of Bihar, Patna.
4. The Under Secretary, Health Department, Government of Bihar, Patna.
5. The Treasury Officer, Secretariat Treasury, Sichai Bhawan, Patna, Bihar.
6. The Director-in-Chief, Health Services, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gyanendra Kumar Shukla, Advocate
For the Respondent/s : Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 22-12-2022

Heard Mr. Gyanendra Kumar Shukla, learned counsel for the petitioner and Mr. Kamlesh Kishore, learned AC to SC-12, for the State.

2. By filing the present writ application, the petitioner seeks quashing of the letter, as contained in Memo no. 557 (3) dated 20.09.2016 whereby and whereunder 20% pensionery amount of the petitioner has been deducted by the respondent authority. The aforesaid order was, in fact, a communication order to the Accountant General, Bihar, hence, later on, the petitioner by filing an interlocutory application, bearing I.A. No. 1 of 2019 assailed the order of punishment, as contained in Memo no. 792(9)

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dated 10.08.2016, which order has been communicated to the petitioner. The aforesaid interlocutory application stood allowed vide order dated 04.09.2019.

3. The short facts, which led to the filing of the present application is that the petitioner was initially appointed as Assistant Civil Surgeon, RMCH, Ranchi on 26.12.1973 and after working more than 39 years he superannuated from the post of Civil Surgeon, Jehanabad on 31.01.2010.

4. It is submitted that during the service period, he rendered efficient service and due to which he was rewarded by the District Administration. Almost two years of the retirement of the petitioner, the Government came out with a resolution, as contained in Memo no.100(9) dated 16.01.2012 initiating a proceeding under Section 43(b) of the Bihar Pension Rules and he was directed to file reply. Pursuant to the aforesaid resolution, the enquiry officer as well as presenting officer were appointed and a memo of charge was served upon the petitioner. He further submits that from bare perusal of memo of charge levelled against the petitioner, in sum and substance the only allegation has been alleged that in his service career in the year 2008 he has issued so many transfers and deputation order irregularly and further he stayed and amended such transfers within one month of the transfer orders. It is also alleged that the petitioner for the sake of

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his desire had illegally done such transfers for his personal gain and, as such, the conduct of the petitioner is found to be unbecoming of Class-I Gazetted Officer. The petitioner submitted his show-cause reply and it has categorically stated in his defence that transfers were made in view of letter No. ED 366 dated 15.04.2008 of Executive Director, State Health Committee, Bihar and letter No. 900(4) dated 16.05.2008 of the Director-in-Chief, as the employees were at station for more than five years. Further the stay of transfers made thereof or amendment was made by him on receipt of letters received within one months whereby the problems of employees were mentioned relating to his/her illness, husband and wife staying together and also on the request of public representatives.

5. During the pendency of the aforesaid departmental proceeding further supplementary memo of charge was served to the petitioner vide letter dated 03.03.2014 with a further allegation of interpolation in the Child Delivery Register of Sadar Hospital, Jehanabad. It is the case of the petitioner that without considering the show-cause of the petitioner in proper perspective, the enquiry officer submitted his enquiry report and charges contained in resolution No. 100(9) has been found proved. So far the charge as alleged in the supplementary memo of charge is concerned that has not been proved. On the basis of the aforesaid enquiry report, the

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impugned order dated 10.08.2016, as contained in Annexure-10, came to be passed whereby 20% pensionery amount of the petitioner has been deducted.

6. Mr. Shukla, learned counsel for the petitioner while submitting the aforesaid facts vehemently relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank and others**, reported in **(2009) 2 SCC 570**. Further reliance has also been made on a judgment rendered by the learned coordinate Bench of this Court in the case of **Mithilesh Kumar Vs. State of Bihar and others**, reported in **2019(1) PLJR 94**.

7. Per contra, learned counsel for the State stranuously submits that the charges against the petitioner has stood proved on the basis of the materials available on record and, therefore, the impugned order has been passed deducting 20% of pension of the petitioner. He submits that the departmental proceeding has been conducted in cosonance with the procedure established under the law and there is no infirmity in the impugned order.

8. Having considered the submissions made on behalf of the parties and considering the materials available on record, it would be prudent to quote Rule 43(b) of the Bihar Pension Rules for proper appreciation of this case.

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"43(b): The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that -

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and as such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed."

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9. From bare reading of Rule 43(b) of the Rules, it is evident that the provisions underlying under Section 43(b) of the Rules would confirm that it is applicable where a pensioner is found guilty of grave misconduct or to have caused pecuniary loss to the Government, or in a departmental, or judicial proceeding so held. It is not the case of the respondent State that because of the conduct of the petitioner any pecuniary loss has caused nor it is the charges, as it appears from the memo of charge. Further, the department has not produced any witness to prove the charges, as has been brought in the memo of charge against the petitioner.

10. It would be proper to quote the relevant paragraph of the judgment rendered by the Hon'ble Supreme Court in the case of **Roop Singh Negi** (Supra) wherein the Apex Court has been pleased to hold in para. 21, 22 and 23, which are quoted herein below:

> 21. Yet again in M.V. Bijlani vs. Union of India & ors. (2006) 5 SCC 88, this Court held:
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> > "25. ....Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot

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refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. Yet again in Jasbir Singh vs. Punjab & Sind Bank & ors. [(2007) 1 SCC 566], this court followed Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. (supra), stating:

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do."

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

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11. Further, the reliance made by the petitioner in the case of **Mithilesh Kumar Vs. State of Bihar and others** (supra) has also gives light on the issue involved in the present writ application and this Court tempted to quote paragraph nos. 17 and 18 of the judgment.

> "17. I fail to appreciate that once the department, on doubting the categorization got an enquiry held by the Inspector, who submitted his report on 28.7.2010 disputing the categorization but exonerating the petitioner of doing the act for any unjust gain and which report persuaded the petitioner to refer the documents for proper valuation under section 47A of "the Stamp Act", where was the need to draw a disciplinary proceeding against the petitioner, more particularly where there was no evidence that the act was backed by a motivated mind or had been done for unjust gains. In fact Annexure-8 to the writ petition is an opinion by the three Member Committee consisting of Officers in the rank of the Assistant Inspector General of Registration on the enquiry report of the Inspector dated 28.7.2010, which recommends acceptance of explanation by the petitioner taking note of his defence as also the fact that the documents had since been referred under section 47A of "the Stamp Act" and that there was no evidence of receipt of illegal gratification.
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> 18. The charges at Annexure 4 nowhere alleges pecuniary gain by the petitioner though it talks about alleged revenue loss but which allegation again losses its sting in view of the reference made by the petitioner under section 47A of "the Stamp Act" for proper valuation in view of the report of the Inspector

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> enclosed at Annexure "A" to the counter affidavit. The legal position is well settled in this regard and every act, which may not be strictly in tune with the guidelines, is not a misconduct, particularly if it is backed by a possible explanation, which explanation again, is not to be written of, simply because it does not suit the disciplinary authority. Misconduct has been well recognized amongst others, as an act which is backed by ill will, conscious violation or done deliberately with a view to cause loss to the Government and provide advantage to someone including the author of the act himself but a negligent act, an error of judgment or a bonafide error simplicitor which is backed by a possible explanation, cannot be sweepingly held as an act of misconduct especially where the fact finding report exonerates the delinquent of any motivated action."

12. From the materials available on record it is also evident there is no compliance of the mandatory provisions of Rules 4, 6 and 17(14) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, as neither the list of witnesses nor the evidences on the basis of which the charges are sought to be proved, has furnished to the petitioner. At this juncture, it would be relevant to observe that the aforesaid rules are not an empty formality but mandatory in nature and non-compliance thereof would certainly vitiate the entire proceedings.

13. Further the impugned order, as contained in Memo No. 792(9) dated 10.08.2016 suffers from the vice of non-

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application of mind, as the same does not even whisper as to what charges have been found proved, which persuaded the disciplinary authority to pass the order of punishment apart from there is no consideration of second show-cause filed by the petitioner.

14. In view of the aforesaid settled legal position and considering the fact that no pecuniary loss has caused to the State Government nor the charges found to be proved comes within the definition of grave misconduct, this Court finds substance in the submission of the learned counsel for the petitioner and, accordingly, set aside the impugned order as contained in Memo No. 792(9) dated 10.08.2016 (Annexure-10 to the interlocutory application) as also the letter contained in Memo no. 557(3) dated 20.09.2016 (Aannexure-1) to the extent whereby 20% of the pensionery amount of the petitioner has been deducted.

15. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2023
Transmission Date	NA

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