IN THE HIGH COURT OF JUDICATURE AT PATNA

Ambika Prasad

vs.

State of Bihar and Others

Civil Writ Jurisdiction Case Number 9843 of 2021

19 September, 2023

(Hon'ble Mr. Justice Madhuresh Prasad)

Issue for Consideration

Whether withholding of 100% pension of petitioner by the Authority is correct or not?

Headnotes

Bihar Pension Rules, 1950—Rule 43(b)—permanent withholding of 100% pension—petitioner was retired employee of Government of Bihar—allegation on petitioner that he allowed excess payment of ₹24.65 crores for carriage of materials during canal restoration in 2012–13—during course of inquiry, the petitioner produced the copy of the measurement book to show that he had specifically inscribed "No Lead Allowed".

Held: Proceedings were initiated more than 4 years after the alleged misconduct, violating the time limit—no witness/evidence was produced in the inquiry—judicial review of the decision itself is also available to the writ court exercising discretionary jurisdiction, but when the findings are perverse and without reference to any material/witness—order of punishment is unsustainable, hence, quashed—order of reviewing Authority quashed—consequential order quashed—writ petition allowed with all consequential benefits.

(Paras 19, 21, 23, 25, 27)

Case Law Cited

Union of India & Ors. vs. P. Gunasekaran, **(2015) 2 SCC 610—**Relied Upon; Ashok Kumar Mishra vs. State of Bihar & Ors., **(2003) 1 PLJR 172;** Overruled in Urmila Sharma & Anr. vs. the State of Bihar & Ors., **(2010) 3 PLJR 845.**

List of Acts

Bihar Pension Rules, 1950; Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

List of Keywords

Pension; withholding of 100% pension; punishment.

Case Arising From

From an order contained in Notification dated 19/12/2019 bearing Notification No. 2628 issued by the Additional Secretary in the Water Resources Department Government of Bihar directing for permanent withholding of 100% of the petitioner's pension.

Appearances for Parties

For the Petitioner: Mr. Chitranjan Sinha, Sr. Advocate; Mr. Bajarangi Lal, Advocate; Mr. Birendra Kumar, Advocate.

For the State: Mr. Vikash Kumar, SC- 11; Mr. Sriram Krishna, AC to SC- 11.

For the Accountant General: Ms. Ritika Rani, Advocate**.**

Headnotes Prepared by Reporter: Abhas Chandra, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9843 of 2021

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Ambika Prasad, Son of late Rup Das Singh Resident of Mohalla- Pathari Ghat, Tripolia, P.S.- Alamganj, District- Patna

... ... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department , Government of Bihar, Patna
3. The Addl. Secretary, Water Resources Department , Government of Bihar, Patna
4. The Deputy Secretary, Water Resources Department , Government of Bihar, Patna
5. The Chief Engineer, Water Resources Department , Valmikinagar camp at Motihari (East Champaran)
6. The Superintending Engineer, Headworks Circle, Balmikinagar (West Champaran)
7. The Executive Engineer, Main Western Canal Division, Valmikinagar (West Champaran)
8. The Treasury Officer, Irrigation Bhawan, patna
9. The Principal Accountant General Bihar, R. Block, Patna

... ... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Bajarangi Lal, Advocate
		Mr. Birendra Kumar, Advocate
For the State	:	Mr. Vikash Kumar, SC- 11
		Mr. Sriram Krishna, AC to SC- 11
For the Accountant General	:	Ms. Ritika Rani, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 19-09-2023

1. Heard learned senior counsel for the petitioner as well as learned counsel for the State.

2. Petitioner is before this Court, aggrieved by order as contained in Notification dated 19/12/2019, bearing Notification No. 2628 (Annexure- 18), issued by the Additional Secretary in the Water Resources Department, Government of Bihar, directing for permanent witholding of 100% of the petitioner's pension. The same is as per conclusion of proceedings conducted under proviso to Rule 43 (b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the '1950 Rules'). The petitioner has also assailed the order dated 09-09-2020 (Annexure- 20), contained in Notification No. 1112, whereby his review submitted by way of memorial under Rule 24 (2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005') has been rejected. The consequential order dated 30-01-2020, bearing Memo No. 1416 (Annexure- 21) addressed to the Office of the Principal Accountant General directing the Treasury not to make payment of pension and other benefits to the petitioner has also been put to challenge in the instant writ proceedings.

3. The facts which are not in dispute are that the charges relate to the year 2012-13, while the petitioner was posted as 'Sub Divisional Officer' in the Main Western Canal, Sub Division. The allegation pertains to restoration work of the 'Main Western Canal' Sub Division at Valmikinagar, wherein it is alleged that local material and stone metals, stone chip sand was used. In spite thereof, the carriage (lead), as per the agreement has been allowed without verifying the actual, under this head. As a result, under this head of carriage Rs. 24.65 Crores excess was paid. The said issue has been inquired into by a Committee, comprising of the Technical Evaluation Cell. The petitioner, allegedly, aided and assisted the contractor by allowing the claim for carriage/lead. During course of inquiry, the petitioner produced the copy of the measurement book to show that he had specifically inscribed "No Lead Allowed".

4. It is further the petitioner's case that he had written a letter dated 26-03-2012 (Annexure- 2), bearing No. 188, specifically addressed to the Executive Engineer of this Division informing him that he had inscribed "No Lead Allowed" in the measurement book for appropriate action in this regard. He had specifically mentioned that local aggregate was used. It is, therefore, his case that there was no occasion to issue any charge memo to the petitioner.

5. In the inquiry, the petitioner has taken the same defence, which has led to issuance of a supplementary charge memo, dated 27-02-2018 (Annexure- 12), bearing Memo No. 552. The same alleges that the measurement book, wherein the two pages, where he claims to have made such inscriptions (no lead allowed), were torn. The copy of these two pages submitted by the petitioner is thus at variance with the same measurement book available with the Junior Engineer as well as the Executive Engineer. The supplementary charge memo also alleges that the communication dated 23/06/2012 (supra) is not available in the Office. The proceedings, thereafter have been concluded by submission of the inquiry report. These facts are extracted from the inquiry report conducted against the petitioner.

6. The relevant dates, keeping this fact in background are that charge memo has been served on 09-11-2017 (Annexure- 9). The proceedings were thus initiated on 09-11-2017. The inquiry report pursuant to the proceedings has been submitted on 14-12-2018. The consequential order of punishment withholding 100 % of petitioner's pension is dated 19-12-2019 (Annexure- 18).

7. It is submitted by the learned senior counsel for the petitioner that the punishment order is unsustainable, as the same is product of a procedure which is unfair and in violation of the settled principles and procedure required in a departmental proceedings. He has also submitted that very initiation is illegal, inasmuch as the same is with respect to an alleged occurrence, more than five years prior to the date of issuance of charge memo. In the circumstance, the charge memo is in contravention of Proviso (a) (ii) of Rule 43 (b) of the 1950 Rules, which requires charge memo to be submitted within four years from the alleged date of occurrence, in the case of retired person.

8. The second submission is that in the inquiry, no witness or evidence was brought to prove the allegations. The allegations arising out of second charge memo have also been not proved with reference to any evidence or witness.

9. The third submission is that the entire conclusions are based on an alleged report of the Technical Evaluation Cell dated 02-01-2013, which is *ex-facie* based on surmises and conjectures. The same is not with reference to any scientific assessment.

10. Lastly, it is submitted that the issue arising out of the supplementary charge memo, that the petitioner has torn relevant part of the measurement book or that the letter dated 23-06-2012, bearing No. 188 (Annexure- 2), is not available in the records has also been held by the Inquiry Officer to be established without reference to any evidence/material in this regard.

11. Whether petitioner can be held liable for variance between the copy of the measurement book available with him; or available with the Junior Engineer and Executive Engineer, was required to be determined with reference to material. It is only thereafter that it could be ascertained as to who was having the correct/genuine copy of measurement book. Insofar as the letter dated 23-06-2012, bearing No. 188 (Annexure- 2), its non-availability also has been attributed to the petitioner on a pre-conceived notion and without reference to any material.

12. The learned counsel for the State, on the other hand, submits that the petitioner has committed gross irregularity while he was posted as Sub Divisional Officer. Huge loss has been caused to the State Exchequer to the tune of Rs. 24.65 Crores. Even though the contractor has used local material, the petitioner has allowed him to avail reimbursement of alleged expenses towards carriage, which as per the report of the Technical Evaluation Cell was unsustainable. The petitioner did not stop at that. So as to frustrate the inquiry, he has also torn the measurement book, and fabricated the document to somehow sustain his false plea that he had written in the measurement book “No Lead Allowed”. He has also fabricated letter dated 23-06-2012, bearing No. 188 (Annexure- 2), though the said letter is not to be found in the Office of the respondent Corporation. The charges have been brought home in the inquiry. The submission is that this Court while examining the issue is required to confine its review to the decision making process and not the decision itself, since the entire process has been followed in accordance with law. This Court should refrain from interfering with the findings.

13. On the very first submission regarding charge memo, being outside the scope of Rule 43 (b) of the 1950 Rules, the learned senior counsel for the petitioner submits that from a plain reading of the provision, it is obvious that an order withholding or withdrawing pension can be passed only if the delinquent is found guilty or of having caused pecuniary loss by misconduct or negligence during his service period. The same, however can be done only in respect of an event which took place not more than four years before the institution of such proceedings. The institution of proceeding in the instant case is by virtue of charge memo, which is dated 09-11-2017, bearing Memo No. 1986 (Annexure- 9), and the alleged occurrence, admittedly, is of the year 2012-13. The occurrence, therefore, is more than four years old, and therefore, the charge memo in relation to the same itself was unsustainable.

14. Learned counsel for the State has made an attempt to convince the Court to allow the charge memo in terms of Rule 43 (b) of the 1950 Rules, having regard to the fact that the alleged misconduct was discovered later and only after submission of the report by the Technical Evaluation Cell. The said submission is being noted, only to be rejected.

15. It is trite law that when a provision is considered, the plain meaning arising out of the words used in the statutory provisions are the most preferred meaning and intent. It is not for the Court to add content to the provision. Plain reading of the Rule 43 (b) of the 1950 Rules, is clear, as would appear from the provision, quoted hereinbelow:-

> ***"43.*** *[1][(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 at 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."

16. If the Court were to allow such an interpretation regarding belated discovery that would amount to inserting new words in the provision, which are not apparent or present in the instant case.

17. A Co-ordinate Bench of this Court, in the case of ***Ashok Kumar Mishra v. State of Bihar & Ors.***, reported in ***(2003) 1 PLJR 172***, had accepted the plea of the Authorities that the date of the knowledge of the occurrence should be made the basis of calculating the four year embargo in Rule 43 (b) of the 1950 Rules. Decision of the Hon'ble Single Judge, was referred to the Division Bench, which resolved the issue in the case of ***Urmila Sharma & Anr. vs. the State of Bihar & Ors.*** reported in ***(2010) 3 PLJR 845***. The Division Bench clearly held that decision in the case of ***Ashok Kumar Mishra*** (supra) did not lay down the correct law as far as interpretation of Rule 43 (b) of the 1950 Rules, is concerned and specifically overrule the said decision.

18. The respondents are thus required to be strictly put to the four years period specified in the proviso to Rule 43 (b) of the 1950 Rules. The charge memo itself is thus unsustainable.

19. The other issues advanced by the learned senior counsel for the petitioner that no witness/evidence was produced in the inquiry, is apparent from a bare perusal of the inquiry report. The entire proceedings had been conducted, based only on the report dated 02-01-2013 submitted by the Technical Evaluation Cell. The report was prepared behind the back of the petitioner. The report also does not arrive at any quantification of the alleged loss/misappropriation based on any scientific evaluation or analysis. By visiting the area, the members of the Technical Evaluation Cell, based on assessment by the naked eye have arrived at findings, which are nothing more than surmises and conjunctures that the loss would be not less than 61.2% of the total amount availed towards carriage of material. There is no definite quantification, which can be attributed to the petitioner. The Authorities, have also not examined as to who is responsible for the measurement book being torn or for the communication dated 23-06-2012, bearing Memo No. 188 (Annexure- 2) being missing.

20. The findings in this regard are also presumptuous, right from the very time the supplementary charge memo dated 20-02-2018 (Annexure- 12) was issued. From bare perusal of the same, it is apparent that the supplementary charge memo purports to give a post decisional hearing to the petitioner. The findings in the inquiry, therefore are clearly unsustainable, as being based on no evidence whatsoever. In view thereof, this Court would consider the scope and parameters for judicial review under Article 226 of the Constitution of India.

21. The submission of the learned counsel for the State that judicial review is to be confined to the decision making process and not decision itself is well founded, but subject to exception, which also are well established. In this connection, the Court would refer to decision of the Apex Court in the Case of ***Union of India & Ors. v. P. Gunasekaran***, reported in ***(2015) 2 SCC 610***. The Apex Court has clearly held that judicial review of the decision itself is also available to the writ court exercising discretionary jurisdiction, but when the findings are perverse and without reference to any material/witness.

22. In the instant case, the Court would find that the inquiry officer's conclusion suffer from both these vices. Not only are the conclusions devoid of any substance and without reference to any material or witness, but the same are also presumptive and based on surmises and conjunctures, leading the conclusions to be perverse. This Court, therefore, does not find the punishment as a result of such inquiry to be sustainable.

23. The order of punishment dated 19-12-2019, bearing Memo No. 2628 (Annexure- 18), therefore, is held by this Court to be unsustainable, for the reasons indicated above, and is hereby quashed. The order of reviewing Authority dated 09-09-2020, contained in Notification No. 1112 (Annexure- 20) on the petitioner's memorial, based under Rule 24 (2) of the Bihar CCA Rules, 2005, which is nothing more than affirmation of the illegal order passed by the disciplinary authority, therefore, must also collapse and is hereby quashed. The consequential order dated 30-01-2020, bearing Memo No. 1416 (Annexure- 21), is therefore, also quashed.

24. Learned counsel for the State, at this juncture, submits that the Authorities be given liberty to proceed against the petitioner in accordance with law.

25. In view of the findings noted above, regarding the time limit contained in proviso (a) (ii) to Rule 43 (b) of the 1950 Rules prohibiting the respondents from initiating proceedings for an occurrence not more than four years old, no such liberty can be granted to the State now to proceed against the petitioner under Rule 43 (b) of the 1950 Rules, for alleged occurrence of the year 2012-13.

26. Should there be any other provision available to the Authorities, the present order will not come in the way.

27. The writ petition stands allowed with all consequential benefits.

(Madhuresh Prasad, J)

Raj Kishore/-

AFR/~~NAFR~~	AFR
CAV DATE	N/A
Uploading Date	12-10-2023
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