

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22260 of 2011

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Dr.(Smt.)Swarn Lata Sinha, wife of Sri Raj Kishore Sinha, Resident At
Rupantar Matri Sewa Sadan, Tilatand, P.O. Katrash, Police Station -
Katrash, District - Dhanbad, Jharkhand at present residing at St. Pole School
Campus, Kachitalaw, Gardanibagh, P.S. Gardanibagh, District - Patna
..... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. The Secretary, Department of Health, Medical Education and Family Planning, Government of Bihar, New Secretariat, Patna
4. The Deputy Secretary, Department of Health, Medical Education and Family Planning, Government of Bihar, New Secretariat, Patna
5. The Civil Surgeon - Cum- Chief Medical Officer, Sasaram
6. The Medical Officer, Sadar Hospital , Sasaram
7. The Regional Deputy Director, Department of Health, Medical Education and Family Planning, Sasaram
8. The Bihar Public Service Commission, Bailey Road, Patna through its Chairman
9. The District Provident Fund Officer, Sasaram
10. The Director, General Provident Fund, Patna Bhawan, Bailey Road, Patna
11. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
12. The Accountant General (Bihar), Virchand Patel Path, Patna

..... Respondents

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar Mishra,
Advocate
For the State : A.C. to S.C.-15


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CORAM: HONOURABLE MR. JUSTICE SHAILESH KUMAR SINHA
ORAL ORDER

4 31-07-2013

Heard learned counsel for the petitioner and the State.

The petitioner is aggrieved by the order as per Memo No.320 dated 24th of March, 2006, as contained in Annexure 10, whereby and whereunder her entire pension has been forfeited as a measure of punishment in a departmental proceedings initiated against her and later on converted into a proceedings under rule 43(b) of the Bihar Pension Rules.



It is submitted on behalf of the petitioner that on perusal of the impugned order, it would appear that the order has been passed without due application of mind inasmuch as the order is a non-speaking one in absence of any reference to the charges against her, the materials brought against her during the proceedings as also the findings of the enquiry officer. The decision of the disciplinary/punishing authority to forfeit her entire pension without expressing any opinion on his own or mentioning the reason accepting the charges against the petitioner is supported by no reasons in absence of any consideration of the charges vis-à-vis the materials in support of the charges. Learned counsel further submits that the impugned order is otherwise in violation of the principles of natural justice. The petitioner accordingly prayed for quashing of the impugned order.

Learned Assistant Counsel to Standing Counsel no.15 appearing for the State, on the other hand, submits that the petitioner remained non-co-operative and as such, since the service of notice of the disciplinary proceedings would not be communicated to her in normal course, publication in the newspaper was resorted. It is further submitted that on perusal of the impugned order it would appear that after the proceeding was converted under rule 43(b) of the Bihar Pension Rules, a notice was again published in the newspaper. The petitioner, however,

did not take any notice and participate in the proceedings and as such, the department concerned has no option except to pass the final order on the basis of the materials available on the record.

Considering the submissions of the parties and on perusal of the impugned order, it would appear that the notice of the disciplinary proceedings was got communicated to the petitioner by publication in the newspaper and as such, the grievance of the petitioner that the impugned order has been passed without notice to the petitioner at any stage cannot be validly sustained.

However, the second contention of the petitioner that the impugned order holding the petitioner guilty and imposing the punishment of forfeiture of her entire pension is not supported by any reason has substance. The impugned order does not disclose as to what was the specific charges against the petitioner and the findings arrived on such charges by the enquiry officer on the basis of the materials brought in the enquiry proceeding. The order further does not disclose as to what was the consideration of the punishing authority in the light of the findings arrived at by the enquiry officer. Merely observing that since no reply was filed by the petitioner, the decision was taken to forfeit the entire pension cannot be justified in law. It was expected of the punishing authority to state, even in short, the charges against the delinquent,

the findings and the materials brought on the record and the findings recorded by the enquiry officer as well as the considerations made by the authority. In absence of the above, the order cannot be said to be a speaking order. In view of the above, the impugned order, as contained in Annexure 10, cannot be sustained in law. It is, accordingly, quashed.

The matter is, however, remitted back to the punishing authority for passing an order afresh in accordance with law after giving an opportunity of hearing to the petitioner or her representative. The petitioner be provided with a copy of the charges framed against her giving an opportunity of reply and thereafter the matter be proceeded so as to complete the proceedings finally by passing the final order expeditiously, preferably within a period of six months on receipt/production of the certified copy of the present order.

It goes without saying that the petitioner shall co-operate in early conclusion of the proceedings, failing which it will be open for the authority to pass an appropriate order.

The writ application stands allowed, as indicated above.

(Shailesh Kumar Sinha, J)

PNM